

Tab 1	CS/SB 160 by JU, Perry (CO-INTRODUCERS) Hooper; (Similar to CS/CS/H 00573) Peer-to-peer Support for First Responders					
682522	D	S	RCS	RC, Perry	Delete everything after	03/03 01:35 PM
834386	AA	S	RCS	RC, Perry	Delete L.18:	03/03 01:35 PM
526660	A	S	WD	RC, Farmer	btw L.65 - 66:	03/03 01:35 PM
Tab 2	CS/SB 410 by CA, Perry; (Compare to CS/CS/CS/H 00203) Growth Management					
939464	D	S	RCS	RC, Perry	Delete everything after	03/02 08:00 PM
223488	AA	S L	RCS	RC, Hutson	Delete L.5 - 10.	03/02 08:00 PM
Tab 3	CS/SB 504 by GO, Perry; (Compare to CS/CS/H 00279) Local Government Public Construction Works					
627108	D	S	RCS	RC, Perry	Delete everything after	03/03 01:47 PM
547446	AA	S	UNFAV	RC, Perry	btw L.4 - 5:	03/03 01:47 PM
719092	A	S	WD	RC, Perry	Before L.26:	02/28 12:26 PM
Tab 4	CS/SB 888 by CA, Perry; (Similar to CS/CS/H 00625) Public Nuisances					
702620	A	S	RCS	RC, Perry	Delete L.36:	03/03 11:56 AM
Tab 5	SB 7032 by CJ; (Identical to H 07015) OGSR/Body Camera Recordings Obtained by Law Enforcement Officers					
Tab 6	CS/SB 218 by HP, Harrell; (Identical to H 00221) Licensure Requirements for Osteopathic Physicians					
Tab 7	CS/CS/SB 230 by AP, HP, Harrell; (Similar to CS/CS/CS/H 00713) Department of Health					
850798	A	S	WD	RC, Harrell	btw L.368 - 369:	03/03 05:18 PM
309044	SA	S	WD	RC, Harrell	btw L.368 - 369:	03/03 05:18 PM
341294	ASA	S	WD	RC, Brandes	btw L.121 - 122:	03/03 05:18 PM
628052	A	S	RCS	RC, Harrell	Delete L.652 - 701:	03/03 05:18 PM
473796	A	S	RS	RC, Harrell	Delete L.1868:	03/03 05:18 PM
512696	SA	S	RCS	RC, Harrell	Delete L.1867 - 1869:	03/03 05:18 PM
444270	A	S	UNFAV	RC, Rodriguez	Delete L.1868 - 1869:	03/03 05:18 PM
639090	AA	S	WD	RC, Rodriguez	Delete L.12 - 16:	03/03 05:18 PM
Tab 8	CS/SB 500 by HP, Harrell; (Similar to CS/H 00309) Prohibited Acts by Health Care Practitioners					
150030	D	S	WD	RC, Harrell	Delete everything after	02/28 01:18 PM
753712	AA	S	WD	RC, Harrell	Delete L.34 - 36:	02/26 07:54 AM
180070	SD	S	WD	RC, Harrell	Delete everything after	02/28 01:18 PM
668434	D	S	RCS	RC, Harrell	Delete everything after	03/03 05:34 PM
536662	AA	S	RCS	RC, Harrell	Delete L.15 - 17:	03/03 05:34 PM
559144	A	S	WD	RC, Harrell	btw L.41 - 42:	02/24 12:53 PM
Tab 9	SB 738 by Harrell; (Similar to CS/H 00393) Jury Service					
679768	D	S	RCS	RC, Harrell	Delete everything after	03/03 05:23 PM
Tab 10	CS/SB 302 by CF, Rader; (Similar to CS/H 00089) Adoption Records					
Tab 11	SB 510 by Wright; (Identical to CS/H 00333) Bail Pending Appellate Review					
493576	A	S	WD	RC, Brandes	Delete L.27:	03/03 09:23 AM

Tab 12	CS/CS/SB 688 by CJ, EN, Wright ; (Similar to CS/H 00327) Illegal Taking, Possession, and Sale of Bears					
Tab 13	CS/SB 660 by CM, Berman ; (Identical to CS/H 00783) Uniform Commercial Real Estate Receivership Act					
Tab 14	SB 726 by Rouson ; (Similar to CS/H 00255) Florida Commission on Human Relations					
Tab 15	SB 798 by Rouson (CO-INTRODUCERS) Pizzo ; (Similar to CS/H 00563) Procurement of Human Organs and Tissue					
804792	A	S	RCS	RC, Rouson	Delete L.17 - 19:	03/03 05:40 PM
202180	A	S	RCS	RC, Rouson	Delete L.35 - 37:	03/03 05:40 PM
Tab 16	CS/CS/SB 792 by BI, HP, Albritton (CO-INTRODUCERS) Harrell ; (Similar to CS/H 00467) Physical Therapy Practice					
415392	A	S	RCS	RC, Albritton	Delete L.99 - 153:	03/03 05:43 PM
148238	AA	S	RCS	RC, Albritton	Delete L.45 - 50:	03/03 05:43 PM
Tab 17	CS/SB 822 by GO, Albritton ; (Identical to CS/H 00659) Drones					
Tab 18	SB 1042 by Albritton ; (Compare to CS/CS/H 01061) Aquatic Preserves					
Tab 19	CS/SB 1082 by AG, Albritton ; (Similar to CS/CS/H 00241) Domestic Violence Injunctions					
Tab 20	SB 1244 by Albritton ; (Compare to CS/CS/H 01139) State Workforce Development Boards					
Tab 21	CS/CS/SB 826 by IS, EN, Mayfield ; (Compare to CS/CS/CS/H 00395) Marina Evacuations					
Tab 22	CS/CS/SB 736 by HP, BI, Diaz ; (Similar to CS/CS/1ST ENG/H 00747) Coverage for Air Ambulance Services					
313996	A	S	RCS	RC, Diaz	Delete L.40 - 83:	03/03 05:46 PM
Tab 23	CS/SB 1128 by CM, Diaz ; (Compare to CS/CS/H 01011) Vacation Rentals					
497386	D	S		RC, Diaz	Delete everything after	02/28 09:48 AM
155026	AA	S		RC, Simmons	Delete L.272 - 297:	03/02 08:27 AM
954984	AA	S		RC, Farmer	Delete L.272 - 297:	03/02 09:54 AM
721704	AA	S		RC, Farmer	Delete L.298 - 305:	03/02 09:56 AM
530420	AA	S		RC, Flores	Delete L.303 - 313:	03/02 07:57 AM
874390	A	S L		RC, Simmons	Delete L.71 - 95:	03/02 08:26 AM
Tab 24	CS/SB 1258 by CA, Diaz (CO-INTRODUCERS) Baxley ; (Similar to CS/CS/H 00915) Commercial Service Airports					
230136	A	S	RCS	RC, Brandes	Delete L.64 - 70:	03/03 02:00 PM
Tab 25	SB 1618 by Diaz ; (Similar to CS/H 01047) Construction Materials Mining Activities					
Tab 26	SB 7008 by ED ; (Identical to H 07075) OGS/Animal Medical Records/State College of Veterinary Medicine					
Tab 27	SB 946 by Baxley ; (Similar to H 00737) Moments of Silence in Public Schools					

Tab 28	CS/SB 1170 by GO, Baxley (CO-INTRODUCERS) Hutson ; (Identical to CS/CS/H 00821) Public Records and Meetings/Division of State Technology
Tab 29	CS/SB 1466 by GO, Baxley (CO-INTRODUCERS) Broxson ; (Compare to H 00855) Government Accountability
Tab 30	CS/SB 898 by BI, Gruters (CO-INTRODUCERS) Broxson ; (Identical to CS/H 00529) Insurance Guaranty Associations
Tab 31	SB 1140 by Gruters ; (Similar to CS/CS/H 00867) Public Accountancy
Tab 32	CS/CS/SJR 1216 by ED, EE, Gruters (CO-INTRODUCERS) Baxley ; (Identical to H 00157) Limitation on Terms of Office for Members of a District School Board
Tab 33	CS/SB 1366 by JU, Gruters ; (Identical to CS/H 01089) Trusts
Tab 34	SB 1424 by Gruters ; (Identical to H 01009) Special Neighborhood Improvement Districts
Tab 35	SB 1376 by Broxson (CO-INTRODUCERS) Baxley ; (Similar to CS/H 01211) Credit For Reinsurance
Tab 36	CS/SB 1672 by JU, Broxson (CO-INTRODUCERS) Baxley ; (Similar to CS/CS/H 00813) Protection of Vulnerable Investors
Tab 37	CS/SR 1572 by IS, Stewart ; Climate Change
Tab 38	CS/CS/SB 1802 by GO, CJ, Pizzo ; (Compare to CS/H 00201) Public Meetings/Urban Core Gun Violence Task Force
Tab 39	CS/SB 4 by JU, Flores ; (Similar to CS/CS/H 06501) Relief of Dontrell Stephens by the Palm Beach County Sheriff's Office
Tab 40	CS/CS/SR 214 by JU, IS, Rodriguez (CO-INTRODUCERS) Cruz, Stewart, Benacquisto, Bradley, Hutson, Mayfield, Diaz, Wright, Perry, Harrell, Albritton, Hooper ; (Compare to H 00051) Philosophies that Espouse Superiority
Tab 41	CS/CS/SB 664 by CM, JU, Lee (CO-INTRODUCERS) Gruters, Harrell, Simmons ; (Compare to CS/H 01265) Verification of Employment Eligibility
885440	D S RCS RC, Lee Delete everything after 03/03 03:31 PM
Tab 42	CS/CS/SB 1270 by CA, GO, Lee ; (Similar to H 01113) Fiduciary Duty of Care for Appointed Public Officials and Executive Officers
Tab 43	CS/SB 1766 by JU, Lee (CO-INTRODUCERS) Perry ; (Compare to CS/CS/CS/H 00395) Growth Management
Tab 44	SB 7048 by IS ; Public Records/Public Shelter Space

Tab 45	CS/CS/SB 680 by CM, EN, Hutson (CO-INTRODUCERS) Gruters, Stewart, Berman, Book; (Similar to CS/H 00401) Shark Fins					
421662	A	S	RCS	RC, Hutson	Delete L.37:	03/02 08:04 PM
382092	A	S	WD	RC, Hutson	btw L.68 - 69:	03/02 08:04 PM
Tab 46	CS/CS/SB 812 by GO, EN, Hutson; (Identical to CS/H 00549) Public Records/Endangered and Threatened Species					
Tab 47	CS/CS/SB 1872 by BI, GO, Hutson; (Similar to CS/CS/H 01393) Public Records/Office of Financial Regulation/Financial Technology Sandbox Applications					
Tab 48	SB 7066 by AP; Fees					
738014	A	S	RCS	RC, Hutson	Delete L.9 - 23:	03/02 08:12 PM
Tab 49	CS/SB 1060 by IT, Thurston; (Similar to CS/CS/H 00755) Public Records and Meetings/911 or E911 Communication System					
344162	D	S	RCS	RC, Thurston	Delete everything after	03/03 12:24 PM
Tab 50	CS/SB 1148 by IS, Brandes; (Similar to CS/CS/H 00971) Electric Bicycles					
Tab 51	CS/SB 1352 by IT, Brandes; (Similar to CS/CS/H 01039) Transportation Companies					
289278	D	S	RCS	RC, Brandes	Delete everything after	03/03 02:33 PM
Tab 52	SB 1354 by Brandes; Statewide Voter Registration Application					
831182	A	S	L WD	RC, Rodriguez	Delete L.23 - 25:	03/03 11:38 AM
Tab 53	CS/CS/SB 1372 by JU, EE, Brandes; (Compare to CS/H 01005) Elections					
883168	D	S		RC, Brandes	Delete everything after	02/28 11:17 AM
870312	AA	S	WD	RC, Rodriguez	Delete L.22 - 24:	03/02 01:12 PM
626332	AA	S		RC, Farmer	Delete L.139 - 159.	02/28 05:42 PM
194602	AA	S		RC, Brandes	Delete L.158 - 159:	03/02 08:50 AM
Tab 54	CS/SB 1738 by IS, Brandes; (Similar to CS/CS/H 00977) Motor Vehicle Dealers					
318568	A	S	L WD	RC, Farmer	Delete L.85 - 97:	03/03 11:40 AM
Tab 55	CS/SB 1582 by CM, Simmons; (Similar to CS/H 00741) Asbestos Trust Claims					
Tab 56	SJR 7062 by JU; (Identical to H 07093) Citizen Initiative					
Tab 57	CS/SB 1634 by ED, Stargel; (Similar to CS/H 01059) Parental Rights					
694008	A	S	WD	RC, Rodriguez	Delete L.102 - 103:	03/03 06:23 PM
957918	A	S	UNFAV	RC, Rodriguez	Delete L.140 - 162:	03/03 06:23 PM
820782	A	S	WD	RC, Rodriguez	Delete L.147 - 149:	03/03 06:23 PM
232476	A	S	RS	RC, Rodriguez	Delete L.179:	03/03 06:23 PM
888014	SA	S	FAV	RC, Stargel	Delete L.177 - 188:	03/03 06:23 PM
396696	A	S	UNFAV	RC, Rodriguez	Delete L.263 - 268:	03/03 06:23 PM

Tab 58	CS/CS/SB 1876 by IT, AG, Montford (CO-INTRODUCERS) Gibson; (Compare to CS/CS/H 01063) State Hemp Program						
492230	A	S	RCS	RC, Montford	Delete L.95:		03/03 03:13 PM
Tab 59	SB 7002 by CF; (Identical to H 07023) OGSR/State Child Abuse Death Review Committee						
Tab 60	SB 7052 by IT; Office of Public Counsel						
Tab 61	HB 5301 by JUA, Yarborough, Beltran; (Similar to S 07050) Judges						
Tab 62	HB 7049 by TTA, Trumbull; (Similar to CS/S 01212) International Affairs						
130920	A	S	FAV	RC, Benacquisto	Delete L.54 - 172:		03/03 02:49 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES

Senator Benacquisto, Chair
Senator Gibson, Vice Chair

MEETING DATE: Monday, March 2, 2020
TIME: 12:00 noon—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	CS/SB 160 Judiciary / Perry (Similar CS/CS/H 573)	Peer-to-peer Support for First Responders; Prohibiting a first responder peer from testifying or divulging specified information under certain circumstances; providing exceptions; prohibiting liability and a cause of action under certain circumstances, etc. CF 10/22/2019 Favorable JU 11/05/2019 Temporarily Postponed JU 11/12/2019 Fav/CS RC 03/02/2020 Fav/CS	Fav/CS Yeas 15 Nays 2
2	CS/SB 410 Community Affairs / Perry (Compare CS/CS/CS/H 203, CS/S 1398)	Growth Management; Requiring the Department of Economic Opportunity to give a preference to certain counties and municipalities when selecting applications for funding for technical assistance; requiring a comprehensive plan to include a property rights element; providing a statement of rights that a local government may use, etc. CA 01/27/2020 Fav/CS JU 02/11/2020 Favorable RC 03/02/2020 Fav/CS	Fav/CS Yeas 14 Nays 3
3	CS/SB 504 Governmental Oversight and Accountability / Perry (Compare CS/CS/H 279)	Local Government Public Construction Works; Revising disclosure requirements for bidding documents and other requests for proposals issued for bids by a local governmental entity and public contracts entered into between local governmental entities and contractors; requiring the governing board of a local government to consider estimated costs of certain projects using generally accepted cost-accounting principles that account for specified costs when the board is making a specified determination, etc. CA 12/09/2019 Favorable GO 01/13/2020 Fav/CS RC 03/02/2020 Fav/CS	Fav/CS Yeas 17 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 888 Community Affairs / Perry (Similar CS/CS/H 625)	Public Nuisances; Revising notice requirements for the filing of temporary injunctions relating to the enjoinder of certain nuisances; declaring that the use of a location by a criminal gang, criminal gang members, or criminal gang associates for criminal gang-related activity is a public nuisance; declaring that any place or premises that has been used on more than two occasions during a certain period as the site of any combination of specified violations is a nuisance and may be abated pursuant to specified procedures, etc. CJ 01/14/2020 Favorable CA 02/03/2020 Fav/CS RC 03/02/2020 Fav/CS	Fav/CS Yeas 16 Nays 0
5	SB 7032 Criminal Justice (Identical H 7015)	OGSR/Body Camera Recordings Obtained by Law Enforcement Officers; Amending a provision which provides an exemption from public records requirements for body camera recordings obtained by law enforcement officers under certain circumstances; abrogating the scheduled repeal of the exemption, etc. GO 01/27/2020 Favorable RC 03/02/2020 Favorable	Favorable Yeas 14 Nays 2
6	CS/SB 218 Health Policy / Harrell (Identical H 221, Compare CS/CS/CS/H 713, CS/CS/S 230)	Licensure Requirements for Osteopathic Physicians; Revising licensure requirements for persons seeking licensure or certification as an osteopathic physician, etc. HP 10/22/2019 Fav/CS AP 02/20/2020 Favorable RC 03/02/2020 Favorable	Favorable Yeas 15 Nays 0
7	CS/CS/SB 230 Appropriations / Health Policy / Harrell (Similar CS/CS/CS/H 713, Compare H 77, CS/CS/CS/H 115, H 221, H 485, H 677, CS/H 707, CS/CS/H 1143, CS/H 1193, CS/H 1341, CS/H 1461, CS/S 66, CS/S 218, CS/S 226, CS/S 356, S 390, CS/CS/CS/S 474, S 926, CS/S 1124, S 1138, CS/S 1296)	Department of Health; Revising the purpose of patient care networks from serving patients with acquired immune deficiency syndrome to serving those with human immunodeficiency virus; requiring the Department of Health to develop strategies to maximize federal-state partnerships that provide incentives for physicians to practice in medically underserved or rural areas; extending through 2025 the Florida Center for Nursing's responsibility to study and issue an annual report on the implementation of nursing education programs; requiring dentists and certified registered dental hygienists to report in writing certain adverse incidents to the department within a specified timeframe, etc. HP 10/15/2019 Fav/CS AP 02/05/2020 Fav/CS AP 02/06/2020 RC 03/02/2020 Fav/CS	Fav/CS Yeas 17 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	CS/SB 500 Health Policy / Harrell (Similar CS/H 309)	Prohibited Acts by Health Care Practitioners; Specifying names and titles that licensed health care practitioners are prohibited from using under certain circumstances; requiring the Department of Health to issue an emergency cease and desist order for specified violations, etc. HP 01/14/2020 Fav/CS AP 02/05/2020 Favorable AP 02/06/2020 RC 02/26/2020 Temporarily Postponed RC 03/02/2020 Fav/CS	Fav/CS Yeas 16 Nays 0
9	SB 738 Harrell (Similar CS/H 393)	Jury Service; Requiring certain students actively enrolled in specified schools to be excused from jury service upon request, etc. JU 12/10/2019 Favorable ED 01/27/2020 Favorable RC 03/02/2020 Fav/CS	Fav/CS Yeas 13 Nays 3
10	CS/SB 302 Children, Families, and Elder Affairs / Rader (Similar CS/H 89)	Adoption Records; Providing that the name and identity of a birth parent, an adoptive parent, and an adoptive may be disclosed from adoption records without a court order under certain circumstances, etc. CF 02/04/2020 Fav/CS JU 02/19/2020 Favorable RC 03/02/2020 Favorable	Favorable Yeas 16 Nays 1
11	SB 510 Wright (Identical CS/H 333)	Bail Pending Appellate Review; Prohibiting a court from granting bail to specified offenders pending review following a conviction for an offense requiring sexual offender or sexual predator registration if the victim was a minor, etc. CJ 11/12/2019 Favorable JU 12/10/2019 Favorable RC 03/02/2020 Favorable	Favorable Yeas 16 Nays 1
12	CS/CS/SB 688 Criminal Justice / Environment and Natural Resources / Wright (Similar CS/H 327)	Illegal Taking, Possession, and Sale of Bears; Providing that a person commits specified violations for the illegal taking, possession, and sale of bears; prohibiting the illegal taking, possession, and sale of bears, etc. EN 02/03/2020 Fav/CS CJ 02/11/2020 Fav/CS RC 03/02/2020 Favorable	Favorable Yeas 16 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	CS/SB 660 Commerce and Tourism / Berman (Identical CS/H 783)	Uniform Commercial Real Estate Receivership Act; Designating chapter 714, F.S., as the Uniform Commercial Real Estate Receivership Act; specifying that a court has exclusive jurisdiction to direct receivers and determine controversies under certain circumstances; providing requirements and authorizations relating to the appointment of a receiver; providing for defenses and immunities of a receiver; authorizing the court to enter certain orders if the court concludes that receivership property is likely to be insufficient to satisfy certain claims; requiring a receiver to file a final report containing certain information upon completion of the receiver's duties, etc. JU 12/10/2019 Favorable CM 02/04/2020 Fav/CS RC 03/02/2020 Favorable	Favorable Yeas 16 Nays 0
14	SB 726 Rouson (Similar CS/H 255, Compare S 450)	Florida Commission on Human Relations; Revising quorum requirements for the Commission on Human Relations and its panels; revising the number of persons the commission must recommend for the Florida Civil Rights Hall of Fame; deleting a requirement that a facility or community that provides housing for older persons register with and submit a letter to the commission; deleting the requirement for the commission or Attorney General to investigate a complaint of discrimination in evaluating an application for club membership, etc. GO 12/09/2019 Favorable JU 01/15/2020 Favorable RC 03/02/2020 Favorable	Favorable Yeas 16 Nays 0
15	SB 798 Rouson (Similar CS/H 563)	Procurement of Human Organs and Tissue; Prohibiting for-profit entities from procuring certain human organs and tissue, with certain exceptions; prohibiting for-profit entities from procuring certain human organs and tissue, with certain exceptions, etc. HP 01/28/2020 Favorable CJ 02/11/2020 Favorable RC 03/02/2020 Fav/CS	Fav/CS Yeas 16 Nays 1
16	CS/CS/SB 792 Banking and Insurance / Health Policy / Albritton (Similar CS/H 467)	Physical Therapy Practice; Revising and defining terms; revising the powers and duties of the Board of Physical Therapy Practice; requiring the board to establish minimum standards of practice for the performance of dry needling by physical therapists, etc. HP 01/21/2020 Fav/CS BI 02/11/2020 Fav/CS RC 03/02/2020 Fav/CS	Fav/CS Yeas 17 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS		COMMITTEE ACTION
17	CS/SB 822 Governmental Oversight and Accountability / Albritton (Identical CS/H 659)	Drones; Adding an exception to prohibited uses of a drone, etc.		Favorable Yeas 17 Nays 0
		EN 01/13/2020 Favorable		
		GO 01/27/2020 Fav/CS		
		RC 03/02/2020 Favorable		
18	SB 1042 Albritton (Compare CS/CS/H 1061)	Aquatic Preserves; Creating the Nature Coast Aquatic Preserve; designating the preserve for inclusion in the aquatic preserve system; outlining the authority of the Board of Trustees of the Internal Improvement Trust Fund in respect to the preserve; prohibiting the establishment and management of the preserve from infringing upon the riparian rights of upland property owners adjacent to or within the preserve, etc.		Favorable Yeas 16 Nays 0
		EN 01/21/2020 Favorable		
		GO 02/03/2020 Favorable		
		RC 03/02/2020 Favorable		
19	CS/SB 1082 Agriculture / Albritton (Similar CS/CS/H 241)	Domestic Violence Injunctions; Authorizing a court to take certain actions regarding the care, possession, or control of an animal in domestic violence injunctions, etc.		Favorable Yeas 17 Nays 0
		AG 01/14/2020 Fav/CS		
		JU 02/19/2020 Favorable		
		RC 03/02/2020 Favorable		
20	SB 1244 Albritton (Compare CS/CS/H 1139, CS/H 1271)	State Workforce Development Boards; Defining the terms “for cause” and “state board”; replacing CareerSource Florida, Inc., with the state board or the Department of Economic Opportunity in provisions relating to the implementation of the federal Workforce Innovation and Opportunity Act; revising provisions relating to the operation of CareerSource Florida, Inc.; authorizing a chief elected official for a local workforce development board to remove certain persons from the board for cause; revising authority relating to the Workforce Training Institute, etc.		Favorable Yeas 17 Nays 0
		CM 01/21/2020 Favorable		
		IT 02/10/2020 Favorable		
		RC 03/02/2020 Favorable		

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
21	CS/CS/SB 826 Infrastructure and Security / Environment and Natural Resources / Mayfield (Compare CS/CS/CS/H 395, H 1329)	Marina Evacuations; Prohibiting vessels under a specified weight from remaining in certain marinas that have been deemed unsuitable for refuge during a hurricane after the issuance of a hurricane watch; requiring a marina owner, operator, employee, or agent to remove specified vessels under certain circumstances; providing that such owner, operator, employee, or agent may charge the vessel owner a reasonable fee for such removal and may not be held liable for any damages as a result of such removal, etc. EN 02/03/2020 Fav/CS IS 02/17/2020 Fav/CS RC 03/02/2020 Favorable	Favorable Yeas 17 Nays 0
22	CS/CS/SB 736 Health Policy / Banking and Insurance / Diaz (Similar CS/CS/H 747)	Coverage for Air Ambulance Services; Requiring health insurers and health maintenance organizations, respectively, to provide reasonable reimbursement to air ambulance services for certain covered services; providing that such reimbursement may be reduced only by certain amounts; providing that full payment of an applicable copayment, coinsurance, or deductible constitutes an accord, satisfaction, and release of certain claims, etc. BI 01/21/2020 Fav/CS HP 02/11/2020 Fav/CS RC 03/02/2020 Fav/CS	Fav/CS Yeas 15 Nays 1
23	CS/SB 1128 Commerce and Tourism / Diaz (Compare CS/CS/H 1011)	Vacation Rentals; Preempting the regulation of vacation rentals to the state; prohibiting a local law, ordinance, or regulation from allowing or requiring inspections or licensing of public lodging establishments, including vacation rentals, or public food service establishments; requiring licenses issued by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to be displayed conspicuously to the public inside the licensed establishment, etc. IT 01/13/2020 Favorable CM 02/11/2020 Fav/CS RC 03/02/2020 Temporarily Postponed	Temporarily Postponed

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
24	CS/SB 1258 Community Affairs / Diaz (Similar CS/CS/H 915)	Commercial Service Airports; Directing the Auditor General to conduct specified audits of certain airports; requiring members of the governing body of a large-hub commercial service airport to comply with certain financial disclosure requirements; requiring the governing body of a municipality, county, or special district that operates a commercial service airport to establish and maintain a website; requiring commercial service airports to comply with certain contracting requirements, etc. IS 01/27/2020 Favorable CA 02/17/2020 Fav/CS RC 02/26/2020 Not Considered RC 03/02/2020 Fav/CS	Fav/CS Yeas 15 Nays 2
25	SB 1618 Diaz (Similar CS/H 1047, Compare H 1431)	Construction Materials Mining Activities; Creating a pilot program within the Division of State Fire Marshal to monitor and report on the use of explosives in construction materials mining activities in Miami-Dade County; requiring the State Fire Marshal to hire or contract with seismologists to monitor and report blasts occurring in connection with construction materials mining activities in Miami-Dade County and to post the reports of the seismologists on the division's website; requiring a person who engages in construction materials mining activities in Miami-Dade County to submit certain written notice relating to the use of an explosive to the State Fire Marshal, etc. EN 01/27/2020 Favorable BI 02/11/2020 Favorable RC 03/02/2020 Favorable	Favorable Yeas 17 Nays 0
26	SB 7008 Education (Identical H 7075)	OGSR/Animal Medical Records/State College of Veterinary Medicine; Amending a provision which provides an exemption from public records requirements for certain animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education; removing the scheduled repeal of the exemption, etc. GO 12/09/2019 Favorable RC 03/02/2020 Favorable	Favorable Yeas 17 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Monday, March 2, 2020, 12:00 noon—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
27	SB 946 Baxley (Similar H 737)	Moments of Silence in Public Schools; Requiring that public school principals require teachers to set aside time for a moment of silence at the beginning of each school day; prohibiting teachers from making suggestions as to the nature of any reflection that a student may engage in during the moment of silence; requiring certain teachers to encourage parents to discuss the moment of silence with their children and to make suggestions as to the best use of this time, etc. ED 01/27/2020 Favorable JU 02/04/2020 Favorable RC 03/02/2020 Favorable	Favorable Yeas 10 Nays 6
28	CS/SB 1170 Governmental Oversight and Accountability / Baxley (Identical CS/CS/H 821)	Public Records and Meetings/Division of State Technology; Revising a provision to reflect the abolishment of the Agency for State Technology; providing an exemption from public records requirements for portions of records held by a state agency which contain network schematics, hardware and software configurations, or encryption; providing an exemption from public meetings requirements for portions of meetings which would reveal certain records; providing for future legislative review and repeal under the Open Government Sunset Review Act of the exemptions; providing statements of public necessity, etc. IT 01/13/2020 Favorable GO 02/03/2020 Fav/CS RC 03/02/2020 Favorable	Favorable Yeas 17 Nays 0
29	CS/SB 1466 Governmental Oversight and Accountability / Baxley (Compare H 855)	Government Accountability; Specifying conditions under which board members and public employees of special districts do not abuse their public positions; revising the list of items required to be included on the websites of special districts; specifying conditions under which board members and public employees of community development districts do not abuse their public positions, etc. CA 01/27/2020 Favorable GO 02/10/2020 Fav/CS RC 03/02/2020 Favorable	Favorable Yeas 16 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Monday, March 2, 2020, 12:00 noon—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
30	CS/SB 898 Banking and Insurance / Gruters (Identical CS/H 529)	Insurance Guaranty Associations; Increasing the obligation of the Florida Insurance Guaranty Association, Incorporated, for certain claims under policies covering certain condominium associations and homeowners' associations; increasing the percentage limit of certain insurer net written premiums up to which the Office of Insurance Regulation may levy certain emergency assessments upon insurers, etc. BI 01/15/2020 Fav/CS IT 02/17/2020 Favorable RC 03/02/2020 Favorable	Favorable Yeas 16 Nays 0
31	SB 1140 Gruters (Similar CS/CS/H 867)	Public Accountancy; Requiring certain applicants to not be licensed in any state or territory in order to be licensed by endorsement; providing license renewal requirements for nonresident licensees; requiring that a majority of the hours required for continuing education include specific content; authorizing certain Florida certified public accountants to apply to the Department of Business and Professional Regulation to have their license placed in a retired status; providing that retired licensees are not required to maintain continuing education requirements, etc. IT 01/21/2020 Favorable CM 01/28/2020 Not Considered CM 02/04/2020 Favorable RC 03/02/2020 Favorable	Favorable Yeas 16 Nays 0
32	CS/CS/SJR 1216 Education / Ethics and Elections / Gruters (Identical HJR 157, SJR 1480)	Limitation on Terms of Office for Members of a District School Board; Proposing amendments to the State Constitution to limit the terms of office for a member of a district school board, etc. EE 01/27/2020 Temporarily Postponed EE 02/03/2020 Fav/CS ED 02/10/2020 Fav/CS RC 03/02/2020 Favorable	Favorable Yeas 9 Nays 8
33	CS/SB 1366 Judiciary / Gruters (Identical CS/H 1089)	Trusts; Authorizing trustees of certain trusts to reimburse persons being treated as the owner of the trust for specified amounts and in a specified manner; prohibiting certain policies, values, and proceeds from being used for such reimbursement; requiring that specified powers be granted to certain persons if the terms of the trust require a trustee to act at the direction or with the consent of such persons or that specified decisions be made directly by such persons, etc. JU 02/11/2020 Fav/CS BI 02/19/2020 Favorable RC 03/02/2020 Favorable	Favorable Yeas 16 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Monday, March 2, 2020, 12:00 noon—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
34	SB 1424 Gruters (Identical H 1009)	Special Neighborhood Improvement Districts; Revising the number of directors allowed on the boards of special neighborhood improvement districts; requiring local planning ordinances to specify the number of directors and provide for 4-year staggered terms; requiring that directors be landowners in the proposed area and be subject to certain taxation, etc. CA 02/03/2020 Favorable IT 02/17/2020 Favorable RC 03/02/2020 Favorable	Favorable Yeas 16 Nays 0
35	SB 1376 Broxson (Similar CS/H 1211)	Credit For Reinsurance; Adding conditions under which a ceding insurer must be allowed credit for reinsurance; specifying requirements for assuming insurers and reinsurance agreements; authorizing a ceding insurer or its representative that is subject to rehabilitation, liquidation, or conservation to seek a certain court order; authorizing the Office of Insurance Regulation to revoke or suspend an assuming insurer's eligibility under certain conditions, etc. BI 01/21/2020 Favorable JU 01/28/2020 Favorable RC 03/02/2020 Favorable	Favorable Yeas 17 Nays 0
36	CS/SB 1672 Judiciary / Broxson (Similar CS/CS/H 813)	Protection of Vulnerable Investors; Requiring securities dealers, investment advisers, and associated persons to immediately report knowledge or suspicion of abuse, neglect, or exploitation of vulnerable adults to the Department of Children and Families' central abuse hotline; authorizing dealers and investment advisers to delay disbursements or transactions of funds or securities from certain accounts associated with specified adults if certain conditions are met; providing for administrative and civil immunity for dealers, investment advisers, and associated persons, etc. BI 01/28/2020 Favorable JU 02/11/2020 Fav/CS RC 03/02/2020 Favorable	Favorable Yeas 17 Nays 0
37	CS/SR 1572 Infrastructure and Security / Stewart	Climate Change; Expressing the Legislature's support for the adoption of policies that will prepare Florida for the environmental and economic impact of climate change, sea-level rise, and flooding, and recognizing the important role that resiliency and infrastructure will play in fortifying this state, etc. IS 01/27/2020 Fav/CS EN 02/10/2020 Favorable RC 03/02/2020 Favorable	Favorable Yeas 17 Nays 0

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Rules

Monday, March 2, 2020, 12:00 noon—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
38	CS/CS/SB 1802 Governmental Oversight and Accountability / Criminal Justice / Pizzo (Compare CS/H 201, CS/H 7101, Linked CS/S 652)	Public Meetings/Urban Core Gun Violence Task Force; Providing an exemption from public meetings requirements for portions of the Urban Core Gun Violence Task Force meetings at which exempt or confidential and exempt information is discussed; providing for future legislative review and repeal of the exemption; requiring the recording and transcription of exempt portions of such meetings; providing a statement of public necessity, etc. CJ 01/28/2020 Fav/CS GO 02/10/2020 Fav/CS RC 03/02/2020 Favorable	Favorable Yeas 17 Nays 0
39	CS/SB 4 Judiciary / Flores (Similar CS/CS/H 6501)	Relief of Dontrell Stephens by the Palm Beach County Sheriff's Office; Providing for the relief of Dontrell Stephens through Evett L. Simmons, as guardian of his property, by the Palm Beach County Sheriff's Office; providing for an appropriation to compensate him for personal injuries and damages sustained as the result of the negligence of a deputy of the office; providing a limitation on the payment of compensation, fees, and costs, etc. JU 02/11/2020 Temporarily Postponed JU 02/19/2020 Fav/CS RC 03/02/2020 Favorable	Favorable Yeas 16 Nays 1
40	CS/CS/SR's 214 & 222 Judiciary / Infrastructure and Security / Rodriguez (Compare HR 51)	Philosophies that Espouse Superiority; (THIS BILL COMBINES SR's 214 & 222) Rejecting and condemning any philosophy that espouses the superiority of one group of people over another which is hateful, dangerous, or a morally corrupt expression of intolerance, and affirming that such philosophies are contradictory to the values that define the people of Florida and the United States, etc. IS 01/13/2020 Fav/CS Combined - Lead JU 01/28/2020 Temporarily Postponed JU 02/19/2020 Fav/CS RC 03/02/2020 Favorable	Favorable Yeas 17 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Monday, March 2, 2020, 12:00 noon—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
41	CS/CS/SB 664 Commerce and Tourism / Judiciary / Lee (Compare CS/H 1265, S 1822)	Verification of Employment Eligibility; Requiring written agreements for the procurement of specified contractual services to include a statement regarding the requirement that a contractor or subcontractor register with and use an employment verification system; requiring public employers and certain contractors and subcontractors to register with and use an employment verification system by a specified date; requiring employers who meet specified criteria to register with and use an employment verification system to verify the employment eligibility of new employees; authorizing the imposition of fines for violations of the act, etc. JU 02/11/2020 Fav/CS CM 02/18/2020 Fav/CS RC 03/02/2020 Fav/CS	Fav/CS Yeas 10 Nays 7
42	CS/CS/SB 1270 Community Affairs / Governmental Oversight and Accountability / Lee (Similar H 1113)	Fiduciary Duty of Care for Appointed Public Officials and Executive Officers; Establishing standards for the fiduciary duty of care for appointed public officials and executive officers of specified governmental entities; requiring training on board governance beginning on a specified date; requiring the Department of Business and Professional Regulation to contract for or approve such training programs or publish a list of approved training providers; specifying requirements for the appointment of executive officers and general counsels of governmental entities, etc. GO 02/03/2020 Not Considered GO 02/10/2020 Fav/CS CA 02/17/2020 Fav/CS RC 03/02/2020 Favorable	Favorable Yeas 16 Nays 1
43	CS/SB 1766 Judiciary / Lee (Compare CS/H 519, S 7054)	Growth Management; Revising notice of claim requirements for property owners; specifying that property owners retain the option to have a court determine awards of compensation; authorizing property owners to bring actions to declare prohibited exactions invalid; requiring the Department of Transportation to afford a right of first refusal to the previous property owner before disposing of property in certain circumstances, etc. JU 02/04/2020 Fav/CS CA 02/10/2020 Favorable RC 03/02/2020 Not Considered	Not Considered

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Rules

Monday, March 2, 2020, 12:00 noon—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
44	SB 7048 Infrastructure and Security	Public Records/Public Shelter Space; Creating an exemption from public records requirements for the name, address, and telephone number of a person which are held by an agency providing shelter or assistance to such person during an emergency; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. GO 02/17/2020 Favorable RC 02/26/2020 Not Considered RC 03/02/2020 Favorable	Favorable Yeas 17 Nays 0
45	CS/CS/SB 680 Commerce and Tourism / Environment and Natural Resources / Hutson (Similar CS/H 401)	Shark Fins; Prohibiting the import of shark fins to this state; prohibiting the sale of shark fins within or the export of shark fins from this state, etc. EN 02/03/2020 Fav/CS CM 02/18/2020 Fav/CS RC 02/26/2020 Not Considered RC 03/02/2020 Fav/CS	Fav/CS Yeas 16 Nays 0
46	CS/CS/SB 812 Governmental Oversight and Accountability / Environment and Natural Resources / Hutson (Identical CS/H 549)	Public Records/Endangered and Threatened Species; Providing an exemption from public records requirements for the site-specific location information of certain endangered and threatened species; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. EN 01/13/2020 Fav/CS GO 02/03/2020 Fav/CS RC 03/02/2020 Favorable	Favorable Yeas 16 Nays 0
47	CS/CS/SB 1872 Banking and Insurance / Governmental Oversight and Accountability / Hutson (Similar CS/H 1393, Compare CS/CS/H 1391, Linked CS/CS/S 1870)	Public Records/Office of Financial Regulation/Financial Technology Sandbox Applications; Providing exemptions from public records requirements for certain information submitted to the Office of Financial Regulation in Financial Technology Sandbox applications and information relating to certain consultations; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. GO 02/10/2020 Fav/CS BI 02/19/2020 Fav/CS RC 02/26/2020 Not Considered RC 03/02/2020 Favorable	Favorable Yeas 16 Nays 1
48	SB 7066 Appropriations (Linked CS/CS/CS/S 512)	Fees; Requiring certain nonembryonic stem cell banks to pay specified fees, etc. RC 02/26/2020 Not Considered RC 03/02/2020 Fav/CS	Fav/CS Yeas 17 Nays 0

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Rules

Monday, March 2, 2020, 12:00 noon—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
49	CS/SB 1060 Innovation, Industry, and Technology / Thurston (Similar CS/CS/H 755)	Public Records and Meetings/911 or E911 Communication System; Providing an exemption from public records requirements for certain documents that depict the structural elements of certain 911 or E911 communication system infrastructure, structures, or facilities; providing an exemption from public records requirements for geographical maps indicating the actual or proposed locations of certain 911 or E911 communication system infrastructure, structures, or facilities; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. IT 01/13/2020 Fav/CS GO 02/03/2020 Favorable RC 03/02/2020 Fav/CS	Fav/CS Yeas 16 Nays 0
50	CS/SB 1148 Infrastructure and Security / Brandes (Similar CS/CS/H 971)	Electric Bicycles; Revising definitions relating to the Florida Uniform Traffic Control Law; authorizing a county or municipality to enact an ordinance regulating the operation of electric bicycles on sidewalks or sidewalk areas when such use is permissible under federal law; expanding exceptions to a prohibition on persons driving certain vehicles on sidewalks and bicycle paths; requiring electric bicycles to comply with specified provisions of law, etc. IS 02/03/2020 Fav/CS CA 02/10/2020 Favorable RC 02/26/2020 Not Considered RC 03/02/2020 Favorable	Favorable Yeas 16 Nays 0
51	CS/SB 1352 Innovation, Industry, and Technology / Brandes (Similar CS/CS/H 1039, Compare CS/CS/CS/H 395)	Transportation Companies; Revising the definition of the term "for-hire vehicle" to exclude transportation network company (TNC) vehicles and certain motor vehicles used for prearranged rides for persons with disabilities for compensation; deleting for-hire vehicles from the list of vehicles that are not considered TNC carriers or are not exempt from certain registration; authorizing TNC drivers or their designees to contract with companies to install TNC digital advertising devices on TNC vehicles, etc. IS 01/27/2020 Favorable IT 02/10/2020 Fav/CS RC 03/02/2020 Fav/CS	Fav/CS Yeas 16 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Rules

Monday, March 2, 2020, 12:00 noon—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
52	SB 1354 Brandes	Statewide Voter Registration Application; Revising requirements for the uniform statewide voter registration application and the acceptance of such applications; deleting an exemption from public records requirements for information related to a voter registration applicant's or voter's prior felony conviction and his or her restoration of voting rights to conform to changes made by the act, etc. EE 01/27/2020 Favorable JU 02/04/2020 Favorable RC 03/02/2020 Favorable	Favorable Yeas 16 Nays 0
53	CS/CS/SB 1372 Judiciary / Ethics and Elections / Brandes (Compare CS/H 1005, CS/S 1312)	Elections; Deleting a provision that prohibits the use of an address appearing on identification presented by an elector at the polls as a basis to confirm an elector's legal residence; revising requirements for eligibility to serve as a poll watcher; revising the timeframes for conducting public preelection testing of automatic tabulating equipment; prohibiting a person from providing, offering to provide, or accepting a pecuniary or other benefit in exchange for distributing, ordering, requesting, collecting, delivering, or otherwise physically possessing any vote-by-mail ballot, etc. EE 02/03/2020 Fav/CS JU 02/19/2020 Fav/CS RC 03/02/2020 Not Considered	Not Considered
54	CS/SB 1738 Infrastructure and Security / Brandes (Similar CS/CS/H 977)	Motor Vehicle Dealers; Providing that certain motor vehicle dealers and their leasing or rental affiliates are immune from causes of action and are not liable for harm to persons or property under certain circumstances, etc. IS 02/10/2020 Fav/CS JU 02/19/2020 Favorable RC 03/02/2020 Favorable	Favorable Yeas 16 Nays 1
55	CS/SB 1582 Commerce and Tourism / Simmons (Similar CS/H 741)	Asbestos Trust Claims; Requiring a plaintiff who files an asbestos claim to provide certain information to the parties of the action within a specified timeframe; requiring the plaintiff to supplement the information and materials under certain circumstances within a specified timeframe; authorizing the defendant to seek discovery from an asbestos trust; prohibiting the plaintiff from claiming privilege or confidentiality to bar discovery of such materials, etc. JU 02/04/2020 Favorable CM 02/18/2020 Fav/CS RC 03/02/2020 Favorable	Favorable Yeas 17 Nays 0

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Rules

Monday, March 2, 2020, 12:00 noon—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
56	SJR 7062 Judiciary (Identical HJR 7093)	Citizen Initiative; Proposing an amendment to the State Constitution to revise threshold requirements for the number of petitions signed by electors needed in order for a citizen initiative to amend or revise the State Constitution to be placed on the ballot, etc. RC 02/26/2020 Temporarily Postponed RC 03/02/2020 Temporarily Postponed	Temporarily Postponed
57	CS/SB 1634 Education / Stargel (Similar CS/H 1059)	Parental Rights; Designating the “Parents’ Bill of Rights”; providing that the state, its political subdivisions, other governmental entities, or other institutions may not infringe on parental rights without demonstrating specified information; providing that a parent of a minor child has specified rights relating to his or her minor child; requiring each district school board in consultation with parents, teachers, and administrators, to develop and adopt a policy to promote parental involvement in the public school system; prohibiting certain health care practitioners from taking specified actions without a parent’s written permission, etc. JU 02/04/2020 Favorable ED 02/17/2020 Fav/CS RC 02/26/2020 Amendment Adopted - Temporarily Postponed RC 03/02/2020 Amendment Adopted - Temporarily Postponed	Amendment Adopted - Temporarily Postponed
58	CS/CS/SB 1876 Innovation, Industry, and Technology / Agriculture / Montford (Compare CS/CS/H 1063)	State Hemp Program; Revising the definition of the term “food” to include hemp extract for purposes of the Florida Food Safety Act; providing that a person operating a minor food outlet that sells hemp extract is not exempt from certain food permit requirements; providing that hemp extract that does not meet certain requirements will be considered adulterated or misbranded; prohibiting the sale of certain hemp extract products to individuals under a specified age, etc. AG 01/28/2020 Temporarily Postponed AG 02/04/2020 Fav/CS IT 02/17/2020 Fav/CS RC 02/26/2020 Not Considered RC 03/02/2020 Fav/CS	Fav/CS Yeas 17 Nays 0

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Rules

Monday, March 2, 2020, 12:00 noon—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
59	SB 7002 Children, Families, and Elder Affairs (Identical H 7023)	OGSR/State Child Abuse Death Review Committee; Amending a provision relating to an exemption from public records and meeting requirements for certain identifying information held or discussed by the State Child Abuse Death Review Committee or a local committee; removing the scheduled repeal of the exemption, etc. GO 01/27/2020 Favorable RC 02/26/2020 Not Considered RC 03/02/2020 Favorable	Favorable Yeas 17 Nays 0
60	SB 7052 Innovation, Industry, and Technology	Office of Public Counsel; Providing term limits for the Public Counsel; providing for the appointment and removal of the Public Counsel; requiring the Committee on Public Counsel Oversight to receive applications, conduct interviews, and appoint a Public Counsel by a specified date every 4 years; providing for the filling of vacancies, etc. RC 02/26/2020 Temporarily Postponed RC 03/02/2020 Favorable	Favorable Yeas 10 Nays 7
61	HB 5301 Justice Appropriations Subcommittee / Yarborough / Beltran (Similar S 7050, Compare H 5001, S 2500)	Judges; Revises number of circuit court judges in certain circuits; revises number of county court judges in certain counties. RC 03/02/2020 Favorable	Favorable Yeas 16 Nays 0
62	HB 7049 Transportation and Tourism Appropriations Subcommittee / Trumbull (Similar CS/S 1212, Compare H 5001, S 2500)	International Affairs; Requires Secretary of State to serve as state protocol officer; requires certain organizations provide notice of international travel to DOS; authorizes Office of International Affairs within DOS to support establishment of citizen support organizations for certain purposes; prohibits office from allowing citizen support organization to use certain services, property, or facilities if organization does not provide equal membership & employment opportunities. RC 03/02/2020 Fav/1 Amendment	Fav/1 Amendment (Yeas 15 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/CS/SB 160

INTRODUCER: Rules Committee; Judiciary Committee; and Senators Perry and Hooper

SUBJECT: Peer-to-peer Support for First Responders

DATE: March 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u>Delia</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 160 generally prohibits the disclosure of a first responder's peer support communication made to a first responder peer.

The bill defines a peer support communication as one or more oral communications between a first responder and a first responder peer. The communication must be made with a mutual expectation of confidentiality and for the purpose of discussing physical, emotional, or issues associated with the first responder's employment.

Under the bill, a first responder peer is a first responder who is not a health care practitioner and who has received training in providing physical or emotional support to first responders.

The bill protects the confidentiality of the communications by prohibiting the person providing support from divulging the communications or from testifying in civil, criminal, administrative, and disciplinary proceedings regarding the communications.

The bill, however, allows peer support communications to be disclosed if: the first responder provides written consent, the first responder files a complaint against the person providing peer support, or if the person providing peer support suspects that the first responder committed a criminal act or has reason to believe that the first responder is a threat to himself or herself or others.

The bill does not limit the disclosure of information obtained by a first responder peer from a source other than a peer support communication.

The bill is effective July 1, 2020.

II. Present Situation:

First Responders

Under Florida law, a first responder is either a (1) law enforcement officer, (2) firefighter, or (3) emergency medical technician or paramedic, employed, or volunteering, with a state or local government. Florida has an estimated 50,000 law enforcement officers,¹ 22,000 firefighters,² and over 60,000 emergency medical technicians and paramedics.³

A study of 1,500 Florida first responders revealed that 60 percent displayed low levels of secondary traumatic stress, 39 percent displayed moderate levels, and 1 percent displayed high levels.⁴ A 2017 study of first responders nationwide found that 84 percent experienced a traumatic event on the job, while 34 percent received a formal diagnosis for a mental health disorder such as depression or post-traumatic stress disorder.⁵ It is estimated that 30 percent of first responders develop behavioral health conditions such as post-traumatic stress disorder and depression, in comparison to 20 percent for the general population.⁶

Peer Support Programs

Some law enforcement agencies offer peer support programs, available either during crisis events or through full-time staff. In 2018, a study published by the *Journal of Police and Criminal Psychology* analyzed 110 different law enforcement agencies' suicide prevention strategies for their employees.⁷ Thirty-one of these agencies had formal peer support programs. These agencies used peers as "para-professionals within the agency to address concerns officers had in using formal mental health/EAP services."⁸ Some of these agencies likewise worked under a policy, or law within their jurisdiction, that assured confidentiality with these services.

¹ Florida Department of Law Enforcement, *Criminal Justice Agency Profile Report 2016*, <https://www.fdle.state.fl.us/CJSTC/Publications/CJAP/CJAP-2016/Statewide-Ratios.aspx> (last visited Oct 29, 2019).

² Bureau of Labor Statistics, United States Department of Labor, *Occupational Employment and Wages, May 2018: 33-2011 Firefighters*, <https://www.bls.gov/OES/Current/oes332011.htm> (last visited Oct 29, 2019).

³ Florida Department of Health, *Emergency Medical Services System*, <http://www.floridahealth.gov/licensing-and-regulation/ems-system/index.html> (last visited Oct 29, 2019).

⁴ University of Central Florida, *UCF Study Examines First Responder Stress & Support Needs UCF Today*, <https://www.ucf.edu/news/ucf-study-examines-first-responder-stress-support-needs/> (last visited Oct 29, 2019).

⁵ University of Phoenix, *Majority of First Responders Face Mental Health Challenges in the Workplace* (Apr. 18, 2017), https://www.phoenix.edu/about_us/media-center/news/uopx-releases-first-responder-mental-health-survey-results.html.

⁶ Abbot, C., Barber, E., Burke, B., Harvey, J., Newland, C., Rose, M., & Young, A., Ambulance Service Manager Program, *Reviving Responders, What's killing our medics?* (Apr. 2015), <http://www.revivingresponders.com/originalpaper>.

⁷ Rajeev Ramchand et al., *Suicide Prevention in U.S. Law Enforcement Agencies: a National Survey of Current Practices*, 34(1) *Journal of Police and Criminal Psychology*, 55–66 (2019).

⁸ *Id.*

Usually, officers apply and train to become a part of the program, and are overseen either by a mental health professional or agency leadership. While the officers can be officially recognized as “peer supporters,” they typically perform their roles informally without routine duties or office hours to provide support.

Similar to peer support, some agencies offer embedded services such as agency-affiliated chaplains and social workers to provide support to employees. Twelve of the 110 agencies studied used a method similar to this.

Large law enforcement agencies may have offices responsible for mental and emotional support for employees. The Psychological Services Section of the Miami-Dade Police Department, for example, offers consultation and referral services to employees.⁹ Officers and staff are on call 24 hours a day for officer-involved shootings, suicide interventions, and other crises. The office likewise supervises Police Chaplain Volunteers who provide support services to employees. Employees may also refer themselves to the county Employee Support Services, who provide a variety personal and mental health services and referrals with strict confidentiality.¹⁰

The Baltimore Police Department¹¹ and New York Police Departments¹² have similar divisions incorporating mental health and suicide prevention programs. New York currently includes a peer-support program with confidentiality protections. While the Baltimore program does not, the Baltimore Police Commissioner has introduced a draft policy proposal to incorporate one.¹³

Privileged Communications

When communications are protected from disclosure, typically, these protections are created by an evidentiary privilege codified in chapter 90, F.S., the Florida Evidence Code. Evidentiary privileges allow individuals to refuse to disclose certain protected information and conversations. These privileges are meant to promote honest communications between individuals involved. The Legislature recognizes the existence of an evidentiary privilege when it “judges that the protection of an interest or relationship is sufficiently important to society to justify the sacrifice of facts that might be needed for the administration of justice.”¹⁴

⁹ Miami-Dade Police Department, *Department Review, 2018 ed.*, 15, <https://www.miamidade.gov/police/library/2018-mdpd-review.pdf>.

¹⁰ Miami-Dade County, *Employee Support Services*, https://www8.miamidade.gov/global/service.page?Mduid_service=ser1544819611878399 (last visited Oct 30, 2019).

¹¹ Baltimore Police Department, *Officer Safety & Wellness Section*, <https://www.baltimorepolice.org/organization/officer-safety-wellness-section> (last visited Oct 30, 2019).

¹² New York City Police Department, Employee Assistance Unit: Sometimes You Just Need Someone to Listen..., <https://www1.nyc.gov/site/nypd/careers/human-resources-info/employee-assistance-unit.page> (last visited Oct 30, 2019).

¹³ Baltimore Police Department, *Policy 1711: Draft Peer Support Team Policy* (Aug. 21, 2019), <https://www.powerdms.com/public/BALTIMOREMD/documents/575672>.

¹⁴ 21 FLA. JUR. 2D *Evidence and Witnesses* s. 672 (2019) (citing *Miami Herald Pub. Co. v. Morejon*, 561 So. 2d 577, 581 (Fla. 1990)).

On the other hand, “[t]he public ‘has a right to every man’s evidence.’”¹⁵ As such, evidentiary privileges are not favored, and the privilege not to disclose relevant evidence is an extraordinary exception to the duty to testify.¹⁶

Florida has a few examples of evidentiary privileges that have some similarities to peer support confidentiality.

Domestic Violence Advocate-Victim Privilege

Under the domestic violence advocate-victim privilege, a victim of domestic violence has a “privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a domestic violence advocate or any record made in the course of advising, counseling, or assisting the victim.”¹⁷ A victim advocate must be an employee of a domestic violence program or volunteer who has at least 30 hours of training in assisting victims of domestic violence.

Sexual assault counselor-victim privilege

Under the sexual assault counselor-victim privilege, a victim of a sexual assault has a “privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a sexual assault counselor or trained volunteer or any record made in the course of advising, counseling, or assisting the victim.”¹⁸ A sexual assault counselor must be an employee of a rape crisis center or a trained volunteer. A trained volunteer must be supervised by a rape crisis center and have at least 30 hours of training in assisting victims of sexual violence and other related topics.

Psychotherapist-Patient Privilege

Under the psychotherapist patient privilege, “a patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications or records made for the purpose of diagnosis or treatment of the patient’s mental or emotional condition.”¹⁹

Privilege with Respect to Communications to Clergy

“A person has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication by the person to a member of the clergy in his or her capacity as spiritual adviser.”²⁰ A communication is confidential if it is made privately for the “purpose of seeking spiritual counsel and advice from the member of the clergy in the usual course of his or her practice or discipline and not intended for further disclosure except to other persons present in furtherance of the communication.”²¹

¹⁵ *Miami Herald Pub. Co. v. Morejon*, 561 So. 2d 577, 581 (Fla. 1990) (quoting 8 Wigmore, *Evidence* § 2192, at 70 (McNaughten rev.1961)).

¹⁶ *Id.*

¹⁷ Section 90.5036, F.S.

¹⁸ Section 90.5035, F.S.

¹⁹ Section 90.503, F.S.

²⁰ Section 90.505(2), F.S.

²¹ Section 90.505(1)(b), F.S.

Florida law, however, does not offer an evidentiary privilege or confidentiality for peer support communications not involving health care practitioners. As such, first responder agencies may offer confidentiality for services administrated internally, but that confidentiality would not supersede state or federal laws requiring disclosure.

When dealing with civil claims or defenses based on a state law, the Federal courts can interpret the privilege of evidence and witnesses in accordance with state law.²² This does not apply, however, to cases based solely on federal claims, or to cases based on both state and federal claims.²³

The Florida Supreme Court and Evidentiary Privileges

The Florida Evidence Code as enacted by the Legislature contains both procedural and substantive law for the courts to apply. However, rules of evidence that are procedural in nature, even those passed by the Legislature, must be approved by Supreme Court. Occasionally, the Court rejects the legislative changes.

In 2000, for example, the Court refused to adopt a recently enacted hearsay exception, noting that applying the statute would go against long standing rules of evidence and violate a defendant's right of confrontation.²⁴ A concurring opinion by Justice Lewis also found that the statute was an unacceptable rule of procedure, and therefore infringed on the Court's ability to adopt rules under Article V, § 2(a), of the Florida Constitution. In 2014, the Court refused to adopt a statute that was not part of the evidence code requiring certain qualifications for medical negligence expert witnesses on the grounds that the statute was procedural.²⁵

Peer Support Laws

Several states including Oregon, Hawaii, Colorado, Washington, and Mississippi offer evidentiary privileges for peer support personnel covering communications between first responders and peer support personnel. Oregon,²⁶ Hawaii,²⁷ Colorado,²⁸ and Washington²⁹ require peer supporters to be trained in providing emotional and moral support to first responders and must be designated by the agency for their role(s). Peer supporters in Mississippi must be a law enforcement officer, fireman, or emergency medical technician with a peer support certification from the State Board of Health or the Department of Public Safety.³⁰

In four of the five example states, all but Washington, the peer support privilege does not cover admissions to criminal conduct, information relating to the abuse of spouses, children, or the elderly, or threats of suicide or homicide. Mississippi adds that the privilege does not apply if the

²² [Fed. R. Evid. 501](#)

²³ *Von Bulow by Auersperg v. Von Bulow*, 811 F.2d 136, 141 (2d Cir. 1987).

²⁴ *In re Amendments to the Fla. Evidence Code*, 782 So. 2d 339, 341 (Fla. 2000). The statute in question stripped the former testimony of witnesses hearsay exception of the requirement that the witness be unavailable.

²⁵ *In re: Amendments to the Fla. Evidence Code*, 144 So. 3d 536, 537 (Fla. 2014).

²⁶ Or. Rev. Stat. Ann. § 181A.835.

²⁷ Haw. Rev. Stat. Ann. § 78-52.

²⁸ Colo. Rev. Stat. § 13-90-107.

²⁹ Wash. Rev. Code Ann. § 5.60.060. The Washington peer support privilege also applies to jail staff.

³⁰ Miss. Code Ann. § 13-1-22.1.

peer supporter was a witness, party, or responder to the incident that lead to the peer support event, which is Washington's only exception to the privilege.

Mississippi is the only state of the five example states that makes it a criminal act to reveal or attempt to coerce another to reveal the privileged communication.³¹

III. Effect of Proposed Changes:

The bill allows first responders to have confidential peer support communications with first responder peers. As defined by the bill, first responders include law enforcement officers, fire fighters, emergency medical technicians, public communications officers, dispatchers, 911 operators and other phone system operators whose job duties include providing support or services to first responders, correctional officers, and correctional probation officers. A first responder peer must either be an individual who has received training in providing physical or emotional support to first responders. The bill excludes health care practitioners from being first responder peers for the purpose of the confidentiality protection. However, existing laws may protect the confidentiality of communications with a health care practitioner.

A peer support communication is one or more oral communication between a first responder and a first responder peer. The communication must be made with a mutual expectation of confidentiality and for the purpose of discussing physical, emotional, or issues associated with the first responder's employment.

The first responder peer generally may not testify in any civil, criminal, administrative, or disciplinary proceeding regarding information obtained during their peer support or otherwise divulge confidential peer support communications. However, a first responder peer may testify or divulge information if:

- The first responder peer is a defendant in a civil, criminal, administrative, or disciplinary proceeding arising from a complaint filed by the first responder in which case such information may be divulged but is limited to the scope of the proceeding.
- The first responder agrees, in writing, to allow the person to testify or divulge information related to the peer-to-peer support.
- The first responder peer has reason to fear for the safety of the first responder, another person, or society. The first responder peer may relay information based on this fear to the potential victims, appropriate family members, or law enforcement or other authorities. If a first responder peer discloses information based on the above, there is no liability or cause of action based on the disclosure.
- The communications by the first responder cause the first responder peer to suspect that the first responder has committed a criminal act.

The bill does not limit the disclosure, discovery, or admissibility of information, testimony, or evidence that is obtained by a first responder peer from a source other than a peer support communication.

The bill is effective July 1, 2020

³¹ A misdemeanor in Mississippi is punishable by up to 6 months in jail and a \$500 fine.

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 received states-shared revenues.

B. Public Records/Open Meetings Issues:

Article 1, s. 24 of the Florida Constitution requires exemptions from public records to state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law. The Legislature may adopt exemptions from public records and public meetings by a general law that is passed by two-thirds vote of each house.

To the extent that peer support communications are made in a record, those records may be public records that must be disclosed under the public records law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill exempts communications between a first responder and a first responder peer from being used in any criminal proceeding. The Confrontation Clause of the 6th amendment to the United State Constitution grants criminal defendants a right to confront their accusers. Criminal defendants have a right to cross examine prosecution witnesses for bias and impeachment purposes.

There is conflicting case law on this. Criminal defendants have a right to confront, and impeach, witnesses based on their juvenile records if they are relevant, despite any law regarding strict confidentiality of those records.³² However, criminal defendants are not entitled to inspect confidential records, and courts must use a balancing approach to protect the interests of the defendant and verify any relevant exculpatory evidence while likewise protecting the confidentiality of the information.³³

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

None.

³² *Davis v. Alaska*, 415 U.S. 308, 320, 94 S. Ct. 1105, 1112 (1974).

³³ *Pennsylvania v. Ritchie*, 480 U.S. 39, 60, 107 S. Ct. 989, 1002-03 (1987).

B. Private Sector Impact:

The bill may limit the availability of evidence in civil trials against first responder agencies.

C. Government Sector Impact:

The bill may limit the availability of information to first responder agencies when engaging in disciplinary functions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 111.09 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 March 2, 2020:**The committee substitute differs from the underlying bill by:

- Specifying that “first responder” includes 911 public safety telecommunicators as defined in s. 401.465, F.S., as well as correctional officers and correctional probation officers.
- Defines “first responder peer” as someone who has experience working as a first responder regarding any physical or emotional conditions or issues associated with their employment. Previously, the bill required the peer to be from the same agency as the first responder and also provided for someone who can provide moral support in addition to physical and emotional support.
- Modifying the definition of “peer support communication” to specify that it includes only communications made by a peer in their official capacity.
- Removing a provision which allows the privilege to extend for “a period of 3 days.”
- Specifying that a first responder peer may not divulge privileged communications unless the first responder has committed a criminal act; previously, the bill allowed a break of the privilege if either the first responder has committed, or if the peer suspects they will commit, a criminal act.
- Providing that a first responder peer who divulges information in violation of the bill is subject to disciplinary action by the appropriate licensing agency, and information improperly divulged is inadmissible in any civil, criminal, administrative, or disciplinary proceeding.

CS by Judiciary on November 12, 2019:

The committee substitute differs from the underlying bill by:

- Restricting peer support communications to oral communications made with a mutual expectation of confidentiality which may extend for a period of 3 days.
- Limiting who may provide peer support to other first responders within the same agency or agency designated individuals who have been trained in providing physical, emotional, or moral support to first responders.
- Allowing suspected criminal activity to be disclosed by the person providing peer support.
- Clarifying that the confidentiality protections do not apply to disclosures or information obtained outside of a peer support communication.

B. Amendments:

None.



682522

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2020	.	
	.	
	.	
	.	

The Committee on Rules (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 111.09, Florida Statutes, is created to
read:

111.09 Peer-to-peer support for first responders.—

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

(a) "First responder" has the same meaning as provided in
s. 112.1815 and includes public safety communications officers,
dispatchers, 911 public safety telecommunicators as defined in



682522

s. 401.465 whose job duties include providing support or services to first responders, and correctional officers and correctional probation officers as defined in s. 943.10.

(b) "First responder peer" means a person who:

1. Is not a health care practitioner as defined in s. 456.001.

2. Has experience working as or with a first responder regarding any physical or emotional conditions or issues associated with the first responder's employment.

(c) "Peer support communication" means one or more oral communications, made with a mutual expectation of confidentiality while the first responder peer is providing peer support in his or her official capacity, between a first responder and a first responder peer for the purpose of discussing physical or emotional conditions or issues associated with being a first responder.

(2) A first responder peer may not divulge a peer support communication or testify in any civil, criminal, administrative, or disciplinary proceeding, except when any of the following occur:

(a) The first responder peer is a defendant in a civil, a criminal, an administrative, or a disciplinary proceeding arising from a complaint filed by the first responder, in which case such information may be divulged but is limited to the scope of the proceeding.

(b) The first responder agrees, in writing, to allow the first responder peer to testify about or divulge information related to the peer-to-peer support.

(c) The communications by the first responder cause the



682522

first responder peer to suspect that the first responder has
committed a criminal act. There is no liability on the part of,
and no cause of action of any nature may arise against, a first
responder peer for disclosing information under this paragraph.

(d) There are articulable facts or circumstances that would
lead a reasonable, prudent person to fear for the safety of the
first responder, another person, or society, and the first
responder peer communicates the information only to the
potential victims, appropriate family members, or law
enforcement or other appropriate authorities. There is no
liability on the part of, and no cause of action of any nature
may arise against, a first responder peer for disclosing
information under this paragraph.

(3) A first responder peer who divulges information in
violation of this section is subject to disciplinary action by
the appropriate licensing agency. Information improperly
divulged in violation of this section is inadmissible in any
criminal, civil, administrative, or disciplinary proceeding.

(4) This section does not limit the disclosure, discovery,
or admissibility of information, testimony, or evidence that is
obtained by a first responder peer from a source other than a
peer support communication.

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

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled



682522

An act relating to peer-to-peer support for first responders; creating s. 111.09, F.S.; defining terms; prohibiting a first responder peer from testifying or divulging specified information except under certain circumstances; providing that there is no liability on the part of, and no cause of action against, a first responder peer for disclosing certain information; providing that a first responder peer who violates the act is subject to disciplinary action; providing that certain information improperly divulged is inadmissible in criminal, civil, administrative, and disciplinary proceedings; providing construction; providing an effective date.



834386

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2020	.	
	.	
	.	
	.	

The Committee on Rules (Perry) recommended the following:

Senate Amendment to Amendment (682522)

Delete line 18
and insert:
2. Has experience working as a first responder



526660

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/03/2020	.	
	.	
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	.	

The Committee on Rules (Farmer) recommended the following:

Senate Amendment

Between lines 65 and 66
insert:

(e) The first responder makes any statement that may indicate guilt relating to a criminal act or is probative to a civil or criminal investigation. Such statement shall be subject to an in camera review. There is no liability on the part of, and no cause of action of any nature may arise against, the first responder peer for disclosing information under this paragraph.

By the Committee on Judiciary; and Senators Perry and Hooper

590-01369-20

2020160c1

A bill to be entitled

An act relating to peer-to-peer support for first responders; creating s. 111.09, F.S.; defining terms; prohibiting a first responder peer from testifying or divulging specified information under certain circumstances; providing exceptions; prohibiting liability and a cause of action under certain circumstances; providing construction; providing an effective date.

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

Section 1. Section 111.09, Florida Statutes, is created to read:

111.09 Peer-to-peer support for first responders.—

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

(a) "First responder" has the same meaning as provided in s. 112.1815 and includes public safety communications officers, dispatchers, and 911 or other phone system operators whose job duties include providing support or services to first responders.

(b) "First responder peer" means a person who is not a health care practitioner and who is a:

1. First responder from the same employing agency as the person seeking peer support; or

2. Civilian designated by the first responder's employing agency who has received training in providing physical, moral, or emotional support to first responders.

(c) "Health care practitioner" has the same meaning as

590-01369-20

2020160c1

provided in s. 456.001.

(d) "Peer support communication" means one or more oral communications, made with a mutual expectation of confidentiality, between a first responder and a first responder peer for the purpose of discussing physical or emotional conditions or issues associated with being a first responder and which may extend for a period of 3 days.

(2) A first responder peer may not divulge a peer support communication or information obtained from a peer support communication or testify regarding information obtained from a peer support communication in any civil, criminal, administrative, or disciplinary proceeding, except in the following circumstances:

(a) The first responder peer is a defendant in a civil, criminal, administrative, or disciplinary proceeding arising from a complaint filed by the first responder, in which case such information may be divulged but is limited to the scope of the proceeding.

(b) The first responder agrees, in writing, to allow the first responder peer to testify about or divulge information related to the peer support communications.

(c) The communications by the first responder cause the first responder peer to suspect that the first responder has committed a criminal act or intends to commit a criminal act. There is no liability on the part of, and no cause of action of any nature may arise against, the first responder peer for disclosing information under this paragraph.

(d) There are articulable facts or circumstances that would lead a reasonable, prudent person to fear for the safety of the

590-01369-20

2020160c1

59 first responder, another person, or society, and the first
60 responder peer communicates the information only to the
61 potential victims, appropriate family members, or a law
62 enforcement agency or other appropriate authorities. There is no
63 liability on the part of, and no cause of action of any nature
64 may arise against, the first responder peer for disclosing
65 information under this paragraph.

66 (3) This section does not limit the disclosure, discovery,
67 or admissibility of information, testimony, or evidence that is
68 obtained by a first responder peer from a source other than a
69 peer support communication.

70 Section 2. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: November 19, 2019

I respectfully request that **Senate Bill #160**, relating to Peer-to-peer Support for First Responders, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long, sweeping underline.

Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20

Meeting Date

160

Bill Number (if applicable)

682522 DE

Amendment Barcode (if applicable)

Topic _____

Name Richard Pinsky

Job Title _____

Address 106 E College Ave. #1200

Street

Tallahassee FL 32301

City

State

Zip

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 9-1-1 Emergency Dispatchers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20
Meeting Date

160
Bill Number (if applicable)

662522
Amendment Barcode (if applicable)

Topic Peer to Peer Support

Name Lisa Henning

Job Title Legislative Director

Address 242 Office Plaza Dr
Street

Phone 850-766-8808

Tallahassee Florida 32301
City State Zip

Email lhenning@legislative@aol.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fraternal Order of Police

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/20

Meeting Date

160

Bill Number (if applicable)

Topic Peer to Peer Support

Amendment Barcode (if applicable)

Name George Wallace

Job Title

Address 5561 NE 5 Place

Phone 352 895 7255

Street

Ocala

FL

34470

City

State

Zip

Email george.wallace@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-2-20

Meeting Date

160

Bill Number (if applicable)

Topic PEER SUPPORT.

Amendment Barcode (if applicable)

Name ANTONIO WRIGHT

Job Title LIEUTENANT

Address 2500 W COLONIAL DR
Street

Phone 407-259-7448

ORLANDO, FL 32804
City State Zip

Email antonio.wright@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
APPEARANCE RECORD

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

March 2, 2020
Meeting Date

CS/SB 160
Bill Number (if applicable)

Topic Peer-to Peer

Amendment Barcode (if applicable)

Name Chief Ray Colburn

Job Title Executive Director

Address 5289 Palm Dr

Phone 407-468-6622

Street

Melbourne Beach, FL

State

32951

Zip

Email ray@ffca.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Fire Chiefs' Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/2020

Meeting Date

SB 160

Bill Number (if applicable)

Topic Peer to Peer Support

Amendment Barcode (if applicable)

Name GARY BILHARDT

Job Title Government Relations

Address 310 E Brevard St

Phone 813-833-5931

Street

Tallahassee

FL

33610

City

State

Zip

Email GBILHARDT@PBA.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA PBA.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/20

Meeting Date

160

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Richard Pinsky

Job Title

Address 106 E College Ave #1200

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 9-1-1 Emergency Dispatchers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-2-20

Meeting Date

160

Bill Number (if applicable)

Topic PEER to PEER FOR 1st Responders

Amendment Barcode (if applicable)

Name Wayne "Bernie" Bernaska

Job Title President

Address 343 W. MADISON ST
Street

Phone 321-231-9116

TALLAHASSEE FL. 32301
City State Zip

Email Bernie @ FFP.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA PROFESSIONAL FIRE FIGHTERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 410

INTRODUCER: Rules Committee; Community Affairs Committee; and Senator Perry

SUBJECT: Growth Management

DATE: March 3, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
2. <u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3. <u>Paglialonga</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 410 amends various sections of Florida law concerning growth management. The bill makes the following changes to current law:

- Requires a local comprehensive plan to have a property rights element, which requires the local government to consider certain private property rights in its decision-making process. Local governments must adopt this element during their next plan amendment process, or by July 1, 2023.
- Provides that a county charter provision or comprehensive plan goal, objective, or policy adopted after January 1, 2020, may not impose a limitation on lands within a municipality unless the municipality, by referendum or local ordinance, adopts and imposes the provision, goal, objective, or policy.
- Provides that a county charter provision or comprehensive plan may not restrict a municipality from deciding the land uses, density, and intensity allowed on lands annexed into a municipality as long as the municipality's comprehensive plan complies with the Community Planning Act.
- Provides that all municipal comprehensive plans *effective*, rather than *adopted*, after January 1, 2019, must incorporate development orders existing before the plan's effective date.
- Directs the Department of Economic Opportunity, when selecting applicants for Community Planning Technical Assistance Grants, to give preference to certain small counties and municipalities located near a proposed multiuse corridor interchange.
- Specifies that a party, or its successor in interest, may amend or cancel a development agreement without securing the consent of other parcel owners whose property was originally

subject to the development agreement, as long as the amendment or cancellation does not directly modify the allowable uses or entitlements of such owner's property.

- Requires that all utility permit applications for the use of the public rights-of-way be processed within the timeframes that currently apply to permit applications submitted by communications services providers.
- Allows agreements pertaining to existing developments of regional impact that are classified as essentially built out, which agreements were valid on or before April 6, 2018, to be amended including amendments exchanging land uses under certain circumstances.

II. Present Situation:

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described in Section III of this analysis, followed immediately by the corresponding Effect of Proposed Changes. The below discussion tracks the order of sections contained in the bill.

III. Effect of Proposed Changes:

Comprehensive Plans and Preexisting Development Orders (Section 1)

Present Situation

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act, also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.¹ The Community Planning Act governs how local governments create and adopt their local comprehensive plans. A comprehensive plan is a statutorily mandated legislative plan to control and direct the use and development of property within a county or municipality.²

Local comprehensive plans adopted after January 1, 2019, and all land development regulations adopted to implement the plan, must incorporate development orders existing before the comprehensive plan's effective date.³ The plan may not impair a party's ability to complete development in accordance with the development order and must vest the density⁴ and intensity⁵ approved by the development order without any limitations or modifications. Land development regulations must incorporate preexisting development orders.⁶

¹ See ch. 2011-139, s. 4, Laws of Fla.

² *Payne v. City of Miami*, 52 So. 3d 707, 737 (Fla. 3rd DCA 2010)

³ See ch. 2019-165, s. 3, Laws of Fla.

⁴ Section 163.3164(12), F.S., defines the term "density" as an objective measure of the number of people or residential units allowed per unit of land, such as residents or employees per acre.

⁵ Section 163.3164(22), F.S., defines the term "intensity" as an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on, or below the ground; the measurement of the use of or demand on natural resources; and the measurement of the use of or demand on facilities and services.

⁶ Sections 163.3167(3) and 163.3203, F.S.

Effect of Proposed Changes

The bill amends s. 163.3167, F.S., to provide that all local comprehensive plans *effective*, rather than *adopted*, after January 1, 2019, and all land development regulations adopted to implement the plan, must incorporate development orders existing before the plan's effective date.

County and Municipal Home Rule Powers (Section 1)

Present Situation

The State Constitution establishes and describes the duties, powers, structure, and function of government in Florida, and establishes the basic law of the state. The State Constitution recognizes that: "All political power is inherent in the people."⁷

Florida is divided into 67 counties.⁸ Out of these counties, there are 20 counties in which the electorate has adopted a charter form of government as described in the State Constitution.⁹ The remaining 47 counties are considered non-charter counties. Collectively, charter counties are home to more than 75 percent of Florida's residents.¹⁰

Under the State Constitution, a county without a charter has such power of self-government as provided by general¹¹ or special law, and may enact county ordinances not inconsistent with general law or special law.¹² Non-charter county ordinances in conflict with a municipal ordinance are not effective within the municipality to the extent of such conflict.¹³ Alternatively, counties operating under county charters shall have all the powers of local self-government not inconsistent with general law, or with special law approved by a vote of the electors.¹⁴ In the event a charter county ordinance conflicts with a municipal ordinance, the county's charter shall provide which ordinance shall control.¹⁵ General law authorizes counties "the power to carry on county government"¹⁶ and to "perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."¹⁷

As for municipalities, the State Constitution describes how municipalities are established, the powers of a municipality, and the manner municipalities annex territory.¹⁸ Municipalities are authorized to exercise any power for municipal purposes except as otherwise provided by law.¹⁹ Chapter 166, F.S., also known as the Municipal Home Rule Powers Act, acknowledges the

⁷ FLA. CONST. Art. I, sec. 1.

⁸ Florida Department of State, *Quick Facts*, available at: <https://dos.myflorida.com/florida-facts/quick-facts/> (last visited March 3, 2020).

⁹ Florida Association of Counties, *Charter County Information*, available at: <https://www.fl-counties.com/charter-county-information> (last visited March 3, 2020); see also FLA. CONST. Art. VIII, s. 1(g).

¹⁰ *Id.*

¹¹ Chapter 125, Part I, F.S.

¹² FLA. CONST. Art. VIII, s. 1(f).

¹³ *Id.*

¹⁴ FLA. CONST. Art. VIII, s. 1(g).

¹⁵ *Id.*

¹⁶ Section 125.01(1), F.S.

¹⁷ Section 125.01(1)(w), F.S.

¹⁸ FLA. CONST. Art. VIII, s. 2(a) – (c).

¹⁹ *Id.* at (a).

constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services. Chapter 166, F.S., provides municipalities with broad home rule powers, respecting expressed limits on municipal powers established by the State Constitution, applicable laws, and county charters.

When it comes to charter counties and municipalities within those counties, a charter county may exercise such authority over municipalities within its boundaries as is provided for in its charter.²⁰ A charter county may preempt a municipality's land use regulation by so providing in the charter.²¹ As for non-charter counties, a county land use regulation in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.²²

Effect of Proposed Changes

The bill amends s. 163.3167, F.S., to state that a county charter provision or comprehensive plan goal, objective, or policy adopted after January 1, 2020, may not impose a limitation on lands within a municipality unless the municipality, by referendum or local ordinance, adopts and imposes the provision, goal, objective, or policy. This revision additionally provides that a county charter provision or comprehensive plan may not restrict a municipality from deciding the land uses, density, and intensity allowed on lands annexed into a municipality as long as the municipality's comprehensive plan complies with the Community Planning Act.

Technical Assistance Funding (Section 2)

Present Situation

DEO Technical Assistance Grant Program

Section 163.3168(3), F.S., requires the Department of Economic Opportunity (DEO), as the state land planning agency, to help communities find creative solutions to fostering vibrant, healthy communities and authorizes DEO to use various means to provide direct and indirect technical assistance within available resources. To carry out this charge, DEO's Bureau of Community Planning and Growth manages the Community Planning Technical Assistance Grant Program. Under the program, DEO awards grant funds to counties, cities, and regional planning councils to assist local governments in developing economic development strategies, meeting the requirements of the Community Planning Act, addressing critical local planning issues, and promoting innovative planning solutions to challenges identified by local government applicants.²³ The program has funded a wide range of activities which have included, for example, the development and revision of comprehensive plan amendments, economic development strategic plans, affordable housing action plans, downtown master plans, transportation master plans, and revitalization plans.

²⁰ Section 163.3171(2), F.S.

²¹ *Seminole County v. City of Winter Springs*, 935 So.2d 521 (Fla. 5th DCA 2006)

²² FLA. CONST. Art. VIII, s. 1(f).

²³ DEO, Division of Community Planning, *Technical Assistance*, available at: <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/technical-assistance> (last visited Feb. 8, 2020).

Beginning in fiscal year 2011-2012, the Legislature has annually appropriated state funds to DEO to implement the program. From fiscal years 2015-2016 to 2019-2020, DEO has expended almost \$6 million on 174 approved grant projects.²⁴

M-CORES Program

Enacted during the 2019 Regular Session,²⁵ the Multi-use Corridors of Regional Economic Significance (M-CORES) Program is designed to advance the construction of regional corridors that will accommodate multiple modes of transportation and multiple types of infrastructure.²⁶ The specific purpose of the program is to revitalize rural communities, encourage job creation in those communities, and provide regional connectivity while leveraging technology, enhancing the quality of life and public safety, and protecting the environment and natural resources.²⁷

Section 338.2278(1)(a)-(k), F.S., enumerates the intended benefits which the M-CORES Program seeks to address, which include, but are not limited to: hurricane evacuation; congestion mitigation; trade and logistics; broadband, water, and sewer connectivity; energy distribution; autonomous, connected, shared, and electric vehicle technology; other transportation modes, such as shared-use nonmotorized trails, freight and passenger rail, and public transit; mobility as a service; availability of a trained workforce skilled in traditional and emerging technologies; protection or enhancement of wildlife corridors or environmentally sensitive areas; and protection or enhancement of primary springs protection zones and farmland preservation areas.

The following three corridors comprise the M-CORES Program:

- Southwest-Central Florida Connector (Collier County to Polk County);
- Suncoast Connector (Citrus County to Jefferson County); and
- Northern Turnpike Connector (the northern terminus of the Florida Turnpike northwest to the Suncoast Parkway).²⁸

As required by law, the Florida Department of Transportation (FDOT) has assembled three task forces to study the three specific multi-use corridors.²⁹ The task forces will make recommendations to FDOT regarding the potential economic and environmental impacts of the corridor and other factors as specified in the M-CORES legislation. Task Forces are required to report their evaluations in a final report submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2020.³⁰ The law requires, to the maximum extent feasible, project construction to begin no later than December 31, 2022, with projects open to traffic no later than December 31, 2030.³¹

²⁴ Information received from DEO staff on Jan. 23, 2020 (on file with Senate Committee on Judiciary).

²⁵ Chapter 2019-43, Laws of Fla.

²⁶ For additional detailed information about M-CORES, see the FDOT M-CORES website, <https://floridamcores.com/> (last visited Jan. 28, 2020).

²⁷ Section 338.2278(1), F.S.

²⁸ Section 338.2278(2)(a)-(c), F.S.

²⁹ Section 338.2278(3)(c)1., F.S.

³⁰ Section 338.2278(3)(c)9., F.S.

³¹ Section 338.2278(6), F.S.

Effect of Proposed Changes

The bill amends s. 163.3168, F.S., to require DEO, when selecting applications for Community Planning Technical Assistance Grants, to give preference to certain small counties and municipalities for assistance in:

- Determining whether an area in and around a proposed multiuse corridor interchange contains appropriate land uses and natural resource protection; and
- Developing or amending a local government’s comprehensive plan to provide for land use, natural resource protection, and intended benefits associated with a proposed multiuse corridor interchange.

Counties with a population of 200,000 or less, and municipalities within such counties, are eligible for the funding preference provided in the bill.

Private Property Rights and the Community Planning Act (Section 3)

Present Situation

Constitutional Private Property Rights

Under Article I, section 2 of the Florida Constitution’s Declaration of Rights, individuals are guaranteed the right “to acquire, possess, and protect property.”³² Although these property rights are enshrined in Florida’s constitution, the state and local governments may curtail these rights through sovereign police powers. State police powers are derived from the Tenth Amendment to the U.S. Constitution, which affords states all rights and powers “not delegated to the United States.”³³ Under this provision, states have police powers to establish and enforce laws protecting the welfare, safety, and health of the public.³⁴ Regarding private property rights, courts have continuously held that “even constitutionally protected property rights are not absolute, and ‘are held subject to the fair exercise of the power inherent in the State to promote the general welfare of the people through regulations that are necessary to secure the health, safety, good order, [and] general welfare.’”³⁵

When a state or political subdivision exercises police powers to affect property rights, citizens are provided two constitutional challenges to oppose the governmental act. The first challenge is that the government may have acted arbitrarily in violation of due process.³⁶ In the *City of Coral Gables v. Wood*, the court ruled that “[a] zoning ordinance will be upheld unless it is clearly shown that it has no foundation in reason and is a mere arbitrary exercise of power without

³² FLA. CONST. art. I s. 2.

³³ U.S. CONST. amend. X.

³⁴ “The States thus can and do perform many of the vital functions of modern government—punishing street crime, running public schools, and zoning property for development, to name but a few—even though the Constitution’s text does not authorize any government to do so. Our cases refer to this general power of governing, possessed by the States but not by the Federal Government, as the police power.” See *NFIB v. Sebelius*, 567 U.S. 519, 535-536 (2012).

³⁵ *Shriners Hospitals for Crippled Children v. Zrillic*, 563 So.2d 64, 68 (Fla. 1990) (quoting *Golden v. McCarthy*, 337 So.2d 388, 390 (Fla. 1976)).

³⁶ See U.S. CONST. amend. V, XIV, s. 1; FLA. CONST. art. I s. 9; see also *Fox v. Town of Bay Harbor Islands*, 450 So.2d 559, 560 (Fla. 3rd DCA 1984).

reference to public health, morals, safety or welfare.”³⁷ In the first constitutional challenge, government action is simply invalid under the due process clause of the constitution.³⁸

The second challenge is whether the government so intrusively regulated the use of property in pursuit of legitimate police power objectives to take the property without compensation in violation of the just compensation clause (takings clause).³⁹ When reasoning whether a regulation or land use plan constitutes a taking of a landowner's property, the operative inquiry is whether the landowner has been deprived of all or substantially all economic, beneficial or productive use of the property.⁴⁰ In the second constitutional challenge, the government action is invalid absent compensation, and so the government may either abandon its regulation or validate its action by payment of appropriate compensation to the landowner.⁴¹

Since the establishment of these constitutional protections for citizens, the scale of government and land use regulation has considerably expanded, but courts have been reluctant to afford relief to property owners under these constitutional challenges.⁴² Thus, property owners who experienced property devaluation or economic loss caused by government regulation were seldom compensated.⁴³

In 1995, the Legislature addressed the ineffectiveness of these constitutional challenges to government regulation by enacting ch. 70, F.S., which is known as the “Bert J. Harris, Jr., Private Property Rights Protection Act” (hereinafter the “Harris Act”).⁴⁴

The Bert J. Harris, Jr., Private Property Rights Protection Act

The Harris Act⁴⁵ entitles private property owners to relief when a specific action of a governmental entity inordinately burdens the owner's existing use of the real property or a vested right to a specific use of the real property.⁴⁶ The Harris Act recognizes that the inordinate burden, restriction, or limitation on private property rights as applied may fall short of a taking or due process violation under the State Constitution or the U.S. Constitution.⁴⁷ The law does not apply to the U.S. government, federal agencies, or state or local government entities exercising delegated U.S. or federal agency powers.⁴⁸

In addition to action that inordinately burdens a property right, an owner may seek relief when a government entity's development order or enforcement action is unreasonable or unfairly burdens the use of the owner's real property,⁴⁹ or when a government entity imposes a condition

³⁷ *City of Coral Gables v. Wood*, 305 So.2d 261, 263 (Fla. 3rd DCA 1974).

³⁸ See *Department of Transp. v. Weisenfeld*, 617 So.2d 1071 (Fla. 5th DCA 1993).

³⁹ See FLA. CONST. art X, s. 6.

⁴⁰ See *Taylor v. Village of North Pam Beach*, 659 So.2d 1167 (Fla. 4th DCA 1995).

⁴¹ See *Department of Transp. v. Weisenfeld*, 617 So.2d 1071 (Fla. 5th DCA 1993).

⁴² See Cooper, Weaver, and Connor, *The Florida Bar, Florida Real Property Litigation, Statutory Private Property Rights Protection*, s.13.1 (2018).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Section 70.001(1), F.S.

⁴⁶ Section 70.001(2), F.S.

⁴⁷ Section 70.001(1), F.S.

⁴⁸ Section 70.001(3)(c), F.S.

⁴⁹ Section 70.51(3), F.S.

on the proposed use of the real property that amounts to a prohibited exaction.⁵⁰ A prohibited exaction occurs when an imposed condition lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate.⁵¹

The Community Planning Act

The Harris Act is balanced against the state's sovereign rights. The state needs to effectively and efficiently plan, coordinate, and deliver government services amid the state's continued growth and development.⁵² Statutes govern how the state and local governments direct land development⁵³ with the State Comprehensive Plan and local comprehensive plans adopted by counties and municipalities as required by statute.⁵⁴

The Legislature expressly intended for all governmental entities in the state to recognize and respect judicially acknowledged or constitutionally protected private property rights.⁵⁵ The authority provided by the Community Planning Act must be exercised with sensitivity for private property rights, without undue restriction, and leave property owners free from actions by others which would harm their property or constitute an inordinate burden on property rights under the Harris Act.⁵⁶

The State Comprehensive Plan must provide long-range policy guidance for the orderly social, economic, and physical growth of the state.⁵⁷ The goals and policies of the State Comprehensive Plan must be consistent with the protection of private property rights.⁵⁸ The State Comprehensive Plan must be reviewed every two years by the Legislature, and legislative action is required to implement its policies unless specifically authorized otherwise in the Constitution or law.⁵⁹

Local Comprehensive Plan Elements

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements.⁶⁰ Plans also are required to identify procedures for monitoring, evaluating, and appraising implementation of the plan.⁶¹ Plans may include optional elements,⁶² but must include the following nine elements:

⁵⁰ Section 70.45(2), F.S.

⁵¹ Section 70.45(1)(c), F.S.

⁵² See Section. 186.002(1)(b), F.S.

⁵³ See Chapters 186, 187, and 163, part II, F.S.

⁵⁴ Section 163.3167(1)(b), F.S.

⁵⁵ See Section 163.3161(10), F.S.; see also s. 187.101(3), F.S.

⁵⁶ *Id.*

⁵⁷ Section 187.101(1), F.S.

⁵⁸ Section 187.101(3), F.S. The plan's goals and policies must also be reasonably applied where they are economically and environmentally feasible and not contrary to the public interest.

⁵⁹ Section 187.101(1), F.S.

⁶⁰ Section 163.3177(1), F.S.

⁶¹ Section 163.3177(1)(d), F.S.

⁶² Section 163.3177(1)(a), F.S.

- Capital improvements;⁶³
- Future land use plan;⁶⁴
- Intergovernmental coordination;⁶⁵
- Conservation;⁶⁶
- Transportation;⁶⁷
- Sanitary sewer, solid waste, drainage, potable water, and aquifer recharge;⁶⁸
- Recreation and open space;⁶⁹
- Housing;⁷⁰ and
- Coastal management (for coastal local governments).⁷¹

All local government land development regulations must be consistent with the local comprehensive plan.⁷² Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.⁷³ However, plans cannot require any special district to undertake a public facility project which would impair the district's bond covenants or agreements.⁷⁴

Amendments to a Local Comprehensive Plan

Local governments must review and amend their comprehensive plans every 7 years to reflect any changes in state requirements.⁷⁵ Within a year of any such amendments, local governments must adopt or amend local land use regulations consistent with the amended plan.⁷⁶ A local government is not required to review its comprehensive plan before its regular review period unless the law specifically requires otherwise.⁷⁷

Generally, a local government amending its comprehensive plan must follow an expedited state review process.⁷⁸ Certain plan amendments, including amendments required to reflect a change in state requirements, must follow the state coordinated review process for the adoption of comprehensive plans.⁷⁹ Under the state process, the state land planning agency is responsible for plan review, coordination, and preparing and transmitting comments to the local government.⁸⁰

⁶³ Section 163.3177(3)(a), F.S. The capital improvements element must be reviewed by the local government on an annual basis.

⁶⁴ Section 163.3177(6)(a), F.S.

⁶⁵ Section 163.3177(6)(h), F.S.

⁶⁶ Section 163.3177(6)(d), F.S.

⁶⁷ Section 163.3177(6)(b), F.S.

⁶⁸ Section 163.3177(6)(c), F.S.

⁶⁹ Section 163.3177(6)(e), F.S.

⁷⁰ Section 163.3177(6)(f), F.S.

⁷¹ Section 163.3177(6)(g), F.S.

⁷² Section 163.3194(1)(b), F.S.

⁷³ See Sections 163.3161(6) and 163.3194(1)(a), F.S.

⁷⁴ Section 189.081(1)(b), F.S.

⁷⁵ Section 163.3191(1), F.S.

⁷⁶ Section 163.3191(2), F.S.

⁷⁷ Section 163.3161(12), F.S.

⁷⁸ Section 163.3184(3)(a), F.S.

⁷⁹ Section 163.3184(2)(c), F.S.

⁸⁰ Section 163.3184(4)(a), F.S.

The Department of Economic Opportunity (DEO) is designated as the state land planning agency.⁸¹

Under the state coordinated review process, local governments must hold a properly noticed public hearing⁸² about the proposed amendment before sending it for comment from several reviewing agencies,⁸³ including DEO, the Department of Environmental Protection, the appropriate regional planning council, and the Department of Transportation.⁸⁴ Local governments or government agencies within the state filing a written request with the governing body are also entitled to copies of the amendment.⁸⁵ Comments on the amendment must be received within 30 days after DEO receives the proposed plan amendment.⁸⁶

DEO must provide a written report within 60 days of receipt of the proposed amendment if it elects to review the amendment.⁸⁷ The report must state the agency's objections, recommendations, and comments with certain specificity, and must be based on written, not oral, comments.⁸⁸ Within 180 days of receiving the report from DEO, the local government must review the report and any written comments and hold a second properly noticed public hearing on the adoption of the amendment.⁸⁹ Adopted plan amendments must be sent to DEO and any agency or government that provided timely comments within 10 working days after the second public hearing.⁹⁰

Once DEO receives the adopted amendment and determines it is complete, it has 45 days to determine if the adopted plan amendment complies with the law⁹¹ and to issue on its website a notice of intent finding whether or not the amendment is compliant.⁹² A compliance review is limited to the findings identified in DEO's original report unless the adopted amendment is substantially different from the reviewed amendment.⁹³ Unless the local comprehensive plan amendment is challenged, it may go into effect pursuant to the notice of intent.⁹⁴ If there is a timely challenge, then the plan amendment will not take effect until DEO, or the Administration Commission⁹⁵ enters a final order determining the adopted amendment complies with the law.⁹⁶

⁸¹ Section 163.3164(44), F.S.

⁸² Sections 163.3184(4)(b) and (11)(b)1., F.S.

⁸³ See Section 163.3184(1)(c), F.S., for complete list of all reviewing agencies.

⁸⁴ Section 163.3184(4)(b) and (c), F.S.

⁸⁵ Section 163.3184(4)(b), F.S.

⁸⁶ Section 163.3184(4)(c), F.S.

⁸⁷ Section 163.3184(4)(d)1., F.S.

⁸⁸ Section 163.3184(4)(d)1., F.S. All written communication the agency received or generated regarding a proposed amendment must be identified with enough information to allow for copies of documents to be requested. See s. 163.3184(4)(d)2., F.S.

⁸⁹ Sections 163.3184(4)(e)1. and (11)(b)2., F.S. If the hearing is not held within 180 days of receipt of the report, the amendment is deemed withdrawn absent an agreement and notice to DEO and all affected persons that provided comments. See s. 163.3184(4)(e)1., F.S.

⁹⁰ Section 163.3184(4)(e)2., F.S.

⁹¹ Section 163.3184(4)(e)3. and 4., F.S.

⁹² Section 163.3184(4)(e)4., F.S.

⁹³ *Id.*

⁹⁴ Section 163.3184(4)(e)5., F.S.

⁹⁵ Section 14.202, F.S., provides that the Administration Commission is composed of the Governor and the Cabinet (Section 20.03, F.S., provides that "Cabinet" means the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture).

⁹⁶ *Id.*

Effect of Proposed Changes

The bill amends s. 163.3177(6), F.S., to require local governments to incorporate a private property rights element into their comprehensive plans and respect private property rights in local decision making.

The bill provides a model statement of property rights, and local governments may incorporate the suggested language directly into their comprehensive plan. The property rights provided in the bill include the following five acknowledgments that a local government should consider in the decision-making process:

- The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.
- The right of the property owner to the quiet enjoyment of the property, to the exclusion of all others.
- The right of a property owner to use, maintain, develop, and improve his or her property for personal use or the use of any other person, subject to state law and local ordinances.
- The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.
- The right of the property owner to dispose of his or her property through sale or gift.

Each local government must adopt its own property rights element in its comprehensive plan by the earlier of its next proposed plan amendment or by July 1, 2023. If a local government adopts its own property rights element, the element may not conflict with the statement of rights provided in the bill.

Local Government Development Agreements (Section 4)***Present Situation***

Local governments may enter into development agreements with developers.⁹⁷ A “development agreement” is a “contract between a local government and a property owner/developer, which provides the developer with vested rights by freezing the existing zoning regulations applicable to a property in exchange for public benefits.”⁹⁸

Any local government may, by ordinance, establish procedures and requirements to consider and enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.⁹⁹ A development agreement must include the following:¹⁰⁰

- A legal description of the land subject to the agreement and the names of its legal and equitable owners;
- The duration of the agreement;

⁹⁷ Section 163.3220(4), F.S.; *see also* ss. 163.3220-163.3243, F.S., known as the “Florida Local Government Development Agreement Act.”

⁹⁸ *Morgan Co., Inc. v. Orange County*, 818 So. 2d 640 (Fla. 5th DCA 2002); 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).

⁹⁹ Section 163.3223, F.S.; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).

¹⁰⁰ Section 163.3227(1), F.S.

- The development uses permitted on the land, including population densities, and building intensities and height;
- A description of public facilities that will service the development, including who will provide such facilities, the date any new facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development;
- A description of any reservation or dedication of land for public purposes;
- A description of all local development permits approved or needed to be approved for the development of the land;
- A finding that the development permitted or proposed is consistent with the local government's comprehensive plan and land development regulations;
- A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens; and
- A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

A development agreement may also provide that the entire development, or any phase, must be commenced or completed within a specific time.¹⁰¹ Within 14 days after a local government enters into a development agreement, the local government must record the agreement with the clerk of the circuit court in the county where the local government is located. A development agreement will not be effective until properly recorded in the public records of the county.¹⁰²

The requirements and benefits in a development agreement are binding upon and vest or continue with any person who later obtains ownership from one of the original parties to the agreement,¹⁰³ also known as a successor in interest.¹⁰⁴ A development agreement may be amended or canceled by the mutual consent of the parties to the agreement or by their successors in interest.¹⁰⁵

Effect of Proposed Changes

The bill provides that a party or its designated successor in interest to a development agreement and the local government are authorized to amend or cancel a development agreement without securing the consent of other parcel owners of property that were originally subject to the development agreement unless the amendment, modification or termination directly modifies the allowable uses or entitlements of an owner's property.

¹⁰¹ Section 163.3227(2), F.S.; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).

¹⁰² Section 163.3239, F.S.; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).

¹⁰³ Section 163.3239, F.S.

¹⁰⁴ A successor in interest is one who follows another in ownership or control of property. A successor in interest retains the same rights as the original owner, with no change in substance. BLACK'S LAW DICTIONARY 1473 (8th ed. 2004).

¹⁰⁵ Section 163.3237, F.S.

Utility Right-of-Way Permitting (Section 5)

Present Situation

Pursuant to s. 337.401, F.S., FDOT and each local government with jurisdiction and control of public roads or publicly owned rail corridors is authorized to prescribe and enforce reasonable rules or regulations concerning the placement and maintenance of utility facilities across, on, or within the right-of-way (ROW) limits of any road or publicly owned rail corridor under its jurisdiction. Each of these entities is individually referred to as the “authority” when acting in this capacity. Each authority may authorize any person who is a resident of this state, or any corporation organized or licensed to do business under Florida law, to use a public ROW for a utility¹⁰⁶ following the authority’s rules or regulations. A utility may not be installed, located, or relocated within a public ROW unless authorized by a written permit.¹⁰⁷

In 2017, the Legislature established an expedited permitting process for small wireless facilities¹⁰⁸ (SWF) that a wireless provider¹⁰⁹ seeks to place in the public ROW.¹¹⁰ Under this process, an authority must, within 14 days after receiving an application, determine and notify the applicant, by electric mail, as to whether the application is complete. If it determines the application is incomplete, the authority must specifically identify the missing information. An application is deemed complete if the authority fails to notify the applicant within 14 days.

A completed permit application for an SWF is deemed approved if the authority fails to approve or deny the application within 60 days of receipt. This review period may be extended by mutual agreement. If an application is denied, the applicant may cure the deficiencies and submit a revised application within 30 days after the denial. The revised application is deemed approved if the authority does not approve or deny it within 30 days of receipt. If the authority provides for an administrative review of its denial of an application, the authority must complete its review and issue a written decision within 45 days of a written request for review.¹¹¹ In 2019, this

¹⁰⁶ Section 337.401(1)(a), F.S., refers to “any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404” as a “utility.”

¹⁰⁷ Section 337.401(2), F.S.

¹⁰⁸ “Small wireless facility” means a wireless facility that meets the following qualifications:

- Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and
- All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures. Section 337.401(7)(b)10., F.S.

¹⁰⁹ The term “wireless provider” means a wireless infrastructure provider or a wireless services provider. Section 337.401(7)(b)14., F.S.

¹¹⁰ Chapter 2017-136, Laws of Fla., codified in pertinent part at s. 337.401(7)(d)7.-9., F.S.

¹¹¹ Section 337.401(7), F.S.

expedited permitting process was expanded to include all communications facilities a provider of communications services¹¹² seeks to place in the public ROW.¹¹³

No timeframes are specified in current law for processing permit applications to use the public ROW for any other type of utility.

Effect of Proposed Changes

The bill provides that all permit applications to a county or municipality to use the public ROW for any utility must be processed within the expedited timeframe that currently applies only to permit applications submitted for communications facilities. Thus, the bill expands the application of the expedited permitting process to include county or municipal public ROW permits for, among other things, electric, natural gas, water, and sewer facilities.

Developments of Regional Impact (Section 6)

Present Situation

A Development of Regional Impact (DRI) is “any development which, because of its character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of citizens of more than one county.”¹¹⁴

The DRI statutes were created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting laws.¹¹⁵ The program provided a process to identify regional impacts stemming from large developments and appropriate provisions to mitigate impacts on state and regional resources.¹¹⁶

The process to review or amend a DRI agreement and its implementing development orders went through several revisions¹¹⁷ until the repeal of the requirements for state and regional reviews in

¹¹² The term “communications services” means “the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added.” The term does not include: information services; installation or maintenance of wiring or equipment on a customer’s premises; the sale or rental of tangible personal property; the sale of advertising, including, but not limited to, directory advertising; bad check charges; late payment charges; billing and collection services; or Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services. Ss. 337.401(5) and 202.11(1), F.S.

¹¹³ Chapter 2019-131, Laws of Fla.

¹¹⁴ Section 380.06(1), F.S.

¹¹⁵ The Florida Senate, Committee on Community Affairs, Interim Report 2012-114, September 2011, citing: Thomas G. Pelham, *A Historical Perspective for Evaluating Florida’s Evolving Growth Management Process*, in *Growth Management in Florida: Planning for Paradise*, 8 (Timothy S. Chapin, Charles E. Connerly, and Harrison T. Higgins eds. 2005).

¹¹⁶ Chapter 72-317, s. 6, Laws of Fla.

¹¹⁷ See Chapter 2015-30, Laws of Fla. (requiring that new DRI-sized developments proposed after July 1, 2015, must be approved by a comprehensive plan amendment in lieu of the state review process provided for in s. 380.06, F.S.) and ch. 2016-148, Laws of Fla. (requiring DRI reviews to follow the state coordinated review process if the development, or an amendment to the development, required an amendment to the comprehensive plan).

2018.¹¹⁸ Local governments, where a DRI is located, are responsible for implementing and amending existing DRI agreements and development orders.¹¹⁹

Currently, an amendment to a development order for an approved DRI may not amend to an earlier date the date to which the local government had agreed not to impose downzoning, unit density reduction, or intensity reduction, unless:¹²⁰

- The local government can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred;
- The development order was based on substantially inaccurate information provided by the developer; or
- The change is clearly established by the local government to be essential to the public health, safety, or welfare.

The local government must review any proposed change to a previously approved DRI based on the standards and procedures in its adopted local comprehensive plan and local land development regulations.¹²¹ The local government must review a proposed change reducing the originally approved height, density, or intensity of the development based on the standards in the local comprehensive plan at the time the development was originally approved. If the proposed change would have been consistent with the comprehensive plan in effect when the development was originally approved, the local government may approve the change.¹²²

DRI agreements classified as essentially built out and valid on or before April 6, 2018, were preserved, but the provisions that allowed such agreements to be amended to exchange approved land uses were eliminated.¹²³

For such agreements, a DRI is essentially built out if:¹²⁴

- All the mitigation requirements in the development order were satisfied, all developers complied with all applicable terms and conditions of the development order except the buildout date, and the amount of proposed development that remained to be built was less than 40 percent of any applicable development-of-regional-impact threshold; or
- The project was determined to be an essentially built-out development of regional impact through an agreement executed by the developer, the state land planning agency, and the local government.

Effect of Proposed Changes

The bill authorizes the amendment of any DRI agreement previously classified as (or officially determined to be) essentially built out, and entered into on or before April 6, 2018, including amendments authorizing the developer to exchange approved land uses. Subject to the developer

¹¹⁸ Chapter 2018-158, Laws of Fla.

¹¹⁹ Sections 380.06(4)(a) and (7), F.S.

¹²⁰ Section 380.06(4)(a), F.S.

¹²¹ Section 380.06(7)(a), F.S. These procedures must include notice to the applicant and public about the issuance of development orders.

¹²² Section 380.06(7)(a), F.S.

¹²³ Chapter 2018-158, s. 1, Laws of Fla.

¹²⁴ Sections 380.06(15)(g)3. and 4., F.S. (2017).

demonstrating that the exchange will not increase impacts to public facilities, amendments are made pursuant to the processes adopted by the local government for amending development orders.

Effective Date (Section 7)

The bill provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(a) of the State Constitution, provides in part that no county or municipality shall be bound by a general law requiring the county or municipality to spend funds or take an action that requires the expenditure of funds unless certain exemptions or exceptions are met.

The bill might require counties and municipalities to incur some costs to amend their comprehensive plans to add a private property rights element by July 1, 2023. Article VII, section 18 (d), provides eight exemptions, which, if any single one is met, exempts the law from the limitations on mandates. Laws having an “insignificant fiscal impact”¹²⁵ are exempt from the mandate requirements, which for the Fiscal Year 2019-2020 is forecast at approximately \$2.2 million.¹²⁶ The cumulative cost for counties and municipalities to update their comprehensive plans to comply with the provisions of the bill is unknown at this time. However, the model language supplied by the bill may help reduce some costs for local governments. Additionally, costs may be lower if a local government adopts a private property rights element concurrent with another necessary comprehensive plan amendment before July 1, 2023.

If the bill does qualify as a mandate, and no exemption or exception applies, to be binding on the counties, the bill must include a finding of important state interest, and two-thirds of the membership of each house of the Legislature must approve the final passage.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹²⁵ 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 Dec. 11, 2019).

¹²⁶ Based on the Florida Demographic Estimating Conference’s Dec. 3, 2019 population forecast for 2020 of 21,555,986. The conference packet is available at: <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Dec. 11, 2019).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article VIII, section 1(g) of the State Constitution states that a county charter “shall provide which shall prevail in the event of conflict between county and municipal ordinances.” By this provision, the Constitution expressly grants charter counties preemptive regulatory power over municipalities to the extent specified in the charter. Thus, charter counties may preempt a municipal land use regulation by so providing in the charter.¹²⁷ In the context of land use regulations, it is unclear to what extent the Legislature may curtail the preemption authority of a charter county by general law.¹²⁸

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Providing a preference to small M-CORES counties and municipalities for technical assistance grants will likely have a minimal fiscal impact, if any, on DEO.

Eligible small M-CORES counties and municipalities will receive preference when applying for DEO technical assistance grants.

There seems to be legitimate disagreement as to whether section 2 of the bill will have a fiscal impact on local governments that are not scheduled to review their plans before 2024 but under the bill, must amend their comprehensive plans by July 1, 2023, to include a property rights element.

Some people have expressed the opinion that this provision will not require significant costs because they believe no additional consultants will be needed to draft an amendment to comply with the provisions of the bill. They believe that, if the local staff does not have the “in-house” expertise, they may simply “copy and paste” the language into the comprehensive plan and be in compliance. The argument has also been offered that a notice requirement would be a minimal expense because the notice could be

¹²⁷ See *Seminole County v. City of Winter Springs*, 935 So.2d 521 (Fla. 5th DCA 2006)

¹²⁸ “Thus, charter counties have a direct constitutional grant of broad powers of self-government, which include the power of county citizens to enable their county to enact regulations of county-wide effect which preempt conflicting municipal ordinances. Op. Att’y Gen. Fla. 2007-41 (2007).”

included on an existing agenda and would not require a separate meeting notice or separate meeting.

In contrast, the Florida League of Cities indicates that there is a range of responses for the cost for a municipality to adopt a comprehensive plan amendment. According to the Hillsborough County City-County Planning Commission, the cost to review and process a privately initiated amendment to the text of a comprehensive plan may be \$10,375. The Fort Myers Community Development Department has found that a small town or city may spend \$50,000 hiring a planning consultant to draft a comprehensive plan amendment and may end up spending another \$50,000 on total staff time, advertising, and paperwork.¹²⁹ However, the costs to comply with the bill may be significantly lower for a local government depending on the timing of the adoption of the amendment (if done concurrently with another amendment) and whether a local government deems it necessary to enlist the assistance of an outside consultant.

DEO indicated that section 2 of the bill would have no fiscal impact on the department.¹³⁰

The expedited right-of-way permitting timeframes imposed by the bill may cause counties and municipalities to expend additional resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3167, 163.3168, 163.3177, 163.3237, 337.401, and 380.06.

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 March 2, 2020:

The committee substitute adds the following provisions to the bill:

- Requires all municipal comprehensive plans “effective,” as opposed to “adopted,” after January 1, 2019, to incorporate development orders existing before the plan’s effective date.
- Provides that a county charter provision or comprehensive plan goal, objective, or policy adopted after January 1, 2020, may not impose a limitation on lands within a

¹²⁹ Information received from the Florida League of Cities (Jan. 23, 2020) (on file with Senate Committee on Judiciary).

¹³⁰ Department of Economic Opportunity, 2020 Agency Legislative Bill Analysis for SB 410 (Oct. 23, 2019) <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=29749>.

municipality unless the municipality, by referendum or local ordinance, adopts and imposes the provision, goal, objective, or policy.

- Allows a party, or its successor in interest, to amend or cancel a development agreement without securing the consent of other parcel owners whose property was originally subject to the development agreement.
- Requires counties and cities to process utility permit applications for the use of the public ROW within the timeframes currently applicable to permit applications submitted by communications services providers.
- Allows a DRI agreement previously classified as or officially determined to be essentially built out, and entered into on or before April 6, 2018, to be amended to authorize the developer to exchange approved land uses.

CS by Community Affairs on January 27, 2020:

The committee substitute requires DEO to give a preference for technical assistance grant funding to certain small counties and municipalities located near a proposed multiuse corridor interchange.

B. Amendments:

None.



939464

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2020	.	
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The Committee on Rules (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (5) of section 57.112, Florida
Statutes, is amended to read:

57.112 Attorney fees and costs and damages; preempted local
actions.—

(5) This section does not apply to local ordinances adopted
pursuant to ~~part II of chapter 163~~, s. 553.73, or s. 633.202.

Section 2. Subsection (3) of section 163.3167, Florida



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Statutes, is amended, and subsection (11) is added to that section, 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 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 controlling until the municipality adopts a comprehensive plan in accordance with this act. A comprehensive plan effective ~~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.

(11) A county charter provision or comprehensive plan goal, objective, or policy adopted after January 1, 2020, may not be imposed as a limitation on lands located within a municipality unless the municipality, through a referendum or locally adopted ordinance, adopts and imposes the provision, goal, objective, or policy on the lands located within the municipal jurisdiction. A county charter provision or comprehensive plan goal, objective, or policy may not limit a municipality from deciding the land uses, density, and intensity allowed on lands annexed into a municipality as long as the municipality is in compliance with



939464

subsection (3).

Section 3. Present subsection (4) of section 163.3168, Florida Statutes, is renumbered as subsection (5), and a new subsection (4) is added to that section, to read:

163.3168 Planning innovations and technical assistance.—

(4) When selecting applications for funding for technical assistance, the state land planning agency shall give a preference to a county that has a population of 200,000 or less, and to a municipality located within such a county, for assistance in determining whether the area in and around a proposed multiuse corridor interchange as described in s. 338.2278 contains appropriate land uses and natural resource protections and for aid in developing or amending a local government's comprehensive plan to provide for such uses, protections, and intended benefits as provided in s. 338.2278.

Section 4. Paragraph (i) is added to subsection (6) of section 163.3177, Florida Statutes, to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(6) In addition to the requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:

(i)1. In accordance with the legislative intent expressed in ss. 163.3161(10) and 187.101(3) that governmental entities respect judicially acknowledged and constitutionally protected private property rights, each local government shall include in its comprehensive plan a property rights element to ensure that private property rights are considered in local decisionmaking. A local government may adopt its own property rights element or use the following statement of rights:



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The following rights shall be considered in local
decisionmaking:

1. The right of a property owner to physically possess
and control his or her interests in the property,
including easements, leases, or mineral rights.

2. The right of a property owner to use, maintain,
develop, and improve his or her property for personal
use or the use of any other person, subject to state
law and local ordinances.

3. The right of the property owner to privacy and to
exclude others from the property to protect the
owner's possessions and property.

4. The right of a property owner to dispose of his or
her property through sale or gift.

2. Each local government must adopt a property rights
element in its comprehensive plan by the earlier of its next
proposed plan amendment or July 1, 2023. If a local government
adopts its own property rights element, the element may not
conflict with the statement of rights provided in subparagraph
1.

Section 5. Section 163.3237, Florida Statutes, is amended
to read:

163.3237 Amendment or cancellation of a development



939464

99 agreement.—A development agreement may be amended or canceled by
100 mutual consent of the parties to the agreement or by their
101 successors in interest. A party or its designated successor in
102 interest to a development agreement and a local government may
103 amend or cancel a development agreement without securing the
104 consent of other parcel owners whose property was originally
105 subject to the development agreement, unless the amendment or
106 cancellation directly modifies the allowable uses or
107 entitlements of such owners' property.

108 Section 6. Subsection (2) of section 337.401, Florida
109 Statutes, is amended to read:

110 337.401 Use of right-of-way for utilities subject to
111 regulation; permit; fees.—

112 (2) The authority may grant to any person who is a resident
113 of this state, or to any corporation which is organized under
114 the laws of this state or licensed to do business within this
115 state, the use of a right-of-way for the utility in accordance
116 with such rules or regulations as the authority may adopt. No
117 utility shall be installed, located, or relocated unless
118 authorized by a written permit issued by the authority. However,
119 for public roads or publicly owned rail corridors under the
120 jurisdiction of the department, a utility relocation schedule
121 and relocation agreement may be executed in lieu of a written
122 permit. The permit shall require the permitholder to be
123 responsible for any damage resulting from the issuance of such
124 permit. The authority may initiate injunctive proceedings as
125 provided in s. 120.69 to enforce provisions of this subsection
126 or any rule or order issued or entered into pursuant thereto. A
127 permit application required by an authority under this



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subsection by a county or municipality having jurisdiction and
control of the right-of-way of any public road must be processed
and acted upon in accordance with the timeframes provided in
subparagraphs (7)(d)7., 8., and 9.

Section 7. Paragraph (d) of subsection (4) of section
380.06, Florida Statutes, is amended to read:

380.06 Developments of regional impact.—

(4) LOCAL GOVERNMENT DEVELOPMENT ORDER.—

(d) Any agreement entered into by the state land planning
agency, the developer, and the local government with respect to
an approved development of regional impact previously classified
as essentially built out, or any other official determination
that an approved development of regional impact is essentially
built out, remains valid unless it expired on or before April 6,
2018, and may be amended pursuant to the processes adopted by
the local government for amending development orders. Any such
agreement or amendment may authorize the developer to exchange
approved land uses, subject to demonstrating that the exchange
will not increase impacts to public facilities. This paragraph
applies to all such agreements and amendments effective on or
after April 6, 2018.

Section 8. This act shall take effect July 1, 2020.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to growth management; amending s.



939464

57.112, F.S.; deleting a provision that prohibits specified attorney fees and costs from applying to local ordinances adopted pursuant to the growth policy act; amending s. 163.3167, F.S.; specifying requirements for certain comprehensive plans effective after a specified date and for associated land development regulations; prohibiting country charter provisions and comprehensive plan goals, objectives, and policies adopted after a specified date from imposing limitations on lands unless certain conditions are met; providing retroactive applicability; prohibiting county charter provisions and comprehensive plan goals, objectives, and policies from limiting a municipality from deciding land uses, density, and intensity allowed on certain lands; amending s. 163.3168, F.S.; requiring the Department of Economic Opportunity to give a preference to certain counties and municipalities when selecting applications for funding for specified technical assistance; amending s. 163.3177, F.S.; requiring local governments to include a property rights element in their comprehensive plans; providing a statement of rights that a local government may use; requiring a local government to adopt a property rights element by a specified date; prohibiting a local government's property rights element from conflicting with the statutorily provided statement of rights; amending s. 163.3237, F.S.; providing that certain property owners are not required to consent to development agreement



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186 changes under certain circumstances; amending s.
187 337.401, F.S.; specifying timeframes for processing a
188 permit application for a utility's use of a right-of-
189 way; amending s. 380.06, F.S.; authorizing certain
190 developments of regional impact agreements to be
191 amended under certain circumstances; providing
192 retroactive applicability; providing an effective
193 date.



223488

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2020	.	
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The Committee on Rules (Hutson) recommended the following:

Senate Amendment to Amendment (939464) (with title amendment)

Delete lines 5 - 10.

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

And the title is amended as follows:

Delete lines 156 - 160

and insert:

An act relating to growth management; amending s.
163.3167, F.S.; specifying

By the Committee on Community Affairs; and Senator Perry

578-02686-20

2020410c1

A bill to be entitled

An act relating to growth management; amending s. 163.3168, F.S.; requiring the Department of Economic Opportunity to give a preference to certain counties and municipalities when selecting applications for funding for technical assistance; amending s. 163.3177, F.S.; requiring a comprehensive plan to include a property rights element; providing a statement of rights that a local government may use; requiring a local government to adopt a property rights element by a specified date; providing that a local government's property rights element may not conflict with the statutorily provided statement of rights; providing an effective date.

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

Section 1. Present subsection (4) of section 163.3168, Florida Statutes, is redesignated as subsection (5), and a new subsection (4) is added to that section, to read:

163.3168 Planning innovations and technical assistance.—

(4) When selecting applications for funding for technical assistance, the state land planning agency shall give a preference to a county that has a population of 200,000 or less, and to a municipality located within such a county, for assistance in determining whether the area in and around a proposed multiuse corridor interchange as described in s. 338.2278 contains appropriate land uses and natural resource protections and for aid in developing or amending a local

578-02686-20

2020410c1

government's comprehensive plan to provide for such uses, protections, and intended benefits as provided in s. 338.2278.

Section 2. Paragraph (i) is added to subsection (6) of section 163.3177, Florida Statutes, to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(6) In addition to the requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:

(i)1. In accordance with the legislative intent expressed in ss. 163.3161(10) and 187.101(3) that governmental entities respect judicially acknowledged and constitutionally protected private property rights, each local government shall include in its comprehensive plan a property rights element to ensure that private property rights are considered in local decisionmaking. A local government may adopt its own property rights element or use the following statement of rights:

The following rights shall be considered in local decisionmaking:

1. The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

2. The right of the property owner to the quiet enjoyment of the property, to the exclusion of all others.

3. The right of a property owner to use, maintain,

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59 develop, and improve his or her property for personal
60 use or the use of any other person, subject to state
61 law and local ordinances.
62
63 4. The right of the property owner to privacy and to
64 exclude others from the property to protect the
65 owner's possessions and property.
66
67 5. The right of a property owner to dispose of his or
68 her property through sale or gift.
69
70 2. Each local government must adopt a property rights
71 element in its comprehensive plan by the earlier of its next
72 proposed plan amendment or July 1, 2023. If a local government
73 adopts its own property rights element, the element may not
74 conflict with the statement of rights provided in subparagraph
75 1.
76 Section 3. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 18, 2020

I respectfully request that **Senate Bill #410**, relating to Growth Management , be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long, sweeping underline.

Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20

Meeting Date

410

Bill Number (if applicable)

939464

Amendment Barcode (if applicable)

Topic Growth Management

Name David Cruz

Job Title Legislative Counsel

Address P.O. Box 1757

Street

Tallahassee

City

FL

State

32302

Zip

Phone 701-3676

Email DCRUZ@flcities.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-2-20

Meeting Date

9 410

Bill Number (if applicable)

939464

Amendment Barcode (if applicable)

Topic GROWTH MANAGEMENT

Name LAURA YOUNG

Job Title LEGISLATIVE COUNSEL

Address 100 S. MONROE

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TAL

City

FL

State

32301

Zip

Phone 294-1838

Email lyoung@flcourts.org

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)

3/2/20

Meeting Date

410

Bill Number (if applicable)

939464

Amendment Barcode (if applicable)

Topic Growth Management

Name Jane West

Job Title Policy + Planning Director

Address 24 Cathedral Place

Street

St Augustine FL 32080

City

State

Zip

Phone 904-671-4008

Email jwest@1000fof.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

3/2/20
Meeting Date

410
Bill Number (if applicable)
939464
Amendment Barcode (if applicable)

Topic _____

Name DAVID CULLEN

Job Title _____

Address 104-2 CREST ST
Street

Phone 941-323-2404

TLH FL 32301
City State Zip

Email collenasea@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)

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3/2/20

Meeting Date

410

Bill Number (if applicable)

939464

Amendment Barcode (if applicable)

Topic

Growth Mgt.

Name

Dan Peterson

Job Title

President

Address

Box 1875

Street

Minneapolis

City

FL

State

32755

Zip

Phone

407-758-2491

Email

dan.peterson@
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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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03/2/20
Meeting Date

410
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

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3/2/20
Meeting Date

410
Bill Number (if applicable)

Topic Growth Mgt.

Amendment Barcode (if applicable)

Name Dan Peterson

Job Title President

Address Box 1875

Phone 407-758-2491

Street

City

Minneka

State

FL

Zip

34755

Email dan.peterson@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

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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)

3/2/2020

Meeting Date

SB 410

Bill Number (if applicable)

Topic GROWTH MANAGEMENT

Amendment Barcode (if applicable)

Name STARRA BROWN

Job Title Deputy STATE DIRECTOR

Address

Phone

Street

City

State

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing AMERICANS FOR PROSPERITY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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 _____

410
Bill Number (if applicable) _____

Topic ENVIRONMENTAL Protection Bill

Amendment Barcode (if applicable) _____

Name ELLEN VAUSE

Job Title CITY MANAGER, HAWTHORNE, FL

Address 6815 SE 221 ST ST, PO BOX 1270

Phone 352 481 2432

Street

Hawthorne

City

FL

State

32640

Zip

Email evause@cityofhawthorne.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Hawthorne

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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3/2/20

Meeting Date

410

Bill Number (if applicable)

Topic Growth Management

Amendment Barcode (if applicable)

Name Lindsay Cross

Job Title Government Relations Director

Address 1700 N Monroe 11-286

Phone _____

Street

Tally

City

FL

State

32303

Zip

Email lindsay@fcvoters.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conservation voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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

3/2/20

Meeting Date

4110

Bill Number (if applicable)

Topic Growth Management

Amendment Barcode (if applicable)

Name Jane West

Job Title Policy & Planning Director

Address 24 Cathedral Place

Phone 904-671-4008

St. Augustine FL 32080

Street

City

State

Zip

Email jwest@1000FofF.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3-2-20

Meeting Date

410

Bill Number (if applicable)

Topic GROWTH MANAGEMENT

Amendment Barcode (if applicable)

Name LAURA YOUMANS

Job Title LEGISLATIVE COUNSEL

Address 105. MONROE

Street

Phone 254-1728

TAL

City

FL

State

32201

Zip

Email lyouman@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

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S-001 (10/14/14)

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3/2/20
Meeting Date

410
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 104-2 CREST ST
Street

Phone 941-323-2404

TLH FL 32301
City State Zip

Email cullen@seag[illegible].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
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 504

INTRODUCER: Rules Committee; Governmental Oversight and Accountability Committee; and Senator Perry

SUBJECT: Local Government Public Construction Works

DATE: March 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Yeatman	CA	Favorable
2.	Ponder	McVane	GO	Fav/CS
3.	Paglialonga	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 504 specifies how the estimated cost of a public building construction project must be determined when a governing board is deciding whether it is in the local government's best interest to perform the project using its own services, employees, and equipment. The bill requires the estimated project cost to account for additional costs associated with performing and completing the work, including employee compensation and benefits, the cost of equipment and maintenance, insurance costs, and the cost of direct materials to be used in the construction of the project, including materials to be purchased by the local government. The estimated project cost must also include other direct costs, plus a factor of 20 percent for management, overhead, and other indirect costs. The bill also requires local governments to consider the same costs when determining the estimated cost of road and bridge construction and reconstruction projects performed utilizing proceeds from the constitutional gas tax.

The bill requires local governments issuing bidding documents or other requests for proposals to include a listing of all other governmental entities that may have additional permits or fees generated by the project.

The bill requires a local government performing a public building construction project using its own services, employees, and equipment to create a report summarizing completed projects constructed by the local government, which must be publicly reviewed each year by the

governing body. The Auditor General must review the report as part of his or her audits of local governments.

The bill is expected to have an insignificant fiscal impact on local governments and the private sector.

The bill takes effect July 1, 2020.

II. Present Situation:

Procurement of Construction Services

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. The Department of Management Services is responsible for establishing the following by rule:

- Procedures for determining the qualifications and responsibilities of potential bidders prior to advertisement for and receipt of bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.¹

Counties, municipalities, special districts, and other political subdivisions seeking to construct or improve a public building, structure, or other public construction works must competitively award the project if the projected cost is in excess of \$300,000.² For electrical work, local governments must competitively award projects estimated to cost more than \$75,000.

Section 255.20(1), F.S., provides that the term “competitively award” means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation.

Exemption from Competitive Solicitation for Local Governments Performing Work

If the governing board of a local government seeking to construct or improve a public building or structure conducts a public meeting and finds by majority vote that it is in the public’s best interest to perform the project using its own services, employees, and equipment, then the local government is exempt from the requirement to competitively award the contract for the project.³ The meeting of the governing board must have been publicly noticed at least 21 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the components and scope of the project, and the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the project, including employee compensation and

¹ Section 255.29, F.S.

² Section 255.20(1), F.S.

³ Section 255.20(1)(c)9., F.S.

benefits, equipment cost and maintenance, insurance costs, and materials. The notice must state that the purpose of the meeting is to consider whether it is in the best interest of the public to perform the project using the local government's own services, employees, and equipment.⁴

At the public meeting, the governing board must allow any qualified contractor or vendor who could have been awarded the project had the project been competitively bid to present evidence regarding the project and the accuracy of the local government's estimated cost of the project. In making a determination, the governing board must consider the estimated cost of the project and the accuracy of the estimated cost in light of any other information that may be presented at the public meeting. In addition, the board must consider whether the project requires an increase in the number of government employees or an increase in capital expenditures for public facilities, equipment, or other capital assets. The governing body may further consider the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest.⁵

Construction and Maintenance of Roads and Bridges

Current law authorizes counties to employ labor and provide road equipment to construct and open new roads or bridges and to repair and maintain any existing roads and bridges under certain circumstances.⁶ However, counties must competitively bid and award to the lowest bidder all projects for construction and reconstruction of roads and bridges, including resurfacing, that utilize the proceeds of the 80 percent portion of the surplus of the constitutional gas tax.⁷ An exception to this requirement allows a county to use its own forces for these construction and reconstruction projects under the following circumstances:

- Construction and maintenance in emergency situations;
- When a construction or reconstruction project has a total cumulative annual value not to exceed five percent of its 80-percent portion of the constitutional gas tax or \$400,000, whichever is greater; or
- When constructing sidewalks, curbing, accessibility ramps, or appurtenances incidental to roads and bridges if each project is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of less than \$400,000.⁸

In addition, if, after proper advertising, the county receives no bids for a specific project, the county may use its own forces to construct the project. A county is not prohibited from performing routine maintenance as authorized by law.⁹

⁴ *Id.*

⁵ *Id.*

⁶ See s. 336.41, F.S.

⁷ Section 336.41(4), F.S. An excise or license tax of 2 cents per net gallon, which is the tax as levied by s. 16, Art. IX of the State Constitution of 1885, as amended, and continued by s. 9(c), Art. XII of the 1968 State Constitution, as amended, which is therein referred to as the "second gas tax," and which is hereby designated the "constitutional fuel tax." See s. 206.41(1)(a), F.S.

⁸ *Id.*

⁹ *Id.*

III. Effect of Proposed Changes:

Section 1 amends 218.80, F.S., to require local governments issuing bidding documents or other requests for proposals to include a listing of all other governmental entities that may have additional permits or fees generated by the project.

Section 2 amends s. 255.20, F.S., relating to certain local bids and contracts for public construction works. The bill specifies the manner in which the estimated cost of a public building construction project must be determined when a governing board is deciding whether it is in the local government's best interest to perform the project using its own services, employees, and equipment. The bill requires the estimated cost of the project to fully account for all costs associated with performing and completing the work, including employee compensation and benefits, the cost of equipment and maintenance, insurance costs, and the cost of direct materials to be used in the construction of the project, including materials to be purchased by the local government. The estimated project cost must also include other direct costs, plus a factor of 20 percent for management, overhead, and other indirect costs.

The bill requires a local government performing a public building construction project using its own services, employees, and equipment to create a report summarizing completed projects constructed by the local government. The report must detail the estimated costs and the actual costs of the projects constructed by the local government and must be publicly reviewed each year by the governing body of the local government. In addition, the report must be made available for review by the public. Finally, the Auditor General must review the report as part of his or her audits of local governments.

The bill also removes provisions requiring local governments to estimate the costs of public building construction projects "in accordance with generally accepted cost-accounting principles."

Section 3 amends s. 336.41, F.S., to require counties to consider the same costs as required in section 2 of the bill when determining the estimated costs of road and bridge construction and reconstruction projects performed utilizing proceeds from the constitutional gas tax. By including these costs in their entirety, the cost of a particular project may be increased above the \$400,000 threshold, requiring the county to competitively procure these services rather than using its own forces.

Section 4 provides an effective date of July 1, 2020.

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:

None.

C. Government Sector Impact:

The bill may have an indeterminate positive fiscal impact on local governments if the estimated cost for a local government to complete a construction project causes governing boards to select private contractors that can perform the projects at a lower cost.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 218.80, 255.20 and 336.41 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 March 2, 2020:

The committee substitute:

- Removes all references to “generally accepted cost-accounting principles;”
- Requires local governments that issue bidding documents or other requests for proposals to include a listing of all other governmental entities that may have additional permits or fees generated by the project;
- Revises the term “cost” to include specified information and requires local governments to consider certain estimated costs before deciding to use their own services; and
- Requires local governments that use their own services to issue a report, reviewed publicly, summarizing the cost of the completed projects.

CS by Governmental Oversight and Accountability on January 13, 2020:

The committee substitute:

- Amends s. 218.80, F.S., to clarify that the local government that issued bidding documents or other requests for proposal must disclose all fees affecting the project let for bid; and
- Removes language prohibiting a local government from performing a project using its own services, employees or an increase in capital expenditures.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2020	.	
	.	
	.	
	.	

The Committee on Rules (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) of section 218.80, Florida
Statutes, is amended to read:

218.80 Public Bid Disclosure Act.—

(3) Bidding documents or other request for proposal issued
for bids by a local governmental entity, or any public contract
entered into between a local governmental entity and a
contractor shall disclose each permit or fee which the



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contractor will have to pay before or during construction, ~~and~~
~~shall include~~ the dollar amount or the percentage method or the
unit method of all permits or fees which may be required by the
local government as a part of the contract and a listing of all
other governmental entities that may have additional permits or
fees generated by the project. If the request for proposal does
not require the response to include a final fixed price, the
local governmental entity is not required to disclose any fees
or assessments in the request for proposal. However, at least 10
days prior to requiring the contractor to submit a final fixed
price for the project, the local governmental entity shall make
the disclosures required in this section. Any of the local
governmental entity's permits or fees that ~~which~~ are not
disclosed in the bidding documents, other request for proposal,
or a contract between a local government and a contractor shall
not be assessed or collected after the contract is let. No local
government shall halt construction under any public contract or
delay completion of the contract in order to collect any permits
or fees which were not provided for or specified in the bidding
documents, other request for proposal, or the contract.

Section 2. Subsection (1) of section 255.20, Florida
Statutes, is amended to read:

255.20 Local bids and contracts for public construction
works; specification of state-produced lumber.—

(1) A county, municipality, special district as defined in
chapter 189, or other political subdivision of the state seeking
to construct or improve a public building, structure, or other
public construction works must competitively award to an
appropriately licensed contractor each project that is estimated



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~~in accordance with generally accepted cost accounting principles~~
to cost more than \$300,000. For electrical work, the local
government must competitively award to an appropriately licensed
contractor each project that is estimated ~~in accordance with~~
~~generally accepted cost accounting principles~~ to cost more than
\$75,000. As used in this section, the term "competitively award"
means to award contracts based on the submission of sealed bids,
proposals submitted in response to a request for proposal,
proposals submitted in response to a request for qualifications,
or proposals submitted for competitive negotiation. This
subsection expressly allows contracts for construction
management services, design/build contracts, continuation
contracts based on unit prices, and any other contract
arrangement with a private sector contractor permitted by any
applicable municipal or county ordinance, by district
resolution, or by state law. For purposes of this section, cost
includes employee compensation and benefits ~~the cost of all~~
~~labor~~, except inmate labor, ~~and~~ the cost of equipment and
maintenance, insurance costs, and the cost of direct materials
to be used in the construction of the project, including
materials purchased by the local government, and other direct
costs, plus a factor of 20 percent for management, overhead, and
other indirect costs. Subject to the provisions of subsection
(3), the county, municipality, special district, or other
political subdivision may establish, by municipal or county
ordinance or special district resolution, procedures for
conducting the bidding process.

(a) Notwithstanding any other law, a governmental entity
seeking to construct or improve bridges, roads, streets,



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highways, or railroads, and services incidental thereto, at a cost in excess of \$250,000 may require that persons interested in performing work under contract first be certified or qualified to perform such work. A contractor may be considered ineligible to bid if the contractor is behind by 10 percent or more on completing an approved progress schedule for the governmental entity at the time of advertising the work. A prequalified contractor considered eligible by the Department of Transportation to bid to perform the type of work described under the contract is presumed to be qualified to perform the work described. The governmental entity may provide an appeal process to overcome that presumption with de novo review based on the record below to the circuit court.

(b) For contractors who are not prequalified by the Department of Transportation, the governmental entity shall publish prequalification criteria and procedures prior to advertisement or notice of solicitation. Such publications must include notice of a public hearing for comment on such criteria and procedures prior to adoption. The procedures must provide for an appeal process within the authority for making objections to the prequalification process with de novo review based on the record below to the circuit court within 30 days.

(c) The provisions of this subsection do not apply:

1. If the project is undertaken to replace, reconstruct, or repair an existing public building, structure, or other public construction works damaged or destroyed by a sudden unexpected turn of events such as an act of God, riot, fire, flood, accident, or other urgent circumstances, and such damage or destruction creates:



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99 a. An immediate danger to the public health or safety;
100 b. Other loss to public or private property which requires
101 emergency government action; or
102 c. An interruption of an essential governmental service.
103 2. If, after notice by publication in accordance with the
104 applicable ordinance or resolution, the governmental entity does
105 not receive any responsive bids or proposals.
106 3. To construction, remodeling, repair, or improvement to a
107 public electric or gas utility system if such work on the public
108 utility system is performed by personnel of the system.
109 4. To construction, remodeling, repair, or improvement by a
110 utility commission whose major contracts are to construct and
111 operate a public electric utility system.
112 5. If the project is undertaken as repair or maintenance of
113 an existing public facility. For the purposes of this paragraph,
114 the term "repair" means a corrective action to restore an
115 existing public facility to a safe and functional condition and
116 the term "maintenance" means a preventive or corrective action
117 to maintain an existing public facility in an operational state
118 or to preserve the facility from failure or decline. Repair or
119 maintenance includes activities that are necessarily incidental
120 to repairing or maintaining the facility. Repair or maintenance
121 does not include the construction of any new building,
122 structure, or other public construction works or any substantial
123 addition, extension, or upgrade to an existing public facility.
124 Such additions, extensions, or upgrades shall be considered
125 substantial if the estimated cost of the additions, extensions,
126 or upgrades included as part of the repair or maintenance
127 project exceeds the threshold amount in subsection (1) and



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exceeds 20 percent of the estimated total cost of the repair or maintenance project ~~using generally accepted cost-accounting principles that~~ fully accounting account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and the cost of direct materials to be used in the construction of the project, including materials purchased by the local government, and other direct costs, plus a factor of 20 percent for management, overhead, and other indirect costs. An addition, extension, or upgrade shall not be considered substantial if it is undertaken pursuant to the conditions specified in subparagraph 1. Repair and maintenance projects and any related additions, extensions, or upgrades may not be divided into multiple projects for the purpose of evading the requirements of this subparagraph.

6. If the project is undertaken exclusively as part of a public educational program.

7. If the funding source of the project will be diminished or lost because the time required to competitively award the project after the funds become available exceeds the time within which the funding source must be spent.

8. If the local government competitively awarded a project to a private sector contractor and the contractor abandoned the project before completion or the local government terminated the contract.

9. If the governing board of the local government complies with all of the requirements of this subparagraph, conducts a public meeting under s. 286.011 after public notice, and finds by majority vote of the governing board that it is in the



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public's best interest to perform the project using its own services, employees, and equipment. The public notice must be published at least 21 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the components and scope of the work, and the estimated cost of the project ~~using generally accepted cost-accounting principles that~~ fully accounting account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and the cost of direct materials to be used in the construction of the project, including materials purchased by the local government, and other direct costs, plus a factor of 20 percent for management, overhead, and other indirect costs. The notice must specify that the purpose for the public meeting is to consider whether it is in the public's best interest to perform the project using the local government's own services, employees, and equipment. Upon publication of the public notice and for 21 days thereafter, the local government shall make available for public inspection, during normal business hours and at a location specified in the public notice, a detailed itemization of each component of the estimated cost of the project and documentation explaining the methodology used to arrive at the estimated cost. At the public meeting, any qualified contractor or vendor who could have been awarded the project had the project been competitively bid shall be provided with a reasonable opportunity to present evidence to the governing board regarding the project and the accuracy of the local government's estimated cost of the project. In deciding whether it is in the public's best interest for the



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186 local government to perform a project using its own services,
187 employees, and equipment, the governing board must consider the
188 estimated cost of the project fully accounting for all costs
189 associated with performing and completing the work, including
190 employee compensation and benefits, equipment cost and
191 maintenance, insurance costs, and the cost of direct materials
192 to be used in the construction of the project, including
193 materials purchased by the local government, and other direct
194 costs, plus a factor of 20 percent for management, overhead, and
195 other indirect costs, and the accuracy of the estimated cost in
196 light of any other information that may be presented at the
197 public meeting and whether the project requires an increase in
198 the number of government employees or an increase in capital
199 expenditures for public facilities, equipment, or other capital
200 assets. The local government may further consider the impact on
201 local economic development, the impact on small and minority
202 business owners, the impact on state and local tax revenues,
203 whether the private sector contractors provide health insurance
204 and other benefits equivalent to those provided by the local
205 government, and any other factor relevant to what is in the
206 public's best interest. A report summarizing completed projects
207 constructed by the local government pursuant to this subsection
208 shall be publicly reviewed each year by the governing body of
209 the local government. The report shall detail the estimated
210 costs and the actual costs of the projects constructed by the
211 local government pursuant to this subsection. The report shall
212 be made available for review by the public. The Auditor General
213 shall review the report as part of his or her audits of local
214 governments.



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10. If the governing board of the local government determines upon consideration of specific substantive criteria that it is in the best interest of the local government to award the project to an appropriately licensed private sector contractor pursuant to administrative procedures established by and expressly set forth in a charter, ordinance, or resolution of the local government adopted before July 1, 1994. The criteria and procedures must be set out in the charter, ordinance, or resolution and must be applied uniformly by the local government to avoid awarding a project in an arbitrary or capricious manner. This exception applies only if all of the following occur:

a. The governing board of the local government, after public notice, conducts a public meeting under s. 286.011 and finds by a two-thirds vote of the governing board that it is in the public's best interest to award the project according to the criteria and procedures established by charter, ordinance, or resolution. The public notice must be published at least 14 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to award the project using the criteria and procedures permitted by the preexisting charter, ordinance, or resolution.

b. The project is to be awarded by any method other than a competitive selection process, and the governing board finds evidence that:

(I) There is one appropriately licensed contractor who is



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uniquely qualified to undertake the project because that contractor is currently under contract to perform work that is affiliated with the project; or

(II) The time to competitively award the project will jeopardize the funding for the project, materially increase the cost of the project, or create an undue hardship on the public health, safety, or welfare.

c. The project is to be awarded by any method other than a competitive selection process, and the published notice clearly specifies the ordinance or resolution by which the private sector contractor will be selected and the criteria to be considered.

d. The project is to be awarded by a method other than a competitive selection process, and the architect or engineer of record has provided a written recommendation that the project be awarded to the private sector contractor without competitive selection, and the consideration by, and the justification of, the government body are documented, in writing, in the project file and are presented to the governing board prior to the approval required in this paragraph.

11. To projects subject to chapter 336.

(d) If the project:

1. Is to be awarded based on price, the contract must be awarded to the lowest qualified and responsive bidder in accordance with the applicable county or municipal ordinance or district resolution and in accordance with the applicable contract documents. The county, municipality, or special district may reserve the right to reject all bids and to rebid the project, or elect not to proceed with the project. This



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subsection is not intended to restrict the rights of any local government to reject the low bid of a nonqualified or nonresponsive bidder and to award the contract to any other qualified and responsive bidder in accordance with the standards and procedures of any applicable county or municipal ordinance or any resolution of a special district.

2. Uses a request for proposal or a request for qualifications, the request must be publicly advertised and the contract must be awarded in accordance with the applicable local ordinances.

3. Is subject to competitive negotiations, the contract must be awarded in accordance with s. 287.055.

(e) If a construction project greater than \$300,000, or \$75,000 for electrical work, is started after October 1, 1999, is to be performed by a local government using its own employees in a county or municipality that issues registered contractor licenses, and the project would require a contractor licensed under chapter 489 if performed by a private sector contractor, the local government must use a person appropriately registered or certified under chapter 489 to supervise the work.

(f) If a construction project greater than \$300,000, or \$75,000 for electrical work, is started after October 1, 1999, is to be performed by a local government using its own employees in a county that does not issue registered contractor licenses, and the project would require a contractor licensed under chapter 489 if performed by a private sector contractor, the local government must use a person appropriately registered or certified under chapter 489 or a person appropriately licensed under chapter 471 to supervise the work.



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(g) Projects performed by a local government using its own services and employees must be inspected in the same manner required for work performed by private sector contractors.

(h) A construction project provided for in this subsection may not be divided into more than one project for the purpose of evading this subsection.

(i) This subsection does not preempt the requirements of any small-business or disadvantaged-business enterprise program or any local-preference ordinance.

(j) A county, municipality, special district as defined in s. 189.012, or any other political subdivision of the state that owns or operates a public-use airport as defined in s. 332.004 is exempt from this section when performing repairs or maintenance on the airport's buildings, structures, or public construction works using the local government's own services, employees, and equipment.

(k) A local government that owns or operates a port identified in s. 403.021(9)(b) is exempt from this section when performing repairs or maintenance on the port's buildings, structures, or public construction works using the local government's own services, employees, and equipment.

(l) A local government that owns or operates a public transit system as defined in s. 343.52, a public transportation system as defined in s. 343.62, or a mass transit system described in s. 349.04(1)(b) is exempt from this section when performing repairs or maintenance on the buildings, structures, or public construction works of the public transit system, public transportation system, or mass transit system using the local government's own services, employees, and equipment.



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(m) Any contractor may be considered ineligible to bid by the governmental entity if the contractor has been found guilty by a court of any violation of federal labor or employment tax laws regarding subjects such as safety, tax withholding, workers' compensation, reemployment assistance or unemployment tax, social security and Medicare tax, wage or hour, or prevailing rate laws within the past 5 years.

Section 3. Subsection (4) of section 336.41, Florida Statutes, is amended to read:

336.41 Counties; employing labor and providing road equipment; accounting; when competitive bidding required.—

(4) All construction and reconstruction of roads and bridges, including resurfacing, full scale mineral seal coating, and major bridge and bridge system repairs, to be performed utilizing the proceeds of the 80-percent portion of the surplus of the constitutional gas tax shall be let to contract to the lowest responsible bidder by competitive bid, except for:

(a) Construction and maintenance in emergency situations, and

(b) In addition to emergency work, construction and reconstruction, including resurfacing, mineral seal coating, and bridge repairs, having a total cumulative annual value not to exceed 5 percent of its 80-percent portion of the constitutional gas tax or \$400,000, whichever is greater, and

(c) Construction of sidewalks, curbing, accessibility ramps, or appurtenances incidental to roads and bridges if each project is estimated ~~in accordance with generally accepted cost-accounting principles~~ to have total construction project costs of less than \$400,000 or as adjusted by the percentage change in



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the Construction Cost Index from January 1, 2008,
for which the county may utilize its own forces. Estimated total construction project costs must include all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and the cost of direct materials to be used in the construction of the project, including materials purchased by the local government, and other direct costs, plus a factor of 20 percent for management, overhead, and other indirect costs. However, if, after proper advertising, no bids are received by a county for a specific project, the county may use its own forces to construct the project, notwithstanding the limitation of this subsection. Nothing in this section shall prevent the county from performing routine maintenance as authorized by law.

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

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to local government public
construction works; amending s. 218.80, F.S.; revising
disclosure requirements for bidding documents and
other requests for proposals issued for bids by a
local governmental entity and public contracts entered
into between local governmental entities and



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contractors; amending s. 255.20, F.S.; revising the term cost to include specified information; requiring the governing board of a local government to consider estimated costs of certain projects that account for specified costs when the board is making a specified determination; requiring that a local government that performs projects using its own services, employees, and equipment provide a report to the local governing board with certain information; requiring that the Auditor General review the report as part of his or her audits of local governments; amending s. 336.41, F.S.; requiring estimated total construction project costs for certain projects to include specified costs; providing an effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/03/2020	.	
	.	
	.	
	.	

The Committee on Rules (Perry) recommended the following:

Senate Amendment to Amendment (627108) (with title amendment)

Between lines 4 and 5
insert:

Section 1. Paragraphs (a), (d), and (f) of subsection (2) of section 255.05, Florida Statutes, are amended, and subsection (12) is added to that section, to read:

255.05 Bond of contractor constructing public buildings;
form; action by claimants.—

(2)(a)1. If a claimant is no longer furnishing labor,



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services, or materials on a project, a contractor or the contractor's agent or attorney may elect to shorten the time within which an action to enforce any claim against a payment bond must be commenced by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

To: ...(Name and address of claimant)...

You are notified that the undersigned contests your notice of nonpayment, dated, and served on the undersigned on, and that the time within which you may file suit to enforce your claim is limited to 60 days after the date of service of this notice.

DATED on

Signed: ...(Contractor or Attorney)...

The claim of a claimant upon whom such notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of such notice is extinguished automatically. The contractor or the contractor's attorney shall serve a copy of the notice of contest on ~~to~~ the claimant at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the notice and record the notice.



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41 2. A claimant, except a laborer, who is not in privity with
42 the contractor shall, before commencing or not later than 45
43 days after commencing to furnish labor, services, or materials
44 for the prosecution of the work, serve the contractor with a
45 written notice that he or she intends to look to the bond for
46 protection. A claimant who is not in privity with the contractor
47 and who has not received payment for furnishing his or her
48 labor, services, or materials shall serve a written notice of
49 nonpayment on the contractor and a copy of the notice on the
50 surety. The notice of nonpayment shall be under oath and served
51 during the progress of the work or thereafter but may not be
52 served earlier than 45 days after the first furnishing of labor,
53 services, or materials by the claimant or later than 90 days
54 after the final furnishing of the labor, services, or materials
55 by the claimant or, with respect to rental equipment, later than
56 90 days after the date that the rental equipment was last on the
57 job site available for use. Any notice of nonpayment served by a
58 claimant who is not in privity with the contractor which
59 includes sums for retainage must specify the portion of the
60 amount claimed for retainage. An action for the labor, services,
61 or materials may not be instituted against the contractor or the
62 surety unless the notice to the contractor and notice of
63 nonpayment have been served, if required by this section.
64 Notices required or permitted under this section must be served
65 in accordance with s. 713.18. A claimant may not waive in
66 advance his or her right to bring an action under the bond
67 against the surety. In any action brought to enforce a claim
68 against a payment bond under this section, the prevailing party
69 is entitled to recover a reasonable fee for the services of his



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or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions. The time periods for service of a notice of nonpayment or for bringing an action against a contractor or a surety are ~~shall be~~ measured from the last day of furnishing labor, services, or materials by the claimant and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A claimant who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the claimant has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the claimant's claim against the bond. The notice of nonpayment under this subparagraph must include the following information, current as of the date of the notice, and must be in substantially the following form:



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NOTICE OF NONPAYMENT

To: ...(name of contractor and address)...

...(name of surety and address)...

The undersigned claimant notifies you that:

1. Claimant has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is \$...., of which \$.... is unpaid retainage.

2. Claimant has been paid to date the amount of \$.... for previously furnishing ...(describe labor, services, or materials)... for this improvement.

3. Claimant expects to furnish ...(describe labor, services, or materials)... for this improvement in the future (if known), and the corresponding amount expected to become due is \$.... (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.

DATED on,

...(signature and address of claimant)...

STATE OF FLORIDA

COUNTY OF



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The foregoing instrument was sworn to (or affirmed) and
subscribed before me by means of physical presence or sworn
to (or affirmed) by online notarization this....day of
...., ...(year)..., by ...(name of signatory)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary
Public)...

Personally Known OR Produced Identification

Type of Identification Produced.....

(d) A person may not require a claimant to furnish a waiver
that is different from the forms in paragraphs (b) and (c) in
exchange for, or to induce payment of, a progress payment or
final payment, unless the claimant has entered into a direct
contract that requires the claimant to furnish a waiver that is
different from the forms in paragraphs (b) and (c).

(f) Any provisions in a waiver that are ~~is~~ not related to
the waiver of right to claim against a payment bond as provided
in this subsection are unenforceable, unless the claimant has
otherwise agreed to those provisions in the claimant's direct
contract ~~substantially similar to the forms in this subsection~~
~~is enforceable in accordance with its terms.~~

(12) Unless otherwise provided in this section, service of
any document must be made in accordance with s. 713.18.

Section 2. Paragraph (c) of subsection (1) of section
337.18, Florida Statutes, is amended, and subsection (6) is
added to that section, to read:



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337.18 Surety bonds for construction or maintenance contracts; requirement with respect to contract award; bond requirements; defaults; damage assessments.—

(1)

(c) A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 90 days after commencing to furnish labor, materials, or supplies for the prosecution of the work, furnish the contractor with a notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for his or her labor, materials, or supplies shall deliver to the contractor and to the surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. The notice of nonpayment may be served at any time during the progress of the work or thereafter but not before 45 days after the first furnishing of labor, services, or materials, and not later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, not later than 90 days after the date that the rental equipment was last on the job site available for use. An action by a claimant, except a laborer, who is not in privity with the contractor for the labor, materials, or supplies may not be instituted against the contractor or the surety unless both notices have been given. Notices required or permitted under this section may be served in any manner provided in s. 713.18, and provisions for the waiver of right to claim against a payment bond contained in s. 713.235 apply to all contracts under this section.



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(6) Unless otherwise provided in this section, service of any document must be made in accordance with s. 713.18.

Section 3. Subsections (8) and (26) of section 713.01, Florida Statutes, are amended to read:

713.01 Definitions.—As used in this part, the term:

(8) "Contractor" means a person other than a materialman or laborer who enters into a contract with the owner of real property for improving it, or who takes over from a contractor as so defined the entire remaining work under such contract. The term "contractor" includes an architect, landscape architect, or engineer who improves real property pursuant to a design-build contract authorized by s. 489.103(16). The term "contractor" also includes a licensed general contractor or building contractor, as those terms are defined in s. 489.105(3)(a) and (b), who provides construction management services, which include responsibility for scheduling and coordination in both preconstruction and construction phases and for the successful, timely, and economical completion of the construction project, or who provides program management services, which include responsibility for schedule control, cost control, and coordination in providing or procuring planning, design, and construction.

(26) "Real property" means the land that is improved and the improvements thereon, including fixtures, except any such property owned by the state or any county, municipality, school board, or governmental agency, commission, or political subdivision. The term includes a private leasehold interest that is improved, and the improvements thereon, on land that is owned by the state or any county, municipality, school board, or



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governmental agency, commission, or political subdivision.

Section 4. Section 713.09, Florida Statutes, is amended to read:

713.09 Single claim of lien.—A lienor may ~~is required to~~ record only one claim of lien covering his or her entire demand against the real property when the amount demanded is for labor or services or material furnished for more than one improvement under the same direct contract or multiple direct contracts. The single claim of lien is sufficient even though the improvement is for one or more improvements located on separate lots, parcels, or tracts of land. If materials to be used on one or more improvements on separate lots, parcels, or tracts of land ~~under one direct contract~~ are delivered by a lienor to a place designated by the person with whom the materialman contracted, other than the site of the improvement, the delivery to the place designated is prima facie evidence of delivery to the site of the improvement and incorporation in the improvement. The single claim of lien may be limited to a part of multiple lots, parcels, or tracts of land and their improvements or may cover all of the lots, parcels, or tracts of land and improvements. If a ~~In each~~ claim of lien under this section is for multiple direct contracts, the owner under the direct contracts ~~contract~~ must be the same person for all lots, parcels, or tracts of land against which a single claim of lien is recorded.

Section 5. Paragraph (b) of subsection (2) of section 713.10, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

713.10 Extent of liens.—

(2)



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(b) The interest of the lessor is not subject to liens for improvements made by the lessee when:

1. The lease, or a short form or a memorandum of the lease that contains the specific language in the lease prohibiting such liability, is recorded in the official records of the county where the premises are located before the recording of a notice of commencement for improvements to the premises and the terms of the lease expressly prohibit such liability; or

2. The terms of the lease expressly prohibit such liability, and a notice advising that leases for the rental of premises on a parcel of land prohibit such liability has been recorded in the official records of the county in which the parcel of land is located before the recording of a notice of commencement for improvements to the premises, and the notice includes the following:

a. The name of the lessor.

b. The legal description of the parcel of land to which the notice applies.

c. The specific language contained in the various leases prohibiting such liability.

d. A statement that all or a majority of the leases entered into for premises on the parcel of land expressly prohibit such liability.

~~3. The lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.~~

A notice that is consistent with subparagraph 2. effectively prohibits liens for improvements made by a lessee even if other leases for premises on the parcel do not expressly prohibit



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liens or if provisions of each lease restricting the application of liens are not identical.

(4) The interest of the lessor is not subject to liens for improvements made by the lessee when the lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.

Section 6. Paragraphs (a) and (d) of subsection (1) of section 713.13, Florida Statutes, are amended to read:

713.13 Notice of commencement.—

(1)(a) Except for an improvement that is exempt under ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized agent before actually commencing to improve any real property, or recommencing completion of any improvement after default or abandonment, whether or not a project has a payment bond complying with s. 713.23, shall record a notice of commencement in the clerk's office and forthwith post either a certified copy thereof or a notarized statement that the notice of commencement has been filed for recording along with a copy thereof. The notice of commencement shall contain the following information:

1. A description sufficient for identification of the real property to be improved. The description should include the legal description of the property and also should include the street address and tax folio number of the property if available or, if there is no street address available, such additional information as will describe the physical location of the real property to be improved.

2. A general description of the improvement.

3. The name and address of the owner, the owner's interest in the site of the improvement, and the name and address of the



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fee simple titleholder, if other than such owner.

4. The name and address of the lessee, if the A lessee who
contracts for the improvements as is an owner as defined in s.
713.01 ~~under s. 713.01(23) and must be listed as the owner~~
~~together with a statement that the ownership interest is a~~
~~leasehold interest.~~

5.4. The name and address of the contractor.

6.5. The name and address of the surety on the payment bond
under s. 713.23, if any, and the amount of such bond.

7.6. The name and address of any person making a loan for
the construction of the improvements.

8.7. The name and address within the state of a person
other than himself or herself who may be designated by the owner
as the person upon whom notices or other documents may be served
under this part; and service upon the person so designated
constitutes service upon the owner.

(d) A notice of commencement must be in substantially the
following form:

Permit No.....

Tax Folio No.....

NOTICE OF COMMENCEMENT

STATE OF FLORIDA ~~State of....~~

COUNTY OF ~~County of....~~

The undersigned hereby gives notice that improvement will be
made to certain real property, and in accordance with Chapter
713, Florida Statutes, the following information is provided in
this Notice of Commencement.

1. Description of property: ...(legal description of the



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property, and street address if available)....

2. General description of improvement:.....

3.a. Owner: ...(name and address)....

b. Owner's phone number:.....

c. Name and address of fee simple titleholder (if different
from Owner listed above):.....

4.a. Lessee, if the lessee contracted for the improvements:
...(name and address)....

b. Lessee's phone number:..... ~~owner information or Lessee
information if the Lessee contracted for the improvement:~~

~~a. Name and address:.....~~

~~b. Interest in property:.....~~

~~c. Name and address of fee simple titleholder (if different
from Owner listed above):.....~~

5.a.~~4.a.~~ Contractor: ...(name and address)....

b. Contractor's phone number:.....

6.~~5.~~ Surety (if applicable, a copy of the payment bond is
attached):

a. Name and address:.....

b. Phone number:.....

c. Amount of bond: \$.....

7.a.~~6.a.~~ Lender: ...(name and address)....

b. Lender's phone number:.....

8.~~7.~~ Persons within the State of Florida designated by
Owner upon whom notices or other documents may be served as
provided in ~~by~~ Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida
Statutes:

a. Name and address:.....

b. Phone numbers of designated persons:.....



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~~9.a.8.a.~~ In addition to himself or herself, Owner designates of to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes.

b. Phone number of person or entity designated by owner:.....

~~10.9.~~ Expiration date of notice of commencement (the expiration date will be 1 year after ~~from~~ the date of recording unless a different date is specified).....

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

...(Signature of Owner or Lessee, or Owner's or Lessee's Authorized Officer/Director/Partner/Manager)..
...(Signatory's Title/Office)...

The foregoing instrument was acknowledged before me by means of physical presence or sworn to (or affirmed) by online notarization this day of, ...(year)...., by ...(name of person)... as ...(type of authority, . . . e.g. officer, trustee, attorney in fact)... for ...(name of party on behalf of



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whom instrument was executed)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known OR Produced Identification

Type of Identification Produced.....

Section 7. Subsections (1), (3), and (4) of section
713.132, Florida Statutes, are amended to read:

713.132 Notice of termination.—

(1) An owner may terminate the period of effectiveness of a
notice of commencement by executing, swearing to, and recording
a notice of termination that contains:

(a) The same information as the notice of commencement;

(b) The official records' ~~recording office document book~~
~~and page~~ reference numbers and recording date affixed by the
recording office on ~~of~~ the recorded notice of commencement;

(c) A statement of the date as of which the notice of
commencement is terminated, which date may not be earlier than
30 days after the notice of termination is recorded;

(d) A statement specifying that the notice applies to all
the real property subject to the notice of commencement or
specifying the portion of such real property to which it
applies;

(e) A statement that all lienors have been paid in full;
and

(f) A statement that the owner has, before recording the
notice of termination, served a copy of the notice of



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418 termination ~~on the contractor and~~ on each lienor who has a
419 direct contract with the owner or who has timely served a notice
420 to owner, and a statement that the owner will serve a copy of
421 the notice of termination on each lienor who timely serves a
422 notice to owner after the notice of termination has been
423 recorded. The owner is not required to serve a copy of the
424 notice of termination on any lienor who has executed a waiver
425 and release of lien upon final payment in accordance with s.
426 713.20.

427 (3) An owner may ~~not~~ record a notice of termination at any
428 time after ~~except after completion of construction, or after~~
429 ~~construction ceases before completion and~~ all lienors have been
430 paid in full or pro rata in accordance with s. 713.06(4).

431 (4) If an owner or a contractor, by fraud or collusion,
432 knowingly makes any fraudulent statement or affidavit in a
433 notice of termination or any accompanying affidavit, the owner
434 and the contractor, or either of them, ~~as the case may be,~~ is
435 liable to any lienor who suffers damages as a result of the
436 filing of the fraudulent notice of termination, ~~+~~ and any such
437 lienor has a right of action for damages ~~occasioned thereby~~.

438 (5) ~~(4)~~ A notice of termination must be served before
439 recording on each lienor who has a direct contract with the
440 owner and on each lienor who has timely and properly served a
441 notice to owner in accordance with this part before the
442 recording of the notice of termination. A notice of termination
443 must be recorded in the official records of the county in which
444 the project is located. If properly served before recording in
445 accordance with this subsection, the notice of termination
446 terminates the period of effectiveness of the notice of



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commencement 30 days after the notice of termination is recorded in the official records ~~is effective to terminate the notice of commencement at the later of 30 days after recording of the notice of termination or a later~~ the date stated in the notice of termination as the date on which the notice of commencement is terminated. However, if a lienor, who began work under the notice of commencement before its termination, lacks a direct contract with the owner, and timely serves his or her notice to owner after the notice of termination has been recorded, the owner must serve a copy of the notice of termination upon such lienor, and the termination of the notice of commencement as to that lienor is effective 30 days after service of the notice of termination if the notice of termination has been served pursuant to paragraph (1)(f) on the contractor and on each lienor who has a direct contract with the owner or who has served a notice to owner.

Section 8. Section 713.18, Florida Statutes, is amended to read:

713.18 Manner of serving documents ~~notices and other instruments.~~

(1) Unless otherwise specifically provided by law, service of any document ~~notices, claims of lien, affidavits, assignments, and other instruments~~ permitted or required under this part, s. 255.05, or s. 337.18, or copies thereof when so permitted or required, ~~unless otherwise specifically provided in this part,~~ must be made by one of the following methods:

(a) By hand ~~actual~~ delivery to the person to be served; if a partnership, to one of the partners; if a corporation, to an officer, director, managing agent, or business agent; or, if a



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limited liability company, to a member or manager.

(b) By common carrier delivery service or by registered, Global Express Guaranteed, or certified mail to the person to be served, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

~~(c) By posting on the site of the improvement if service as provided by paragraph (a) or paragraph (b) cannot be accomplished.~~

(2) Notwithstanding subsection (1), service of a notice to owner or a preliminary notice to contractor under this part, s. 255.05, or s. 337.18, or s. 713.23 is effective as of the date of mailing and the requirements for service under this section have been satisfied if:

(a) The notice is mailed by registered, Global Express Guaranteed, or certified mail, with postage prepaid, to the person to be served and addressed as prescribed ~~at any of the addresses set forth~~ in subsection (3);

(b) The notice is mailed within 40 days after the date the lienor first furnishes labor, services, or materials; and

(c)1. The person who served the notice maintains a registered or certified mail log that shows the registered or certified mail number issued by the United States Postal Service, the name and address of the person served, and the date stamp of the United States Postal Service confirming the date of mailing; or

2. The person who served the notice maintains ~~electronic~~ tracking records approved or generated by the United States Postal Service containing the postal tracking number, the name and address of the person served, and verification of the date



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of receipt by the United States Postal Service.

(3) (a) Notwithstanding subsection (1), service of a document under an instrument pursuant to this section is effective on the date of mailing or shipping and the requirements for service under this section have been satisfied the instrument if it:

1. Is sent using one of the methods provided in paragraph (1) (b) to the last address shown in the notice of commencement or any amendment thereto or, in the absence of a notice of commencement, to the last address shown in the building permit application, or, in the absence of a notice of commencement and building permit application, to the last known address of the person to be served, unless otherwise specifically provided in this part, s. 255.05, or s. 337.18; and

2. Is returned as being "refused," "moved, not forwardable," or "unclaimed," or is otherwise not delivered or deliverable through no fault of the person serving the document item.

(b) If the address shown in the notice of commencement or any amendment thereto to the notice of commencement, or, in the absence of a notice of commencement, in the building permit application, is incomplete for purposes of mailing or delivery, the person serving the document item may complete the address and properly format it according to United States Postal Service addressing standards using information obtained from the property appraiser or another public record without affecting the validity of service under this section.

(4) A document notice served by a lienor on one owner or one partner of a partnership owning the real property is deemed



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served on ~~notice to~~ all owners and partners.

Section 9. Subsections (6) and (8) of section 713.20, Florida Statutes, are amended to read:

713.20 Waiver or release of liens.—

(6) A person may not require a lienor to furnish a lien waiver or release of lien that is different from the forms in subsection (4) or subsection (5) in exchange for, or to induce payment of, a progress payment or final payment, unless the lienor has entered into a direct contract that requires the lienor to furnish a waiver or release that is different from the forms in subsection (4) or subsection (5).

(8) Any provisions in a lien waiver or lien release that are ~~is~~ not related to the waiver or release of lien rights as provided in this section are unenforceable, unless the lienor has otherwise agreed to those provisions in the lienor's direct contract substantially similar to the forms in subsections (4) and (5) is enforceable in accordance with the terms of the lien waiver or lien release.

Section 10. Paragraph (d) of subsection (1) of section 713.23, Florida Statutes, is amended to read:

713.23 Payment bond.—

(1)

(d) In addition, a lienor who has not received payment for furnishing his or her labor, services, or materials must, as a condition precedent to recovery under the bond, serve a written notice of nonpayment on ~~to~~ the contractor and a copy of the notice on the surety. The notice must be under oath and served during the progress of the work or thereafter, but may not be served later than 90 days after the final furnishing of labor,



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services, or materials by the lienor, or, with respect to rental equipment, later than 90 days after the date the rental equipment was on the job site and available for use. A notice of nonpayment that includes sums for retainage must specify the portion of the amount claimed for retainage. The required notice satisfies this condition precedent with respect to the payment described in the notice of nonpayment, including unpaid finance charges due under the lienor's contract, and with respect to any other payments which become due to the lienor after the date of the notice of nonpayment. The time period for serving a notice of nonpayment is ~~shall be~~ measured from the last day of furnishing labor, services, or materials by the lienor and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The failure of a lienor to receive retainage sums not in excess of 10 percent of the value of labor, services, or materials furnished by the lienor is not considered a nonpayment requiring the service of the notice provided under this paragraph. If the payment bond is not recorded before commencement of construction, the time period for the lienor to serve a notice of nonpayment may at the option of the lienor be calculated from the date specified in this section or the date the lienor is served a copy of the bond. However, the limitation period for commencement of an action on the payment bond as established in paragraph (e) may not be expanded. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A lienor who serves a



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fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the lienor has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the lienor's claim against the bond. The notice under this paragraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

To ...(name of contractor and address)...
...(name of surety and address)...

The undersigned lienor notifies you that:

1. The lienor has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is \$...., of which \$.... is unpaid retainage.

2. The lienor has been paid to date the amount of \$.... for previously furnishing ...(describe labor, services, or materials)... for this improvement.



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3. The lienor expects to furnish ...(describe labor, services, or materials)... for this improvement in the future (if known), and the corresponding amount expected to become due is \$.... (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.

DATED on,

...(signature and address of lienor)...

STATE OF FLORIDA

COUNTY OF.....

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of physical presence or sworn to (or affirmed) by online notarization this day of, ...(year)..., by ...(name of signatory)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known OR Produced Identification

Type of Identification Produced.....

Section 11. Subsections (3) and (5) of section 713.235, Florida Statutes, are amended to read:

713.235 Waivers of right to claim against payment bond; forms.—



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(3) A person may not require a claimant to furnish a waiver that is different from the forms in subsections (1) and (2) in exchange for, or to induce payment of, a progress payment or final payment, unless the claimant has entered into a direct contract that requires the claimant to furnish a waiver that is different from the forms in subsections (1) and (2).

(5) Any provisions in a waiver that are ~~is~~ not related to the waiver of the right to claim against the payment bond as provided in this section are unenforceable, unless the claimant has otherwise agreed to those provisions in the claimant's direct contract ~~substantially similar to the forms in this section is enforceable in accordance with its terms.~~

Section 12. Section 713.29, Florida Statutes, is amended to read:

713.29 Attorney ~~Attorney's~~ fees.—In any action brought to enforce a lien, including a lien that has been transferred to security, or to enforce a claim against a bond under this part, the prevailing party is entitled to recover a reasonable fee for the services of her or his attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions.

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

And the title is amended as follows:

Delete lines 383 - 384

and insert:

An act relating to construction; amending s. 255.05, F.S.; requiring that a copy of a notice of nonpayment



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be served on the surety; prohibiting a person from
requiring a claimant to furnish a certain waiver in
exchange for or to induce certain payments; providing
that specified provisions in certain waivers are
unenforceable; providing an exception; revising the
process for notarizing a notice of nonpayment;
requiring service of documents to be made in a
specified manner; amending s. 337.18, F.S.; providing
that certain waivers apply to certain contracts;
requiring service of documents to be made in a
specified manner; amending s. 713.01, F.S.; revising
definitions; amending s. 713.09, F.S.; authorizing a
lienor to record one claim of lien for multiple direct
contracts; amending s. 713.10, F.S.; revising the
extent of certain liens; amending s. 713.13, F.S.;
revising information to be included in a notice of
commencement; revising the process for notarizing a
notice of commencement; amending s. 713.132, F.S.;
revising requirements for a notice of termination;
amending s. 713.18, F.S.; requiring service of
documents relating to construction bonds to be made in
a specified manner; making technical changes; amending
ss. 713.20 and 713.235, F.S.; prohibiting a person
from requiring a lienor to furnish a certain waiver or
release in exchange for or to induce certain payments;
providing that specified provisions in certain waivers
or releases are unenforceable; providing an exception;
amending s. 713.23, F.S.; requiring that a copy of a
notice of nonpayment be served on the surety; revising



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708 the process for notarizing a notice of nonpayment
709 under a payment bond; amending s. 713.29, F.S.;
710 authorizing attorney fees in actions to enforce a lien
711 that has been transferred to security; amending s.
712 218.80, F.S.; revising



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/28/2020	.	
	.	
	.	
	.	

The Committee on Rules (Perry) recommended the following:

Senate Amendment (with title amendment)

Before line 26
insert:

Section 1. Paragraphs (a), (d), and (f) of subsection (2) of section 255.05, Florida Statutes, are amended, and subsection (12) is added to that section, to read:

255.05 Bond of contractor constructing public buildings; form; action by claimants.—

(2)(a)1. If a claimant is no longer furnishing labor, services, or materials on a project, a contractor or the



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contractor's agent or attorney may elect to shorten the time within which an action to enforce any claim against a payment bond must be commenced by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

To: ...(Name and address of claimant)...

You are notified that the undersigned contests your notice of nonpayment, dated,, and served on the undersigned on,, and that the time within which you may file suit to enforce your claim is limited to 60 days after the date of service of this notice.

DATED on,

Signed: ...(Contractor or Attorney)...

The claim of a claimant upon whom such notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of such notice is extinguished automatically. The contractor or the contractor's attorney shall serve a copy of the notice of contest on ~~to~~ the claimant at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the notice and record the notice.

2. A claimant, except a laborer, who is not in privity with



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41 the contractor shall, before commencing or not later than 45
42 days after commencing to furnish labor, services, or materials
43 for the prosecution of the work, serve the contractor with a
44 written notice that he or she intends to look to the bond for
45 protection. A claimant who is not in privity with the contractor
46 and who has not received payment for furnishing his or her
47 labor, services, or materials shall serve a written notice of
48 nonpayment on the contractor and a copy of the notice on the
49 surety. The notice of nonpayment shall be under oath and served
50 during the progress of the work or thereafter but may not be
51 served earlier than 45 days after the first furnishing of labor,
52 services, or materials by the claimant or later than 90 days
53 after the final furnishing of the labor, services, or materials
54 by the claimant or, with respect to rental equipment, later than
55 90 days after the date that the rental equipment was last on the
56 job site available for use. Any notice of nonpayment served by a
57 claimant who is not in privity with the contractor which
58 includes sums for retainage must specify the portion of the
59 amount claimed for retainage. An action for the labor, services,
60 or materials may not be instituted against the contractor or the
61 surety unless the notice to the contractor and notice of
62 nonpayment have been served, if required by this section.
63 Notices required or permitted under this section must be served
64 in accordance with s. 713.18. A claimant may not waive in
65 advance his or her right to bring an action under the bond
66 against the surety. In any action brought to enforce a claim
67 against a payment bond under this section, the prevailing party
68 is entitled to recover a reasonable fee for the services of his
69 or her attorney for trial and appeal or for arbitration, in an



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amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions. The time periods for service of a notice of nonpayment or for bringing an action against a contractor or a surety are ~~shall be~~ measured from the last day of furnishing labor, services, or materials by the claimant and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A claimant who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the claimant has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the claimant's claim against the bond. The notice of nonpayment under this subparagraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT



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To: ...(name of contractor and address)...

...(name of surety and address)...

The undersigned claimant notifies you that:

1. Claimant has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is \$...., of which \$.... is unpaid retainage.

2. Claimant has been paid to date the amount of \$.... for previously furnishing ...(describe labor, services, or materials)... for this improvement.

3. Claimant expects to furnish ...(describe labor, services, or materials)... for this improvement in the future (if known), and the corresponding amount expected to become due is \$.... (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.

DATED on,

...(signature and address of claimant)...

STATE OF FLORIDA

COUNTY OF

The foregoing instrument was sworn to (or affirmed) and



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subscribed before me by means of physical presence or sworn
to (or affirmed) by online notarization this....day of
...., ...(year)...., by ...(name of signatory)....

...(Signature of Notary Public - State of Florida)...
...(Print, Type, or Stamp Commissioned Name of Notary
Public)...

Personally Known OR Produced Identification

Type of Identification Produced.....

(d) A person may not require a claimant to furnish a waiver
that is different from the forms in paragraphs (b) and (c) in
exchange for, or to induce payment of, a progress payment or
final payment, unless the claimant has entered into a direct
contract that requires the claimant to furnish a waiver that is
different from the forms in paragraphs (b) and (c).

(f) Any provisions in a waiver that are ~~is~~ not related to
the waiver of right to claim against a payment bond as provided
in this subsection are unenforceable, unless the claimant has
otherwise agreed to those provisions in the claimant's direct
contract ~~substantially similar to the forms in this subsection~~
~~is enforceable in accordance with its terms.~~

(12) Unless otherwise provided in this section, service of
any document must be made in accordance with s. 713.18.

Section 2. Paragraph (c) of subsection (1) of section
337.18, Florida Statutes, is amended, and subsection (6) is
added to that section, to read:

337.18 Surety bonds for construction or maintenance



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contracts; requirement with respect to contract award; bond requirements; defaults; damage assessments.—

(1)

(c) A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 90 days after commencing to furnish labor, materials, or supplies for the prosecution of the work, furnish the contractor with a notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for his or her labor, materials, or supplies shall deliver to the contractor and to the surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. The notice of nonpayment may be served at any time during the progress of the work or thereafter but not before 45 days after the first furnishing of labor, services, or materials, and not later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, not later than 90 days after the date that the rental equipment was last on the job site available for use. An action by a claimant, except a laborer, who is not in privity with the contractor for the labor, materials, or supplies may not be instituted against the contractor or the surety unless both notices have been given. Notices required or permitted under this section may be served in any manner provided in s. 713.18, and provisions for the waiver of right to claim against a payment bond contained in s. 713.235 apply to all contracts under this section.

(6) Unless otherwise provided in this section, service of



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any document must be made in accordance with s. 713.18.

Section 3. Subsections (8) and (26) of section 713.01, Florida Statutes, are amended to read:

713.01 Definitions.—As used in this part, the term:

(8) "Contractor" means a person other than a materialman or laborer who enters into a contract with the owner of real property for improving it, or who takes over from a contractor as so defined the entire remaining work under such contract. The term "contractor" includes an architect, landscape architect, or engineer who improves real property pursuant to a design-build contract authorized by s. 489.103(16). The term "contractor" also includes a licensed general contractor or building contractor, as those terms are defined in s. 489.105(3)(a) and (b), who provides construction management services, which include responsibility for scheduling and coordination in both preconstruction and construction phases and for the successful, timely, and economical completion of the construction project, or who provides program management services, which include responsibility for schedule control, cost control, and coordination in providing or procuring planning, design, and construction.

(26) "Real property" means the land that is improved and the improvements thereon, including fixtures, except any such property owned by the state or any county, municipality, school board, or governmental agency, commission, or political subdivision. The term includes a private leasehold interest that is improved, and the improvements thereon, on land that is owned by the state or any county, municipality, school board, or governmental agency, commission, or political subdivision.



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Section 4. Section 713.09, Florida Statutes, is amended to read:

713.09 Single claim of lien.—A lienor may ~~is required to~~ record only one claim of lien covering his or her entire demand against the real property when the amount demanded is for labor or services or material furnished for more than one improvement under the same direct contract or multiple direct contracts. The single claim of lien is sufficient even though the improvement is for one or more improvements located on separate lots, parcels, or tracts of land. If materials to be used on one or more improvements on separate lots, parcels, or tracts of land ~~under one direct contract~~ are delivered by a lienor to a place designated by the person with whom the materialman contracted, other than the site of the improvement, the delivery to the place designated is prima facie evidence of delivery to the site of the improvement and incorporation in the improvement. The single claim of lien may be limited to a part of multiple lots, parcels, or tracts of land and their improvements or may cover all of the lots, parcels, or tracts of land and improvements. If a ~~In each~~ claim of lien under this section is for multiple direct contracts, the owner under the direct contracts ~~contract~~ must be the same person for all lots, parcels, or tracts of land against which a single claim of lien is recorded.

Section 5. Paragraph (b) of subsection (2) of section 713.10, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

713.10 Extent of liens.—

(2)

(b) The interest of the lessor is not subject to liens for



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improvements made by the lessee when:

1. The lease, or a short form or a memorandum of the lease that contains the specific language in the lease prohibiting such liability, is recorded in the official records of the county where the premises are located before the recording of a notice of commencement for improvements to the premises and the terms of the lease expressly prohibit such liability; or

2. The terms of the lease expressly prohibit such liability, and a notice advising that leases for the rental of premises on a parcel of land prohibit such liability has been recorded in the official records of the county in which the parcel of land is located before the recording of a notice of commencement for improvements to the premises, and the notice includes the following:

a. The name of the lessor.

b. The legal description of the parcel of land to which the notice applies.

c. The specific language contained in the various leases prohibiting such liability.

d. A statement that all or a majority of the leases entered into for premises on the parcel of land expressly prohibit such liability.

~~3. The lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.~~

A notice that is consistent with subparagraph 2. effectively prohibits liens for improvements made by a lessee even if other leases for premises on the parcel do not expressly prohibit liens or if provisions of each lease restricting the application



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of liens are not identical.

(4) The interest of the lessor is not subject to liens for improvements made by the lessee when the lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.

Section 6. Paragraphs (a) and (d) of subsection (1) of section 713.13, Florida Statutes, are amended to read:

713.13 Notice of commencement.—

(1)(a) Except for an improvement that is exempt under ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized agent before actually commencing to improve any real property, or recommencing completion of any improvement after default or abandonment, whether or not a project has a payment bond complying with s. 713.23, shall record a notice of commencement in the clerk's office and forthwith post either a certified copy thereof or a notarized statement that the notice of commencement has been filed for recording along with a copy thereof. The notice of commencement shall contain the following information:

1. A description sufficient for identification of the real property to be improved. The description should include the legal description of the property and also should include the street address and tax folio number of the property if available or, if there is no street address available, such additional information as will describe the physical location of the real property to be improved.

2. A general description of the improvement.

3. The name and address of the owner, the owner's interest in the site of the improvement, and the name and address of the fee simple titleholder, if other than such owner.



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4. The name and address of the lessee, if the ~~A lessee who~~
contracts for the improvements as is ~~is~~ an owner as defined in s.
713.01 ~~under s. 713.01(23) and must be listed as the owner~~
~~together with a statement that the ownership interest is a~~
~~leasehold interest.~~

5.4. The name and address of the contractor.

6.5. The name and address of the surety on the payment bond
under s. 713.23, if any, and the amount of such bond.

7.6. The name and address of any person making a loan for
the construction of the improvements.

8.7. The name and address within the state of a person
other than himself or herself who may be designated by the owner
as the person upon whom notices or other documents may be served
under this part; and service upon the person so designated
constitutes service upon the owner.

(d) A notice of commencement must be in substantially the
following form:

Permit No.....

Tax Folio No.....

NOTICE OF COMMENCEMENT

STATE OF FLORIDA ~~State of....~~

COUNTY OF ~~County of....~~

The undersigned hereby gives notice that improvement will be
made to certain real property, and in accordance with Chapter
713, Florida Statutes, the following information is provided in
this Notice of Commencement.

1. Description of property: ...(legal description of the
property, and street address if available)....



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2. General description of improvement:.....

3.a. Owner: ...(name and address)....

b. Owner's phone number:.....

c. Name and address of fee simple titleholder (if different from Owner listed above):.....

4.a. Lessee, if the lessee contracted for the improvements: ...(name and address)....

b. Lessee's phone number:..... ~~owner information or Lessee information if the Lessee contracted for the improvement:~~

a. ~~Name and address:.....~~

b. ~~Interest in property:.....~~

c. ~~Name and address of fee simple titleholder (if different from Owner listed above):.....~~

5.a. ~~4.a.~~ Contractor: ...(name and address)....

b. Contractor's phone number:.....

6. ~~5.~~ Surety (if applicable, a copy of the payment bond is attached):

a. Name and address:.....

b. Phone number:.....

c. Amount of bond: \$.....

7.a. ~~6.a.~~ Lender: ...(name and address)....

b. Lender's phone number:.....

8. ~~7.~~ Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided in by Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida Statutes:

a. Name and address:.....

b. Phone numbers of designated persons:.....

9.a. ~~8.a.~~ In addition to himself or herself, Owner



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designates of to receive a copy of the
Lienor's Notice as provided in Section 713.13(1)(b), Florida
Statutes.

b. Phone number of person or entity designated by
owner:.....

10.9. Expiration date of notice of commencement (the
expiration date will be 1 year after ~~from~~ the date of recording
unless a different date is specified).....

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU
INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF
COMMENCEMENT.

...(Signature of Owner or Lessee, or Owner's or Lessee's
Authorized Officer/Director/Partner/Manager)...

...(Signatory's Title/Office)...

The foregoing instrument was acknowledged before me by means of
.... physical presence or sworn to (or affirmed) by online
notarization this day of, ...(year)...., by ...(name of
person)... as ...(type of authority, . . . e.g. officer,
trustee, attorney in fact)... for ...(name of party on behalf of
whom instrument was executed)....



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...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known OR Produced Identification

Type of Identification Produced.....

Section 7. Subsections (1) , (3), and (4) of section
713.132, Florida Statutes, are amended to read:

713.132 Notice of termination.—

(1) An owner may terminate the period of effectiveness of a
notice of commencement by executing, swearing to, and recording
a notice of termination that contains:

(a) The same information as the notice of commencement;

(b) The official records' ~~recording office document book~~
~~and page~~ reference numbers and recording date affixed by the
recording office on ~~of~~ the recorded notice of commencement;

(c) A statement of the date as of which the notice of
commencement is terminated, which date may not be earlier than
30 days after the notice of termination is recorded;

(d) A statement specifying that the notice applies to all
the real property subject to the notice of commencement or
specifying the portion of such real property to which it
applies;

(e) A statement that all lienors have been paid in full;
and

(f) A statement that the owner has, before recording the
notice of termination, served a copy of the notice of
termination ~~on the contractor and~~ on each lienor who has a



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direct contract with the owner or who has timely served a notice to owner, and a statement that the owner will serve a copy of the notice of termination on each lienor who timely serves a notice to owner after the notice of termination has been recorded. The owner is not required to serve a copy of the notice of termination on any lienor who has executed a waiver and release of lien upon final payment in accordance with s. 713.20.

(3) An owner may ~~not~~ record a notice of termination at any time after ~~except after completion of construction, or after construction ceases before completion and~~ all lienors have been paid in full or pro rata in accordance with s. 713.06(4).

(4) If an owner or a contractor, by fraud or collusion, knowingly makes any fraudulent statement or affidavit in a notice of termination or any accompanying affidavit, the owner and the contractor, or either of them, ~~as the case may be,~~ is liable to any lienor who suffers damages as a result of the filing of the fraudulent notice of termination, ~~and~~ and any such lienor has a right of action for damages ~~occasioned thereby~~.

(5) ~~(4)~~ A notice of termination must be served before recording on each lienor who has a direct contract with the owner and on each lienor who has timely and properly served a notice to owner in accordance with this part before the recording of the notice of termination. A notice of termination must be recorded in the official records of the county in which the project is located. If properly served before recording in accordance with this subsection, the notice of termination terminates the period of effectiveness of the notice of commencement 30 days after the notice of termination is recorded



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~~in the official records is effective to terminate the notice of commencement at the later of 30 days after recording of the notice of termination or a later the date stated in the notice of termination as the date on which the notice of commencement is terminated. However, if a lienor, who began work under the notice of commencement before its termination, lacks a direct contract with the owner, and timely serves his or her notice to owner after the notice of termination has been recorded, the owner must serve a copy of the notice of termination upon such lienor, and the termination of the notice of commencement as to that lienor is effective 30 days after service of the notice of termination if the notice of termination has been served pursuant to paragraph (1)(f) on the contractor and on each lienor who has a direct contract with the owner or who has served a notice to owner.~~

Section 8. Section 713.18, Florida Statutes, is amended to read:

713.18 Manner of serving documents ~~notices and other instruments.~~

(1) Unless otherwise specifically provided by law, service of any document ~~notices, claims of lien, affidavits, assignments, and other instruments~~ permitted or required under this part, s. 255.05, or s. 337.18, or copies thereof when so permitted or required, ~~unless otherwise specifically provided in this part,~~ must be made by one of the following methods:

(a) By hand ~~actual~~ delivery to the person to be served; if a partnership, to one of the partners; if a corporation, to an officer, director, managing agent, or business agent; or, if a limited liability company, to a member or manager.



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(b) By common carrier delivery service or by registered, Global Express Guaranteed, or certified mail to the person to be served, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

~~(c) By posting on the site of the improvement if service as provided by paragraph (a) or paragraph (b) cannot be accomplished.~~

(2) Notwithstanding subsection (1), service of a notice to owner or a preliminary notice to contractor under this part, s. 255.05, or s. 337.18, ~~or s. 713.23~~ is effective as of the date of mailing and the requirements for service under this section have been satisfied if:

(a) The notice is mailed by registered, Global Express Guaranteed, or certified mail, with postage prepaid, to the person to be served and addressed as prescribed ~~at any of the addresses set forth~~ in subsection (3);

(b) The notice is mailed within 40 days after the date the lienor first furnishes labor, services, or materials; and

(c) 1. The person who served the notice maintains a registered or certified mail log that shows the registered or certified mail number issued by the United States Postal Service, the name and address of the person served, and the date stamp of the United States Postal Service confirming the date of mailing; or

2. The person who served the notice maintains ~~electronic~~ tracking records approved or generated by the United States Postal Service containing the postal tracking number, the name and address of the person served, and verification of the date of receipt by the United States Postal Service.



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(3) (a) Notwithstanding subsection (1), service of a document under an instrument pursuant to this section is effective on the date of mailing or shipping and the requirements for service under this section have been satisfied the instrument if it:

1. Is sent using one of the methods provided in paragraph (1) (b) to the last address shown in the notice of commencement or any amendment thereto or, in the absence of a notice of commencement, to the last address shown in the building permit application, or, in the absence of a notice of commencement and building permit application, to the last known address of the person to be served, unless otherwise specifically provided in this part, s. 255.05, or s. 337.18; and

2. Is returned as being "refused," "moved, not forwardable," or "unclaimed," or is otherwise not delivered or deliverable through no fault of the person serving the document item.

(b) If the address shown in the notice of commencement or any amendment thereto to the notice of commencement, or, in the absence of a notice of commencement, in the building permit application, is incomplete for purposes of mailing or delivery, the person serving the document item may complete the address and properly format it according to United States Postal Service addressing standards using information obtained from the property appraiser or another public record without affecting the validity of service under this section.

(4) A document notice served by a lienor on one owner or one partner of a partnership owning the real property is deemed served on notice to all owners and partners.



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Section 9. Subsections (6) and (8) of section 713.20, Florida Statutes, are amended to read:

713.20 Waiver or release of liens.—

(6) A person may not require a lienor to furnish a lien waiver or release of lien that is different from the forms in subsection (4) or subsection (5) in exchange for, or to induce payment of, a progress payment or final payment, unless the lienor has entered into a direct contract that requires the lienor to furnish a waiver or release that is different from the forms in subsection (4) or subsection (5).

(8) Any provisions in a lien waiver or lien release that are ~~is~~ not related to the waiver or release of lien rights as provided in this section are unenforceable, unless the lienor has otherwise agreed to those provisions in the lienor's direct contract substantially similar to the forms in subsections (4) and (5) is enforceable in accordance with the terms of the lien waiver or lien release.

Section 10. Paragraph (d) of subsection (1) of section 713.23, Florida Statutes, is amended to read:

713.23 Payment bond.—

(1)

(d) In addition, a lienor who has not received payment for furnishing his or her labor, services, or materials must, as a condition precedent to recovery under the bond, serve a written notice of nonpayment on ~~to~~ the contractor and a copy of the notice on the surety. The notice must be under oath and served during the progress of the work or thereafter, but may not be served later than 90 days after the final furnishing of labor, services, or materials by the lienor, or, with respect to rental



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equipment, later than 90 days after the date the rental equipment was on the job site and available for use. A notice of nonpayment that includes sums for retainage must specify the portion of the amount claimed for retainage. The required notice satisfies this condition precedent with respect to the payment described in the notice of nonpayment, including unpaid finance charges due under the lienor's contract, and with respect to any other payments which become due to the lienor after the date of the notice of nonpayment. The time period for serving a notice of nonpayment is ~~shall be~~ measured from the last day of furnishing labor, services, or materials by the lienor and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The failure of a lienor to receive retainage sums not in excess of 10 percent of the value of labor, services, or materials furnished by the lienor is not considered a nonpayment requiring the service of the notice provided under this paragraph. If the payment bond is not recorded before commencement of construction, the time period for the lienor to serve a notice of nonpayment may at the option of the lienor be calculated from the date specified in this section or the date the lienor is served a copy of the bond. However, the limitation period for commencement of an action on the payment bond as established in paragraph (e) may not be expanded. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A lienor who serves a fraudulent notice of nonpayment forfeits his or her rights under



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the bond. A notice of nonpayment is fraudulent if the lienor has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the lienor's claim against the bond. The notice under this paragraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

To ...(name of contractor and address)...
...(name of surety and address)...

The undersigned lienor notifies you that:

1. The lienor has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is \$...., of which \$.... is unpaid retainage.

2. The lienor has been paid to date the amount of \$.... for previously furnishing ...(describe labor, services, or materials)... for this improvement.

3. The lienor expects to furnish ...(describe labor,



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services, or materials)... for this improvement in the future
(if known), and the corresponding amount expected to become due
is \$.... (if known).

I declare that I have read the foregoing Notice of Nonpayment
and that the facts stated in it are true to the best of my
knowledge and belief.

DATED on,

...(signature and address of lienor)...

STATE OF FLORIDA

COUNTY OF.....

The foregoing instrument was sworn to (or affirmed) and
subscribed before me by means of physical presence or sworn
to (or affirmed) by online notarization this day of
...., ...(year)...., by ...(name of signatory)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary
Public)...

Personally Known OR Produced Identification

Type of Identification Produced.....

Section 11. Subsections (3) and (5) of section 713.235,
Florida Statutes, are amended to read:

713.235 Waivers of right to claim against payment bond;
forms.—

(3) A person may not require a claimant to furnish a waiver



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that is different from the forms in subsections (1) and (2) in exchange for, or to induce payment of, a progress payment or final payment, unless the claimant has entered into a direct contract that requires the claimant to furnish a waiver that is different from the forms in subsections (1) and (2).

(5) Any provisions in a waiver that are ~~is~~ not related to the waiver of the right to claim against the payment bond as provided in this section are unenforceable, unless the claimant has otherwise agreed to those provisions in the claimant's direct contract ~~substantially similar to the forms in this section is enforceable in accordance with its terms.~~

Section 12. Section 713.29, Florida Statutes, is amended to read:

713.29 Attorney ~~Attorney's~~ fees.—In any action brought to enforce a lien, including a lien that has been transferred to security, or to enforce a claim against a bond under this part, the prevailing party is entitled to recover a reasonable fee for the services of her or his attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete lines 2 - 3
and insert:

An act relating to construction; amending s. 255.05, F.S.; requiring that a copy of a notice of nonpayment be served on the surety; prohibiting a person from



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requiring a claimant to furnish a certain waiver in exchange for or to induce certain payments; providing that specified provisions in certain waivers are unenforceable; providing an exception; revising the process for notarizing a notice of nonpayment; requiring service of documents to be made in a specified manner; amending s. 337.18, F.S.; providing that certain waivers apply to certain contracts; requiring service of documents to be made in a specified manner; amending s. 713.01, F.S.; revising definitions; amending s. 713.09, F.S.; authorizing a lienor to record one claim of lien for multiple direct contracts; amending s. 713.10, F.S.; revising the extent of certain liens; amending s. 713.13, F.S.; revising information to be included in a notice of commencement; revising the process for notarizing a notice of commencement; amending s. 713.132, F.S.; revising requirements for a notice of termination; amending s. 713.18, F.S.; requiring service of documents relating to construction bonds to be made in a specified manner; making technical changes; amending ss. 713.20 and 713.235, F.S.; prohibiting a person from requiring a lienor to furnish a certain waiver or release in exchange for or to induce certain payments; providing that specified provisions in certain waivers or releases are unenforceable; providing an exception; amending s. 713.23, F.S.; requiring that a copy of a notice of nonpayment be served on the surety; revising the process for notarizing a notice of nonpayment



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708 under a payment bond; amending s. 713.29, F.S.;

709 authorizing attorney fees in actions to enforce a lien

710 that has been transferred to security; amending s.

711 218.80, F.S.; revising

By the Committee on Governmental Oversight and Accountability;
and Senator Perry

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1 A bill to be entitled
2 An act relating to local government public
3 construction works; amending s. 218.80, F.S.; revising
4 legislative intent; revising disclosure requirements
5 for bidding documents and other requests for proposals
6 issued for bids by a local governmental entity and
7 public contracts entered into between local
8 governmental entities and contractors; amending s.
9 255.20, F.S.; requiring the governing board of a local
10 government to consider estimated costs of certain
11 projects using generally accepted cost-accounting
12 principles that account for specified costs when the
13 board is making a specified determination; requiring
14 that a local government that performs projects using
15 its own services, employees, and equipment disclose
16 the actual costs of the project after completion to
17 the Auditor General; requiring that the Auditor
18 General review such disclosures as part of his or her
19 routine audits of local governments; amending s.
20 336.41, F.S.; requiring estimated total construction
21 project costs for certain projects to include
22 specified costs; providing an effective date.

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

26 Section 1. Subsections (2) and (3) of section 218.80,
27 Florida Statutes, are amended to read:

28 218.80 Public Bid Disclosure Act.—

29 (2) It is the intent of the Legislature that a local

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30 governmental entity shall disclose all of the ~~local governmental~~
31 ~~entity's~~ permits or fees, including, but not limited to, all
32 license fees, permit fees, impact fees, or inspection fees,
33 payable by the contractor ~~to the unit of government that issued~~
34 ~~the bidding documents or other request for proposal~~, unless such
35 permits or fees are disclosed in the bidding documents or other
36 request for proposal for the project at the time the project was
37 let for bid. It is further the intent of the Legislature to
38 prohibit local governments from halting construction to collect
39 any undisclosed permits or fees which were not disclosed or
40 included in the bidding documents or other request for proposal
41 for the project at the time the project was let for bid.

42 (3) Bidding documents or other request for proposal issued
43 for bids by a local governmental entity, or any public contract
44 entered into between a local governmental entity and a
45 contractor shall disclose each permit or fee which the
46 contractor will have to pay before or during construction and
47 shall include the dollar amount or the percentage method or the
48 unit method of all permits or fees which may be required ~~by the~~
49 ~~local government~~ as a part of the contract. If the request for
50 proposal does not require the response to include a final fixed
51 price, the local governmental entity is not required to disclose
52 any fees or assessments in the request for proposal. However, at
53 least 10 days prior to requiring the contractor to submit a
54 final fixed price for the project, the local governmental entity
55 shall make the disclosures required in this section. Any of the
56 local governmental entity's permits or fees that which are not
57 disclosed in the bidding documents, other request for proposal,
58 or a contract between a local government and a contractor shall

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not be assessed or collected after the contract is let. No local government shall halt construction under any public contract or delay completion of the contract in order to collect any permits or fees which were not provided for or specified in the bidding documents, other request for proposal, or the contract.

Section 2. Paragraph (c) of subsection (1) of section 255.20, Florida Statutes, is amended to read:

255.20 Local bids and contracts for public construction works; specification of state-produced lumber.—

(1) A county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than \$300,000. For electrical work, the local government must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than \$75,000. As used in this section, the term "competitively award" means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation. This subsection expressly allows contracts for construction management services, design/build contracts, continuation contracts based on unit prices, and any other contract arrangement with a private sector contractor permitted by any applicable municipal or county ordinance, by district

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resolution, or by state law. For purposes of this section, cost includes the cost of all labor, except inmate labor, and the cost of equipment and materials to be used in the construction of the project. Subject to the provisions of subsection (3), the county, municipality, special district, or other political subdivision may establish, by municipal or county ordinance or special district resolution, procedures for conducting the bidding process.

(c) The provisions of this subsection do not apply:

1. If the project is undertaken to replace, reconstruct, or repair an existing public building, structure, or other public construction works damaged or destroyed by a sudden unexpected turn of events such as an act of God, riot, fire, flood, accident, or other urgent circumstances, and such damage or destruction creates:

a. An immediate danger to the public health or safety;

b. Other loss to public or private property which requires emergency government action; or

c. An interruption of an essential governmental service.

2. If, after notice by publication in accordance with the applicable ordinance or resolution, the governmental entity does not receive any responsive bids or proposals.

3. To construction, remodeling, repair, or improvement to a public electric or gas utility system if such work on the public utility system is performed by personnel of the system.

4. To construction, remodeling, repair, or improvement by a utility commission whose major contracts are to construct and operate a public electric utility system.

5. If the project is undertaken as repair or maintenance of

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an existing public facility. For the purposes of this paragraph, the term "repair" means a corrective action to restore an existing public facility to a safe and functional condition and the term "maintenance" means a preventive or corrective action to maintain an existing public facility in an operational state or to preserve the facility from failure or decline. Repair or maintenance includes activities that are necessarily incidental to repairing or maintaining the facility. Repair or maintenance does not include the construction of any new building, structure, or other public construction works or any substantial addition, extension, or upgrade to an existing public facility. Such additions, extensions, or upgrades shall be considered substantial if the estimated cost of the additions, extensions, or upgrades included as part of the repair or maintenance project exceeds the threshold amount in subsection (1) and exceeds 20 percent of the estimated total cost of the repair or maintenance project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. An addition, extension, or upgrade shall not be considered substantial if it is undertaken pursuant to the conditions specified in subparagraph 1. Repair and maintenance projects and any related additions, extensions, or upgrades may not be divided into multiple projects for the purpose of evading the requirements of this subparagraph.

6. If the project is undertaken exclusively as part of a public educational program.

7. If the funding source of the project will be diminished

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or lost because the time required to competitively award the project after the funds become available exceeds the time within which the funding source must be spent.

8. If the local government competitively awarded a project to a private sector contractor and the contractor abandoned the project before completion or the local government terminated the contract.

9. If the governing board of the local government complies with all of the requirements of this subparagraph, conducts a public meeting under s. 286.011 after public notice, and finds by majority vote of the governing board that it is in the public's best interest to perform the project using its own services, employees, and equipment. The public notice must be published at least 21 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the components and scope of the work, and the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. The notice must specify that the purpose for the public meeting is to consider whether it is in the public's best interest to perform the project using the local government's own services, employees, and equipment. Upon publication of the public notice and for 21 days thereafter, the local government shall make available for public inspection, during normal business hours and at a location specified in the public notice, a detailed itemization of each component of the estimated cost of the project and

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175 documentation explaining the methodology used to arrive at the
 176 estimated cost. At the public meeting, any qualified contractor
 177 or vendor who could have been awarded the project had the
 178 project been competitively bid shall be provided with a
 179 reasonable opportunity to present evidence to the governing
 180 board regarding the project and the accuracy of the local
 181 government's estimated cost of the project. In deciding whether
 182 it is in the public's best interest for the local government to
 183 perform a project using its own services, employees, and
 184 equipment, the governing board must consider the estimated cost
 185 of the project using generally accepted cost-accounting
 186 principles that fully account for all costs associated with
 187 performing and completing the work, including employee
 188 compensation and benefits, equipment costs and maintenance,
 189 insurance costs, and the cost of materials, and the accuracy of
 190 the estimated cost in light of any other information that may be
 191 presented at the public meeting and whether the project requires
 192 an increase in the number of government employees or an increase
 193 in capital expenditures for public facilities, equipment, or
 194 other capital assets. The local government may further consider
 195 the impact on local economic development, the impact on small
 196 and minority business owners, the impact on state and local tax
 197 revenues, whether the private sector contractors provide health
 198 insurance and other benefits equivalent to those provided by the
 199 local government, and any other factor relevant to what is in
 200 the public's best interest. A local government that performs
 201 projects using its own services, employees, and equipment must
 202 disclose the actual costs of the project after completion to the
 203 Auditor General. The Auditor General shall review such

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204 disclosures as part of his or her routine audits of local
 205 governments.

206 10. If the governing board of the local government
 207 determines upon consideration of specific substantive criteria
 208 that it is in the best interest of the local government to award
 209 the project to an appropriately licensed private sector
 210 contractor pursuant to administrative procedures established by
 211 and expressly set forth in a charter, ordinance, or resolution
 212 of the local government adopted before July 1, 1994. The
 213 criteria and procedures must be set out in the charter,
 214 ordinance, or resolution and must be applied uniformly by the
 215 local government to avoid awarding a project in an arbitrary or
 216 capricious manner. This exception applies only if all of the
 217 following occur:

218 a. The governing board of the local government, after
 219 public notice, conducts a public meeting under s. 286.011 and
 220 finds by a two-thirds vote of the governing board that it is in
 221 the public's best interest to award the project according to the
 222 criteria and procedures established by charter, ordinance, or
 223 resolution. The public notice must be published at least 14 days
 224 before the date of the public meeting at which the governing
 225 board takes final action. The notice must identify the project,
 226 the estimated cost of the project, and specify that the purpose
 227 for the public meeting is to consider whether it is in the
 228 public's best interest to award the project using the criteria
 229 and procedures permitted by the preexisting charter, ordinance,
 230 or resolution.

231 b. The project is to be awarded by any method other than a
 232 competitive selection process, and the governing board finds

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evidence that:

(I) There is one appropriately licensed contractor who is uniquely qualified to undertake the project because that contractor is currently under contract to perform work that is affiliated with the project; or

(II) The time to competitively award the project will jeopardize the funding for the project, materially increase the cost of the project, or create an undue hardship on the public health, safety, or welfare.

c. The project is to be awarded by any method other than a competitive selection process, and the published notice clearly specifies the ordinance or resolution by which the private sector contractor will be selected and the criteria to be considered.

d. The project is to be awarded by a method other than a competitive selection process, and the architect or engineer of record has provided a written recommendation that the project be awarded to the private sector contractor without competitive selection, and the consideration by, and the justification of, the government body are documented, in writing, in the project file and are presented to the governing board prior to the approval required in this paragraph.

11. To projects subject to chapter 336.

Section 3. Subsection (4) of section 336.41, Florida Statutes, is amended to read:

336.41 Counties; employing labor and providing road equipment; accounting; when competitive bidding required.—

(4) All construction and reconstruction of roads and bridges, including resurfacing, full scale mineral seal coating,

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and major bridge and bridge system repairs, to be performed utilizing the proceeds of the 80-percent portion of the surplus of the constitutional gas tax shall be let to contract to the lowest responsible bidder by competitive bid, except for:

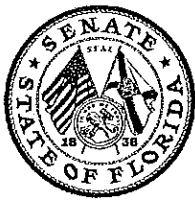
(a) Construction and maintenance in emergency situations;~~;~~
~~and~~

(b) In addition to emergency work, construction and reconstruction, including resurfacing, mineral seal coating, and bridge repairs, having a total cumulative annual value not to exceed 5 percent of its 80-percent portion of the constitutional gas tax or \$400,000, whichever is greater;~~;~~ and

(c) Construction of sidewalks, curbing, accessibility ramps, or appurtenances incidental to roads and bridges if each project is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of less than \$400,000 or as adjusted by the percentage change in the Construction Cost Index from January 1, 2008,

for which the county may utilize its own forces. Estimated total construction project costs must include all costs associated with performing and completing the work, including employee compensation and benefits, equipment costs and maintenance, insurance costs, and the cost of materials. However, if, after proper advertising, no bids are received by a county for a specific project, the county may use its own forces to construct the project, notwithstanding the limitation of this subsection. Nothing in this section shall prevent the county from performing routine maintenance as authorized by law.

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 16, 2020

I respectfully request that **Senate Bill #504**, relating to Local Government Public Construction Works, be placed on the:

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

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

Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 2, 2020
Meeting Date

SB 504
Bill Number (if applicable)

Topic Construction

5474460
Amendment Barcode (if applicable)

Name Bruce Kershner

Job Title _____

Address 231 West Bay Ave
Street
Longwood FL 32750
City State Zip

Phone 407 830 1882

Email BKershner@att.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Southeast Glass Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20

Meeting Date

504

Bill Number (if applicable)

547446

Amendment Barcode (if applicable)

Topic Construction

Name Deborah Lawson

Job Title _____

Address P.O. Box 12277

Street

Phone 850-570-0033

Tallah

City

FL

State

32317

Zip

Email deborah.e.lawson@outlook.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NACM Improved Construction Practices Committee

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/20*Meeting Date*SB 504*Bill Number (if applicable)*547446 AA*Amendment Barcode (if applicable)*Topic ConstructionName French BrownJob Title lobbyistAddress 118 South Monroe Street, Suite 815Phone 850-459-0992*Street*TallahasseeFL32301Email fbrown@deanmead.com*City**State**Zip*Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Real Property, Probate, and Trust Law Section of the Florida BarAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.****This form is part of the public record for this meeting.***

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)

3-2-20

Meeting Date

504

Bill Number (if applicable)

62708

Amendment Barcode (if applicable)

Topic LOCAL GOVT CONSTRUCTION

Name CAITIA YOUNANS

Job Title LEGISLATIVE COUNSEL

Address W 5

Street

Phone 254-1838

City

State

Zip

Email

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

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

3/2/20

Meeting Date

504

Bill Number (if applicable)

Topic Public Construction Projects

Amendment Barcode (if applicable)

Name Scott Jenkins

Job Title Senior Gov't Consultant

Address 215 S. Monroe St. Ste 500

Phone 850 661 0829

Street

TLH

City

FL

State

32301

Zip

Email sjenk@carlsonheller.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing National Utility Contractors Assoc. 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)

8/2/20
Meeting Date

504
Bill Number (if applicable)

Topic Public Construction Projects

627108 PE
Amendment Barcode (if applicable)

Name Scott Jenkins

Job Title Senior Government Consultant

Address 215 S. Monroe St. Ste 500

Phone 850 661 0829

Street

TCH

City

FL

State

32301

Zip

Email sjenkins@carltonfreeman.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing National Utility Contractors Assoc. 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)

9/2/2020

Meeting Date

504

Bill Number (if applicable)

627 108

Amendment Barcode (if applicable)

Topic Local Construction

Name Jeff Branch

Job Title

Address

Street

Jefferson

City

State

Zip

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Florida League of Cities

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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 888

INTRODUCER: Rules Committee; Community Affairs Committee; and Senator Perry

SUBJECT: Public Nuisances

DATE: March 3, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Jones	CJ	Favorable
2. Paglialonga	Ryon	CA	Fav/CS
3. Erickson	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 888 amends s. 60.05, F.S., which generally provides for the enjoinder of public nuisances. The bill amends this statute to:

- Provide specific authorization for a sheriff to enjoin a public nuisance;
- Extend and increase the frequency of notice, so a property owner has sufficient time to receive a notice and correct the use of the property;
- Provide more detail on what must be provided in the notice and serving the notice; and
- Afford property owners the ability to respond to notices with details of actions taken to abate a nuisance that may result in an extended timeframe for abatement before an application for a temporary injunction is filed.

The bill also amends s. 823.05, F.S., relating to public nuisances, to:

- Delete the requirement that a criminal gang or member or associate of such gang must use a location “on two or more occasions” to engage in criminal gang-related activity for such use to qualify as a public nuisance that can be abated or enjoined;
- Provide that any place or premises that has been used on more than two occasions within six months as the site of dealing in stolen property, assault, aggravated assault, battery, aggravated battery, burglary, theft, or robbery by sudden snatching, may be declared a public nuisance and may be abated or enjoined; and
- Provide that a rental property that is declared a public nuisance based upon the previously-described circumstances may not be abated or subject to forfeiture under the Florida Contraband Forfeiture Act if the nuisance was committed by someone other than the owner

of the property and the property owner commences rehabilitation of the property within 30 days after the property is declared a public nuisance and completes the rehabilitation within a reasonable time thereafter.

The bill also amends s. 893.138, F.S., to authorize a declaration of a public nuisance and abated, if a place or premises has been used on more than two occasions within six months as the site of any combination of the following offenses: murder; attempted felony murder; aggravated battery with a deadly weapon; or aggravated assault with deadly weapon without intent to kill. Additionally, the bill clarifies that a rental property that is declared a nuisance may not be abated or subject to forfeiture under the Florida Contraband Forfeiture Act if the offense was committed by someone other than the property owner, and the owner commences rehabilitation of the property within 30 days of it being declared a nuisance.

The abatement or enjoining of a public nuisance described in the bill may result in a cost-savings or cost-avoidance to homeowners or businesses if they have sustained an economic loss, and a cost-savings or cost-avoidance to local governments if they have sustained an economic loss. See Section V. Fiscal Impact Statement.

The bill takes effect on July 1, 2020.

II. Present Situation:

Enjoining or Abating a Public Nuisance (ss. 60.05 and 60.06, F.S.)

Public nuisances are generally enjoined under s. 60.05, F.S., and abated under s. 60.06, F.S.¹ Section 60.05(1), F.S., authorizes the Attorney General, state attorney, city attorney, county attorney, and any citizen of the county to sue in the name of the state to enjoin the nuisance, the person(s) maintaining it, and the owner or agent of the building or ground on which the nuisance exists. The court, based on evidence² or affidavit, may issue a temporary injunction enjoining:

- The maintaining of a nuisance;
- The operating and maintaining of the place or premises where the nuisance is maintained;
- The owner or agent of the building or ground upon which the nuisance exists; and
- The conduct, operation, or maintenance of any business or activity operated or maintained in the building or on the premises in connection with or incident to the maintenance of the nuisance.³

The injunction must specify the activities enjoined and must not preclude the operation of any lawful business not conducive to the maintenance of the alleged nuisance.⁴ If the existence of a nuisance is shown at the final hearing, the court must issue a permanent injunction and order the costs to be paid by the persons establishing or maintaining the nuisance.⁵ The court must adjudge

¹ Section 823.05(1), (2)(b) and (c), and (3), F.S.

² Evidence of the general reputation of the alleged nuisance and place is admissible to prove the existence of a nuisance. Section 60.05(3), F.S.

³ Section 60.05(2), F.S.

⁴ Section 60.05(2), F.S. At least 3 days' notice in writing shall be given to the defendant of the time and place of application for the temporary injunction. *Id.*

⁵ Section 60.05(4), F.S.

that the costs are a lien on all personal property found in the place of the nuisance; however, if the property fails to bring enough to pay costs, the lien is on the real estate occupied by the nuisance.⁶

Section 60.06, F.S., requires the court, upon “proper” proof, to order the abatement of all nuisances mentioned in s. 823.05, F.S., and authorizes the court to enforce injunctions by contempt. However, this jurisdiction does not repeal or alter s. 823.01, F.S., which provides criminal penalties for nuisances described in that section.⁷

**Public Nuisances: Places and Groups Engaged in Criminal Gang-Related Activity
(s. 823.05, F.S.)**

Section 823.05(1), F.S., provides that a person is guilty of maintaining a public nuisance⁸ if he or she erects, establishes, continues, or maintains, owns or leases any building, booth, tent or place which tends to annoy the community or injure the health of the community or become manifestly injurious to the morals or manners of the people as described in s. 823.01, F.S., or any house or place of prostitution, assignation, lewdness, or place or building where games of chance are engaged in a violation of law or any place where a person violates a law of the state. The building, erection, place, tent or booth, and the furniture, fixtures, and contents are declared a public nuisance.

Section 823.05(2), F.S., provides that a criminal gang, criminal gang member, or criminal gang associate who engages in the commission of criminal gang-related activity⁹ is a public nuisance,¹⁰ and the use of a location on two or more occasions by a criminal gang or member or associate of such gang to engage in criminal gang-related activity is also a public nuisance.¹¹

⁶ *Id.* However, no lien attaches to the real estate of any person other than the person establishing or maintaining the nuisance unless five days’ written notice has been given to the owner or owner’s agent who fails to abate the nuisance within this five-day period. *Id.*

⁷ Section 60.06, F.S.

⁸ Although s. 823.05(1), F.S., refers to a person being “guilty of maintaining a public nuisance,” s. 823.05, F.S., does not make maintaining a public nuisance a crime. However, s. 823.01, F.S., provides that all nuisances that tend to annoy the community, injure the health of the citizens in general, or corrupt the public morals are second degree misdemeanors, except that a violation of s. 823.10, F.S., is a third degree felony. Section 823.10(1), F.S., provides that certain places visited by persons for the purpose of unlawfully using any controlled substance under ch. 893, F.S. (Florida Comprehensive Drug Abuse Prevention and Control Act), or any drugs as described in ch. 499, F.S. (Florida Drug and Cosmetic Act), or for the illegal keeping, selling, or delivering of such substance or drug, are a public nuisance. Any person who willfully keeps or maintains, or aids or abets another in keeping or maintaining, such public nuisance commits a third degree felony, if such public nuisance is a warehouse, structure, or building. *Id.*

⁹ Section 823.05(2)(a), F.S., defines the terms “criminal gang,” “criminal gang member,” “criminal gang associate,” and “criminal gang-related activity” by reference to the definitions of those terms in s. 874.03, F.S.

¹⁰ Section 823.05(2)(b), F.S. Section 893.138(2)(d), F.S., also provides that any place or premises that has been used by a criminal gang for the purpose of conducting criminal gang activity may be declared a public nuisance. Additionally, if the place or premises has been used on more than two occasions within a six-month period as the site of dealing in stolen property or a violation of ch. 499, F.S., such location may be declared a public nuisance. Unlike s. 823.05, F.S., a public nuisance described in s. 893.138, F.S., is abated pursuant to procedures provided in that section. Section 893.138(2)-(7), F.S. However, the public nuisance may be enjoined pursuant to s. 60.05, F.S. Section 893.138(9), F.S.

¹¹ Section 823.05(2)(c), F.S.

Section 823.05(2), F.S., does not prevent a local governing body from adopting and enforcing laws consistent with ch. 823, F.S., relating to criminal gangs and gang violence.¹² Further, the state, through the Department of Legal Affairs or any state attorney, or any of the state's agencies, instrumentalities, subdivisions, or municipalities having jurisdiction over conduct in violation of a provision of ch. 823, F.S., may institute civil proceedings under s. 823.05(2)(e), F.S., and, pending final determination, the circuit court may enter injunctions, prohibitions, or restraining orders or take such other actions it deems proper.¹³

Local Administrative Action to Abate Prohibited Activity Relating to Drugs, Prostitution, Stolen Property, or Criminal Street Gangs (s. 893.138, F.S.)

Section 893.138(2), F.S., provides that a place or premises may be declared a public nuisance, which may be abated if the place or premises has been used:

- On more than two occasions within 6 months, as the site of a violation of s. 796.07, F.S. (prostitution and related acts);
- On more than two occasions within 6 months, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony, and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- By a criminal gang to conduct criminal gang activity;
- On more than two occasions within 6 months, as the site of a violation of s. 812.019, F.S. (stolen property); or
- On two or more occasions within 6 months, as the site of a violation of ch. 499, F.S. (the "Florida Drug and Cosmetic Act").

A county or municipality, by ordinance, may create an administrative board to hear complaints regarding the nuisances described in s. 893.138(2), F.S. Any employee, officer, or resident of the county or municipality may bring a complaint before the board after giving not less than 3 days' written notice of such complaint to the owner of the place or premises at his or her last known address. After a hearing in which the board may consider any evidence, including evidence of the general reputation of the place or premises, and at which the owner of the premises has an opportunity to present evidence in his or her defense, the board may declare the place or premises to be a public nuisance.¹⁴

If the board declares a place or premises to be a public nuisance, it may enter an order requiring the owner of the place or premises to adopt such procedure as may be appropriate under the circumstances to abate any such nuisance or it may enter an order immediately prohibiting:

- The maintaining of the nuisance;
- The operating or maintaining of the place or premises, including the closure of the place or premises or any part thereof; or

¹² Section 823.05(2)(d), F.S.

¹³ Section 823.05(2)(e), F.S.

¹⁴ Section 893.138(4), F.S.

- The conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.¹⁵

The board may also bring a complaint under s. 60.05, F.S., seeking temporary and permanent injunctive relief against any public nuisance described in s. 893.138(2), F.S.¹⁶ Further, nothing contained in s. 893.138, F.S., prohibits a county or municipality from proceeding against a public nuisance by any other means.¹⁷

Section 893.138, F.S., may be supplemented by a county or municipal ordinance. The ordinance may include but is not limited to, provisions that:

- Establish additional penalties for public nuisances, including fines not to exceed \$250 per day;
- Provide for the payment of reasonable costs, including reasonable attorney fees associated with investigations of and hearings on public nuisances;
- Provide for continuing jurisdiction for 1 year over any place or premises that has been or is declared to be a public nuisance;
- Establish penalties, including fines not to exceed \$500 per day for recurring public nuisances;
- Provide for the recording of orders on public nuisances so that notice must be given to subsequent purchasers, successors in interest, or assigns of the real property that is the subject of the order;
- Provide that recorded orders on public nuisances may become liens against the real property that is the subject of the order; and
- Provide for the foreclosure of property subject to a lien and the recovery of all costs, including reasonable attorney fees, associated with the recording of orders and foreclosure.¹⁸

Real Property and the Florida Contraband Forfeiture Act

The “Florida Contraband Forfeiture Act” (Act)¹⁹ authorizes the seizure and civil forfeiture of real property used in violation of the provisions of the Act.²⁰ The seizure may only occur if the owner

¹⁵ Section 893.138(5), F.S. The order expires after 1 year or at such earlier time as is stated in the order. Section 893.138(6), F.S. The order may be enforced pursuant to the procedures contained in s. 120.69, F.S., which provides for enforcement of an agency action under ch. 120, F.S. (the “Administrative Procedure Act” or APA), but a municipality that creates a board under s. 893.138, F.S., or the board so created, is not subject to any other provision of the APA. Section 893.138(7), F.S.

¹⁶ Section 893.138(8), F.S. Additionally, s. 893.138, F.S., does not restrict the right of any person to proceed under s. 60.05, F.S., against any public nuisance. Section 893.138(9), F.S.

¹⁷ Section 893.138(11), F.S.

¹⁸ Total fines may not exceed \$15,000. A lien cannot be foreclosed on real property which is a homestead. Where a local government seeks to bring an administrative action, based on a stolen property nuisance, against a property owner operating an establishment where multiple tenants, on one site, conduct their own retail business, the property owner is not subject to a lien against his or her property or the prohibition of operation if the property owner evicts the business declared to be a nuisance within 90 days after notification by registered mail to the property owner of a second stolen property conviction of the tenant. *Id.*

¹⁹ Sections 932.701-932.7062, F.S. See s. 932.701(1), F.S.

²⁰ Section 932.703(1)(a), F.S. Real property may not be seized or restrained, other than by lis pendens, subsequent to a violation of the Florida Contraband Forfeiture Act until the persons entitled to notice are afforded the opportunity to attend the pre-seizure adversarial preliminary hearing. Section 932.703(3)(b), F.S. “A notice of lis pendens is an instrument which may be filed with the clerk of the circuit court in connection with actions involving the ownership of, or interest in, property. It is intended to operate as constructive notice to persons dealing with the property that is the subject matter of litigation.” Op. Att’y Gen. Fla. 58-135 (1958). Other requirements relating to seizure are specified in s. 932.703, F.S. Forfeiture

of the property is arrested for a criminal offense²¹ that forms the basis for determining that the property is a “contraband article” under s. 932.701, F.S.,²² or when one or more statutorily-specified exceptions to this arrest requirement apply.²³ For example, one specified exception is when the property is not owned by the person arrested for a criminal offense that forms the basis for determining that the property is a “contraband article,” but the owner of the property had actual knowledge of the criminal activity.²⁴

As previously noted, s. 823.05, F.S., in part, addresses criminal gang-related activity. Section 874.08, F.S., provides that the following are subject to seizure and forfeiture under the Florida Contraband Forfeiture Act:

- All profits, proceeds, and instrumentalities of criminal gang activity;
- All property used or intended or attempted to be used to facilitate the criminal activity of any criminal gang or any criminal gang member;
- All profits, proceeds, and instrumentalities of criminal gang recruitment; and
- All property used or intended or attempted to be used to facilitate criminal gang recruitment.

III. Effect of Proposed Changes:

Public nuisances may be enjoined under s. 60.05, F.S. The bill amends this statute to provide specific authorization for a sheriff to enjoin a public nuisance.

The bill also amends this statute to increase the notice requirements from one three-day notice to two notices (if needed) with a total of 25 days to abate the nuisance. The defendant must be given written notice (first notice) to abate the public nuisance within 10 days after issuance of the notice. The first notice must inform the defendant that an application for a temporary injunction may be filed if the nuisance is not timely abated.

If the nuisance is not timely abated, the defendant must be given a second written notice that informs the defendant that an application for a temporary injunction will be filed if the nuisance is not abated within 15 days after the end of the initial 10-day period. However, the defendant must be given a second written notice providing the defendant with an extended time period to abate the nuisance sufficient to comply with another law or this state or contract terms, if the defendant responds to the first notice in writing within the initial 10-day period, and in such response alleges and provides proof that:

- Nuisance abatement involves compliance with another law of this state and the requirements of such law make nuisance abatement within 10 days impossible; or

proceedings are addressed in s. 932.704, F.S., and disposition of liens and forfeited property are addressed in s. 932.7055, F.S.

²¹ Section 932.703(1)(a), F.S.

²² The definition of “contraband article” in s. 932.701(2), F.S., includes an extensive list of tangible items. One of these items is real property used or attempted to be used as an instrumentality in the commission of, or in aiding or abetting the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Act. Section 932.701(2)(a)6., F.S. See s. 932.702, F.S. (unlawful acts involving a contraband article).

²³ Section 932.703(1)(a), F.S.

²⁴ Section 932.703(1)(a)3., F.S. Evidence that the owner received notification from a law enforcement agency and acknowledged receipt of the notification in writing, that the seized asset had been used in violation of the Act on a prior occasion by the arrested person, may be used to establish actual knowledge. *Id.*

- The terms of an executed contract to perform services necessary to abate the nuisance require more than 10 days to complete.

Contents of the notice must also include:

- If applicable, a description of the building, booth, tent, or place that is declared an alleged nuisance;
- A statement of the activities that led to the nuisance allegations;
- A statement of the actions necessary to abate the public nuisance; and
- A statement that costs will be assessed if abatement of the public nuisance is not completed and if the court determines that the public nuisance exists.

Required notices must be sent by personal service to the owner at his or her address as it appears on the latest tax assessment roll or to the tenant of such an address. If an address is not found for the owner, notices must be sent to the location of the declared nuisance and displayed prominently and conspicuously at that location. The notice timeframe before a lien may attach when the property is owned by someone other than the person causing the public nuisance is extended from five days to the time frame provided in the second notice (as provided by the bill and previously described).

The bill also amends s. 823.05, F.S., relating to public nuisances, to:

- Delete the requirement that a criminal gang or member or associate of such gang must use a location “on two or more occasions” to engage in criminal gang-related activity for such use to qualify as a public nuisance that can be abated or enjoined;
- Provide that any place or premises that has been used on more than two occasions within 6 months as the site of dealing in stolen property (s. 812.019, F.S.), assault (s. 784.011, F.S.), aggravated assault (s. 784.021, F.S.), battery (s. 784.03, F.S.), aggravated battery (s. 784.045, F.S.), burglary (s. 810.02, F.S.),²⁵ theft (s. 812.014, F.S.), or robbery by sudden snatching (s. 812.131, F.S.), may be declared a public nuisance and may be abated or enjoined as provided in s. 60.05, F.S., or s. 60.06, F.S.; and
- Provide that a rental property that is declared a public nuisance based upon the previously-described circumstances may not be abated or subject to forfeiture under the Florida Contraband Forfeiture Act if the nuisance was committed by someone other than the owner of the property and the property owner commences rehabilitation of the property within 30 days after the property is declared a public nuisance and completes the rehabilitation within a reasonable time thereafter.

The bill restructures the conditions for a public nuisance, injunction, and abatement in s. 823.05(1), F.S. These changes are non-substantive.

The bill also amends s. 893.138, F.S., relating to public nuisances, to authorize a place or premises to be declared a public nuisance, which may be abated, if the place or premises has been used on more than two occasions within 6 months as the site of any combination of the following offenses: murder (s. 782.04, F.S.); attempted felony murder (s. 782.051, F.S.); aggravated battery with a deadly weapon (s. 784.045(1)(a)2., F.S.); or aggravated assault with deadly weapon without intent to kill (s. 784.021(1)(a), F.S.). Additionally, the bill clarifies that a

²⁵ Armed burglary is also included in this section. See s. 810.02(2)(b), F.S.

rental property that is declared a nuisance may not be abated or subject to forfeiture under the Florida Contraband Forfeiture Act if the offense was committed by someone other than the property owner, and the owner commences rehabilitation of the property within 30 days of it being declared a nuisance.

The bill takes effect on July 1, 2020.

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, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The abatement or enjoining of a public nuisance described in the bill may result in a cost-savings or cost-avoidance to homeowners or businesses if they have sustained an economic loss (e.g., decreased home and business property values and loss of customers) as a result of the presence of the nuisance.

C. Government Sector Impact:

The abatement or enjoining of a public nuisance described in the bill may result in a cost-savings or cost-avoidance to local governments if they have sustained an economic loss

(e.g., decreased local tax revenues, increased local law enforcement costs, and increased local ordinance or code enforcement costs) as a result of the presence of the nuisance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 60.05, 823.05, and 893.138.

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 March 2, 2020:

The committee substitute:

- Provides specific authorization for a sheriff to enjoin a public nuisance.

CS by Community Affairs on February 3, 2020:

The committee substitute:

- Allows individuals receiving a written notice to abate a nuisance to respond within 10 days with proof that other provisions of law or the terms of an executed contract make it impossible to abate the nuisance within 10 days;
- Provides that the above response will receive a second written notice that must grant a time extension for nuisance abatement, and detail the time and location where an application for a temporary injunction will be filed if the nuisance is not abated;
- Removes language which allowed notice requirements to be waived if the nuisance presented a danger of immediate and irreparable injury to a person or the safety of a community.
- Clarifies that a rental property that is declared a nuisance may not be abated or subject to forfeiture under the Florida Contraband Forfeiture Act if the offense was committed by someone other than the property owner, and the owner commences rehabilitation of the property within 30 days of it being declared a nuisance.

B. Amendments:

None.



702620

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2020	.	
	.	
	.	
	.	

The Committee on Rules (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete line 36
and insert:
attorney, sheriff, or any citizen of the county may sue in the
name of

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

And the title is amended as follows:



702620

12 Delete line 3
13 and insert:
14 60.05, F.S.; specifically authorizing a sheriff to
15 enjoin a public nuisance; revising notice requirements
16 for the
17

By the Committee on Community Affairs; and Senator Perry

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A bill to be entitled

An act relating to public nuisances; amending s. 60.05, F.S.; revising notice requirements for the filing of temporary injunctions relating to the enjoinder of certain nuisances; extending the period of notice before a lien may attach to certain real estate; amending s. 823.05, F.S.; making technical changes; declaring that the use of a location by a criminal gang, criminal gang members, or criminal gang associates for criminal gang-related activity is a public nuisance; declaring that any place or premises that has been used on more than two occasions during a certain period as the site of specified violations is a nuisance and may be abated or enjoined pursuant to specified provisions; providing a property owner an opportunity to remedy a nuisance before specified legal actions may be taken against the property under certain circumstances; amending s. 893.138, F.S.; declaring that any place or premises that has been used on more than two occasions during a certain period as the site of any combination of specified violations may be declared to be a nuisance and may be abated pursuant to specified procedures; providing a property owner an opportunity to remedy a nuisance before specified legal actions may be taken against the property under certain circumstances; providing an effective date.

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

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

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Section 1. Section 60.05, Florida Statutes, is amended to read:

60.05 Abatement of nuisances.—

(1) When any nuisance as defined in s. 823.05 exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county may sue in the name of the state on his or her relation to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists.

(2) The court may allow a temporary injunction without bond on proper proof being made. If it appears by evidence or affidavit that a temporary injunction should be issued ~~issue~~, the court, pending the determination on final hearing, may enjoin any of the following:

(a) The maintaining of a nuisance.+

(b) The operating and maintaining of the place or premises where the nuisance is maintained.+

(c) The owner or agent of the building or ground upon which the nuisance exists.+

(d) The conduct, operation, or maintenance of any business or activity operated or maintained in the building or on the premises in connection with or incident to the maintenance of the nuisance.

The injunction shall specify the activities enjoined and may ~~shall~~ not preclude the operation of any lawful business not conducive to the maintenance of the nuisance complained of. ~~At least 3 days' notice in writing shall be given defendant of the~~

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

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~~time and place of application for the temporary injunction-~~

(3) (a) The defendant shall be given written notice to abate the nuisance within 10 days after the issuance of the notice. The notice must inform the defendant that an application for temporary injunction may be filed if the nuisance is not timely abated. If the nuisance is not timely abated, the defendant must be given a second written notice that informs the defendant that an application for a temporary injunction will be filed if the nuisance is not abated within 15 days after the end of the initial 10-day period. However, if the defendant responds to the first notice in writing within the initial 10-day period, and in such response alleges and provides proof that:

1. Nuisance abatement involves compliance with another law of this state and the requirements of such law make nuisance abatement within 10 days impossible; or

2. The terms of an executed contract to perform services necessary to abate the nuisance require more than 10 days to complete,

the defendant must be given a second written notice providing the defendant with an extended time period to abate the nuisance sufficient to comply with such other law or contract terms.

(b) A second notice sent under paragraph (a) must also provide the location where the application will be filed and the time when it will be filed. If the nuisance is not timely abated as provided in the second notice, the application for the temporary injunction must be filed as indicated in the notice.

(c) In addition to the information required under paragraphs (a) and (b), each notice must:

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1. If applicable, describe the building, booth, tent, or place that is an alleged nuisance.

2. State the activities that led to the nuisance allegations.

3. State the actions necessary to abate the nuisance.

4. State that costs will be assessed if abatement of the nuisance is not completed and if the court determines that the nuisance exists.

(d) The notices provided in this subsection must be sent by personal service to the owner at his or her address as it appears on the latest tax assessment roll or to the tenant of such address. If an address is not found for the owner, the notices must be sent to the location of the alleged nuisance and displayed prominently and conspicuously at that location.

(4)(3) Evidence of the general reputation of the alleged nuisance and place is admissible to prove the existence of the nuisance. An ~~Ne~~ action filed by a citizen may not ~~shall~~ be dismissed unless the court is satisfied that it should be dismissed. Otherwise the action shall continue and the state attorney notified to proceed with it. If the action is brought by a citizen and the court finds that there was no reasonable ground for the action, the costs shall be taxed against the citizen.

(5)(4) On trial if the existence of a nuisance is shown, the court shall issue a permanent injunction and order the costs to be paid by the persons establishing or maintaining the nuisance and shall adjudge that the costs are a lien on all personal property found in the place of the nuisance and on the failure of the property to bring enough to pay the costs, then

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on the real estate occupied by the nuisance. ~~A No~~ lien may not
~~shall~~ attach to the real estate of any other than such said
 persons unless a second ~~5 days'~~ written notice has been given in
accordance with paragraph (3) (a) to the owner or his or her
 agent who fails to begin to abate the nuisance within the time
specified therein said 5 days. In a proceeding abating a
 nuisance pursuant to s. 823.10 or s. 823.05, if a tenant has
 been convicted of an offense under chapter 893 or s. 796.07, the
 court may order the tenant to vacate the property within 72
 hours if the tenant and owner of the premises are parties to the
 nuisance abatement action and the order will lead to the
 abatement of the nuisance.

~~(6) (5)~~ If the action was brought by the Attorney General, a
 state attorney, or any other officer or agency of state
 government; if the court finds either before or after trial that
 there was no reasonable ground for the action; and if judgment
 is rendered for the defendant, the costs and reasonable attorney
~~attorney's~~ fees shall be taxed against the state.

Section 2. Section 823.05, Florida Statutes, is amended to
 read:

823.05 Places and groups engaged in certain activities
~~criminal gang-related activity~~ declared a nuisance; abatement
~~and enjoinder~~ ~~massage establishments engaged in prohibited~~
~~activity; may be abated and enjoined.~~

(1) A person who erects, establishes, continues, maintains,
owns, or leases any of the following is deemed to be maintaining
a nuisance, and the building, erection, place, tent, or booth,
and the furniture, fixtures, and contents of such structure, are
declared a nuisance, and all such places or persons shall be

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abated or enjoined as provided in ss. 60.05 and 60.06:

(a) ~~A~~ Whoever shall erect, establish, continue, or
~~maintain, own or lease any building, booth, tent, or place that~~
~~which~~ tends to annoy the community or injure the health of the
 community, or ~~becomes~~ become manifestly injurious to the morals
 or manners of the people as provided described in s. 823.01, ~~or~~

(b) ~~A~~ any house or place of prostitution, assignation, or
 lewdness. ~~or~~

(c) A place or building in which persons engage in where
 games of chance ~~are engaged~~ in violation of law. ~~or~~

(d) ~~A~~ any place where any law of the state is violated,
~~shall be deemed guilty of maintaining a nuisance, and the~~
~~building, erection, place, tent or booth and the furniture,~~
~~fixtures, and contents are declared a nuisance. All such places~~
~~or persons shall be abated or enjoined as provided in ss. 60.05~~
~~and 60.06.~~

(2) (a) As used in this subsection, the terms "criminal
 gang," "criminal gang member," "criminal gang associate," and
 "criminal gang-related activity" have the same meanings as
 provided in s. 874.03.

(b) A criminal gang, criminal gang member, or criminal gang
 associate who engages in the commission of criminal gang-related
 activity is a public nuisance. ~~Any and~~ All such persons shall be
 abated or enjoined as provided in ss. 60.05 and 60.06.

(c) The use of a location ~~on two or more occasions~~ by a
 criminal gang, criminal gang members, or criminal gang
 associates for the purpose of engaging in criminal gang-related
 activity is a public nuisance. Such use of a location as a
 public nuisance shall be abated or enjoined as provided in ss.

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175 60.05 and 60.06.

176 (d) ~~Nothing in~~ This subsection does not shall prevent a
 177 local governing body from adopting and enforcing laws consistent
 178 with this chapter relating to criminal gangs and gang violence.
 179 Where local laws duplicate or supplement this chapter, this
 180 chapter shall be construed as providing alternative remedies and
 181 not as preempting the field.

182 (e) The state, through the Department of Legal Affairs or
 183 any state attorney, or any of the state's agencies,
 184 instrumentalities, subdivisions, or municipalities having
 185 jurisdiction over conduct in violation of a provision of this
 186 chapter may institute civil proceedings under this subsection.
 187 In any action brought under this subsection, the circuit court
 188 shall proceed as soon as practicable to the hearing and
 189 determination. Pending final determination, the circuit court
 190 may at any time enter such injunctions, prohibitions, or
 191 restraining orders, or take such actions, including the
 192 acceptance of satisfactory performance bonds, as the court may
 193 deem proper.

194 (3) A massage establishment as defined in s. 480.033(7)
 195 which that operates in violation of s. 480.0475 or s.
 196 480.0535(2) is declared a nuisance and may be abated or enjoined
 197 as provided in ss. 60.05 and 60.06.

198 (4)(a) Any place or premises that has been used on more
 199 than two occasions within a 6-month period as the site of any of
 200 the following violations is declared a nuisance and may be
 201 abated or enjoined as provided in ss. 60.05 and 60.06:

202 1. Section 812.019, relating to dealing in stolen property.

203 2. Section 784.011, s. 784.021, s. 784.03, or s. 784.045,

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204 relating to assault and battery.

205 3. Section 810.02, relating to burglary.

206 4. Section 812.014, relating to theft.

207 5. Section 812.131, relating to robbery by sudden
 208 snatching.

209 (b) Notwithstanding any other law, a rental property that
 210 is declared a nuisance under this subsection may not be abated
 211 or subject to forfeiture under the Florida Contraband Forfeiture
 212 Act if the nuisance was committed by someone other than the
 213 owner of the property and the property owner commences
 214 rehabilitation of the property within 30 days after the property
 215 is declared a nuisance and completes the rehabilitation within a
 216 reasonable time thereafter.

217 Section 3. Section 893.138, Florida Statutes, is amended to
 218 read:

219 893.138 Local administrative action to abate certain
 220 activities declared ~~drug-related, prostitution-related, or~~
 221 ~~stolen-property-related~~ public nuisances ~~and criminal gang~~
 222 ~~activity.~~

223 (1) It is the intent of this section to promote, protect,
 224 and improve the health, safety, and welfare of the citizens of
 225 the counties and municipalities of this state by authorizing the
 226 creation of administrative boards with authority to impose
 227 administrative fines and other noncriminal penalties in order to
 228 provide an equitable, expeditious, effective, and inexpensive
 229 method of enforcing ordinances in counties and municipalities
 230 under circumstances when a pending or repeated violation
 231 continues to exist.

232 (2) Any place or premises that has been used:

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233 (a) On more than two occasions within a 6-month period, as
 234 the site of a violation of s. 796.07;
 235 (b) On more than two occasions within a 6-month period, as
 236 the site of the unlawful sale, delivery, manufacture, or
 237 cultivation of any controlled substance;
 238 (c) On one occasion as the site of the unlawful possession
 239 of a controlled substance, where such possession constitutes a
 240 felony and that has been previously used on more than one
 241 occasion as the site of the unlawful sale, delivery,
 242 manufacture, or cultivation of any controlled substance;
 243 (d) By a criminal gang for the purpose of conducting
 244 criminal gang activity as defined by s. 874.03;
 245 (e) On more than two occasions within a 6-month period, as
 246 the site of a violation of s. 812.019 relating to dealing in
 247 stolen property; ~~or~~
 248 (f) On two or more occasions within a 6-month period, as
 249 the site of a violation of chapter 499; or
 250 (g) On more than two occasions within a 6-month period, as
 251 the site of a violation of any combination of the following:
 252 1. Section 782.04, relating to murder;
 253 2. Section 782.051, relating to attempted felony murder;
 254 3. Section 784.045(1)(a)2., relating to aggravated battery
 255 with a deadly weapon; or
 256 4. Section 784.021(1)(a), relating to aggravated assault
 257 with a deadly weapon without intent to kill,
 258
 259 may be declared to be a public nuisance, and such nuisance may
 260 be abated pursuant to the procedures provided in this section.
 261 (3) Any pain-management clinic, as described in s. 458.3265

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262 or s. 459.0137, which has been used on more than two occasions
 263 within a 6-month period as the site of a violation of:
 264 (a) Section 784.011, s. 784.021, s. 784.03, or s. 784.045,
 265 relating to assault and battery;
 266 (b) Section 810.02, relating to burglary;
 267 (c) Section 812.014, relating to theft;
 268 (d) Section 812.131, relating to robbery by sudden
 269 snatching; or
 270 (e) Section 893.13, relating to the unlawful distribution
 271 of controlled substances,
 272
 273 may be declared to be a public nuisance, and such nuisance may
 274 be abated pursuant to the procedures provided in this section.
 275 (4) Any county or municipality may, by ordinance, create an
 276 administrative board to hear complaints regarding the nuisances
 277 described in subsection (2). Any employee, officer, or resident
 278 of the county or municipality may bring a complaint before the
 279 board after giving not less than 3 days' written notice of such
 280 complaint to the owner of the place or premises at his or her
 281 last known address. After a hearing in which the board may
 282 consider any evidence, including evidence of the general
 283 reputation of the place or premises, and at which the owner of
 284 the premises shall have an opportunity to present evidence in
 285 his or her defense, the board may declare the place or premises
 286 to be a public nuisance as described in subsection (2).
 287 (5) If the board declares a place or premises to be a
 288 public nuisance, it may enter an order requiring the owner of
 289 such place or premises to adopt such procedure as may be
 290 appropriate under the circumstances to abate any such nuisance

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or it may enter an order immediately prohibiting:

(a) The maintaining of the nuisance;

(b) The operating or maintaining of the place or premises, including the closure of the place or premises or any part thereof; or

(c) The conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.

(6) An order entered under subsection (5) shall expire after 1 year or at such earlier time as is stated in the order.

(7) An order entered under subsection (5) may be enforced pursuant to the procedures contained in s. 120.69. This subsection does not subject a municipality that creates a board under this section, or the board so created, to any other provision of chapter 120.

(8) The board may bring a complaint under s. 60.05 seeking temporary and permanent injunctive relief against any nuisance described in subsection (2).

(9) This section does not restrict the right of any person to proceed under s. 60.05 against any public nuisance.

(10) As used in this section, the term "controlled substance" includes any substance sold in lieu of a controlled substance in violation of s. 817.563 or any imitation controlled substance defined in s. 817.564.

(11) The provisions of this section may be supplemented by a county or municipal ordinance. The ordinance may include, but is not limited to, provisions that establish additional penalties for public nuisances, including fines not to exceed \$250 per day; provide for the payment of reasonable costs, including reasonable attorney fees associated with

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investigations of and hearings on public nuisances; provide for continuing jurisdiction for a period of 1 year over any place or premises that has been or is declared to be a public nuisance; establish penalties, including fines not to exceed \$500 per day for recurring public nuisances; provide for the recording of orders on public nuisances so that notice must be given to subsequent purchasers, successors in interest, or assigns of the real property that is the subject of the order; provide that recorded orders on public nuisances may become liens against the real property that is the subject of the order; and provide for the foreclosure of property subject to a lien and the recovery of all costs, including reasonable attorney fees, associated with the recording of orders and foreclosure. No lien created pursuant to the provisions of this section may be foreclosed on real property which is a homestead under s. 4, Art. X of the State Constitution. Where a local government seeks to bring an administrative action, based on a stolen property nuisance, against a property owner operating an establishment where multiple tenants, on one site, conduct their own retail business, the property owner shall not be subject to a lien against his or her property or the prohibition of operation provision if the property owner evicts the business declared to be a nuisance within 90 days after notification by registered mail to the property owner of a second stolen property conviction of the tenant. The total fines imposed pursuant to the authority of this section shall not exceed \$15,000. Nothing contained within this section prohibits a county or municipality from proceeding against a public nuisance by any other means.

(12) Notwithstanding any other law, a rental property that

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349 is declared a nuisance under this section may not be abated or
350 subject to forfeiture under the Florida Contraband Forfeiture
351 Act if the nuisance was committed by someone other than the
352 owner of the property and the property owner commences
353 rehabilitation of the property within 30 days after the property
354 is declared a nuisance and completes the rehabilitation within a
355 reasonable time thereafter.

356 Section 4. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 5, 2020

I respectfully request that **Senate Bill #888**, relating to Public Nuisances, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long, sweeping underline.

Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE
APPEARANCE RECORD

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

03/02/2020

Meeting Date

888

Bill Number (if applicable)

702620

Amendment Barcode (if applicable)

Topic _____

Name Lauren Jackson

Job Title Lobbyist

Address 205 S Adams St.
Street

Phone 931-265-8999

Tallahassee FL 32301
City State Zip

Email lauren@ericksconsultants.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Seminole 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

APPEARANCE RECORD

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

3-2-20

Meeting Date

888

Bill Number (if applicable)

Topic PUBLIC NUISANCES

Amendment Barcode (if applicable)

Name ANTONIO WRIGHT

Job Title LIEUTENANT

Address 2500 W COLONIAL DR

Phone 407-259-7448

Street

City

Orlando

State

FL

Zip

32804

Email antonio.wright@aol.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: SB 7032

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Body Camera Recordings Obtained by Law Enforcement Officers

DATE: February 28, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Erickson</u>	<u>Jones</u>		CJ Submitted as Committee Bill
1.	<u>Hackett</u>	<u>McVane</u>	<u>GO</u>	Favorable
2.	<u>Erickson</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 7032 amends s. 119.071(2)(l), F.S., to save from repeal the public records exemption for body camera recordings. A body camera is a portable electronic recording device that is worn on a law enforcement officer's body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.

Section 119.071(2)(l), F.S., makes a body camera recording, or a portion thereof, confidential and exempt from public disclosure if the recording is taken:

- Within the interior of a private residence;
- Within the interior of a facility that offers health care, mental health care, or social services;
- At the scene of a medical emergency involving a death or involving an injury that requires transport to a medical facility; or
- In a place that a reasonable person would expect to be private.

The public records exemption also specifies when a law enforcement agency may or must provide disclosure, and also provides for court-ordered disclosure and specifies grounds the court must consider in reaching its decision regarding disclosure.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill removes this repeal language.

Costs incurred by an agency in responding to public records requests for the body camera information should be offset by authorized fees. There are also costs associated with retention of the body camera recordings for the minimum period mandated by the public record exemption. However, Florida law does not mandate that a law enforcement agency acquire and use body cameras. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2020.

II. Present Situation:

Access to Public Records – Generally

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So.3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So.2d 633, 640 (Fla. 1980).

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So.2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Body Cameras

Florida law defines a “body camera” as a portable electronic recording device that is worn on a law enforcement officer's body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.²⁷ Although Florida law does not require a law enforcement agency to acquire and use body cameras, it does require a law enforcement agency²⁸ that permits its law enforcement officers²⁹ to wear body cameras to establish policies

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 119.071(2)(l)1.a. and 943.1718(1)(a), F.S.

²⁸ A “law enforcement agency” is defined in s. 943.1718(1)(b), F.S., as an agency that has a primary mission of preventing and detecting crime and enforcing the penal, criminal, traffic, and motor vehicle laws of the state and in furtherance of that primary mission employs law enforcement officers as defined in s. 943.10, F.S.

²⁹ A “law enforcement officer” is defined in s. 943.1718(1)(c), F.S., as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make

and procedures addressing the proper use, maintenance, and storage of body cameras and the data recorded by body cameras. The policies and procedures must include:

- General guidelines for the proper use, maintenance, and storage of body cameras.
- Any limitations on which law enforcement officers are permitted to wear body cameras.
- Any limitations on law-enforcement-related encounters and activities in which law enforcement officers are permitted to wear body cameras.
- A provision permitting a law enforcement officer using a body camera to review the recorded footage from the body camera, upon his or her own initiative or request, before writing a report or providing a statement regarding any event arising within the scope of his or her official duties. Any such provision may not apply to an officer's inherent duty to immediately disclose information necessary to secure an active crime scene or to identify suspects or witnesses.
- General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.³⁰

Florida law also requires a law enforcement agency that permits its law enforcement officers to wear body cameras to:

- Ensure that all personnel who wear, use, maintain, or store body cameras are trained in the law enforcement agency's policies and procedures concerning them.
- Ensure that all personnel who use, maintain, store, or release audio or video data recorded by body cameras are trained in the law enforcement agency's policies and procedures pertaining to body cameras.
- Retain audio and video data recorded by body cameras in accordance with the requirements of s. 119.021, F.S. (maintenance of public records), except as otherwise provided by law.
- Perform a periodic review of actual agency body camera practices to ensure conformity with the agency's policies and procedures.³¹

According to a 2018 criminal justice agency survey by the Florida Department of Law Enforcement, one state agency, 102 municipal police agencies, 23 sheriffs' offices, one college police department, six university police departments, and one school district reported that they currently use body cameras.³²

Body camera recordings are not subject to ch. 934, F.S. (interception of communications).³³ Therefore, a body camera recording cannot be considered an "intercept" of communications and the general prohibition in ch. 934, F.S., against interception of wire, oral, and electronic communications does not apply to such recordings.

arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

³⁰ Section 943.1718(2), F.S.

³¹ Section 943.1718(3), F.S.

³² 2018 Criminal Justice Agency Profile Survey Results, Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/CJSTC/Publications/CJAP/CJAP> (last visited Dec. 19, 2019). The information, which is only available in Microsoft Excel Spreadsheet format, can be obtained by selecting the relevant law enforcement agency and then selecting "Supplemental Programs."

³³ Section 943.1718(4), F.S.

Generally, information contained in a body camera recording is subject to public disclosure. However, as discussed below, Florida law provides that some information contained in a body camera recording is confidential and exempt from public disclosure.³⁴

Public Records Exemption for Body Camera Recordings

“Although broad disclosure policies can promote police agency transparency and accountability, some videos—especially recordings of victims or from inside people’s homes—will raise privacy concerns if they are released to the public or the news media.” “In most state public disclosure laws, exceptions are outlined that may exempt body-worn camera footage from public release.”³⁵

Like most state public disclosure laws, Florida’s public records law exempts some body camera footage from public release. Section s. 119.071(2)(l), F.S., which was created in 2015,³⁶ provides a public records exemption for a body camera recording made by a law enforcement officer³⁷ in the course of the officer performing his or her official duties and responsibilities.

Section s. 119.071(2)(l), F.S., makes a body camera recording, or a portion thereof, confidential and exempt from public disclosure if the recording is taken:

- Within the interior of a private residence;
- Within the interior of a facility that offers health care, mental health care, or social services;
- At the scene of a medical emergency involving a death or involving an injury that requires transport to a medical facility; or
- In a place that a reasonable person would expect to be private.³⁸

A law enforcement agency may disclose a body camera recording in furtherance of its official duties and responsibilities and may also disclose the recording to another governmental agency in the furtherance of its official duties and responsibilities.³⁹

A law enforcement agency must disclose a body camera recording, or a portion thereof, to:

- A person recorded by a body camera (the person receives those portions of the recording relevant to the person’s presence in the recording);

³⁴ Section 119.071(2)(l), F.S.

³⁵ Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. 2014. *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Washington, DC: Office of Community Oriented Policing Services, available at <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf> (last visited on Dec. 18, 2019). See p. 17 (footnote omitted) of the report.

³⁶ Chapter 2015-41, L.O.F.

³⁷ Section 119.071(2)(l)1.b., F.S., provides that “law enforcement officer” has the same meaning as provided in s. 943.10, F.S. Section 943.10(1), F.S., defines a “law enforcement officer” as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

³⁸ Section 119.071(2)(l)2.a.-c., F.S.

³⁹ Section 119.071(2)(l)3.a. and b., F.S.

- The personal representative⁴⁰ of a person recorded by a body camera (the person receives those portions of the recording relevant to the recorded person's presence in the recording);⁴¹
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording (the person receives those portions of the recording that record the interior of such a place); and
- Pursuant to a court order.⁴²

In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court must consider:

- Whether disclosure is necessary to advance a compelling interest;
- The recording contains information that is otherwise exempt or confidential and exempt under the law;
- The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
- Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
- Disclosure may cause reputational harm or jeopardize the safety of a person depicted in the recording;
- Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
- The recording could be redacted to protect privacy interests; and
- There is good cause to disclose all or portions of a recording.⁴³

A law enforcement agency must retain a body camera recording for at least 90 days.⁴⁴ Generally, records retained by law enforcement agencies are governed by statutes and rules promulgated by the Department of State, Division of Library Services.⁴⁵ Currently, public records may be destroyed in accordance with the retention schedules established by the Division of Library Services.⁴⁶ This public records exemption requires law enforcement to retain these recordings for a minimum amount of time but does not otherwise supersede the retention and destruction schedule established by the Division of Library Services.

⁴⁰ Section 119.071(2)(1)1.c., F.S., defines a "personal representative" as a parent of, a court-appointed guardian of, an attorney of, an agent of, or a person holding a power of attorney for a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.

⁴¹ This scenario would include a situation in which the person recorded was unable to give consent for some reason or was deceased.

⁴² Section 119.071(2)(1)4.a.-d., F.S.

⁴³ Section 119.071(2)(1)4.d.(I)(A)-(H), F.S. In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording must be given reasonable notice of hearings and an opportunity to participate. Section 119.071(2)(1)4.d.(II), F.S.

⁴⁴ Section 119.071(2)(1)5., F.S.

⁴⁵ Section 257.36, F.S. See *State of Florida General Records Schedule GS2 For Law Enforcement, Correctional Facilities, and District Medical Examiners*, effective Aug. 2017, available at <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/> (last visited on Dec. 18, 2019).

⁴⁶ Section 257.36(6), F.S.

The exemption applies retroactively. It does not supersede any other exemption existing prior to or created after the effective date of this exemption. Those portions of a body camera recording that are protected from disclosure by another exemption continue to be exempt or confidential and exempt.⁴⁷ Some of the other public records exemptions that may be relevant to a body camera recording include:

- Active criminal intelligence information and active criminal investigative information (exempt);⁴⁸
- Information revealing surveillance techniques or procedures or personnel (exempt);⁴⁹
- Information revealing the substance of a confession of a person arrested (exempt);⁵⁰
- Information revealing the identity of a confidential informant or a confidential source (exempt);⁵¹
- Criminal intelligence information or criminal investigative information that reveals the identity of the victim of the crime of child abuse or any sexual offense or a videotape or image of any part of the body of the victim of a statutorily-specified sexual offense (confidential and exempt);⁵²
- Any information in a videotaped statement of a minor who is alleged to be or who is a victim of a statutorily-specified sexual offense, which reveals that minor's identity, home, school, etc. (confidential and exempt);⁵³
- A video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence (confidential and exempt);⁵⁴ and
- Information revealing undercover personnel of any criminal justice agency (exempt).⁵⁵

The statement of public necessity for creation of the exemption provides the following reasons for creating the exemption:

- It is a public necessity that the following types of body camera recordings are made confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution: recordings taken within the interior of a private residence; recordings taken within the interior of a facility that offers health care, mental health care, or social services; and recordings taken in a place that a reasonable person would expect to be private.
- There is an increased prevalence of body cameras being used by law enforcement officers. Body cameras preserve information that has the potential to assist both law enforcement officers' and the public's ability to review the circumstances surrounding an event in which law enforcement intervention occurs.
- However, in certain instances, audio and video recorded by body cameras is significantly more likely to capture highly sensitive personal information than other types of law enforcement recordings or documents.

⁴⁷ Section 119.071(2)(l)7., F.S.

⁴⁸ Section 119.071(2)(c)1., F.S.

⁴⁹ Section 119.071(2)(d), F.S.

⁵⁰ Section 119.071(2)(e), F.S.

⁵¹ Section 119.071(2)(f), F.S.

⁵² Section 119.071(2)(h), F.S.

⁵³ Section 119.071(2)(j)2.a., F.S.

⁵⁴ Section 119.071(2)(p), F.S.

⁵⁵ Section 119.071(4)(c), F.S.

- Public disclosure of these recordings could have an undesirable chilling effect. People who know they are being recorded by a body camera may be unwilling to cooperate fully with law enforcement officers if they know that a body camera recording can be made publicly available to anyone else. People may also be less likely to call a law enforcement agency for services if their sensitive personal information or the circumstances that necessitate a law enforcement agency's involvement are subject to public dissemination as a body camera recording.
- Body camera recordings could be used for criminal purposes if they were available upon request. This exemption from public records requirements allows law enforcement officers to more effectively and efficiently administer their duties, which would otherwise be significantly impaired.
- These concerns regarding the impact of the public records requirements for body camera recordings not only necessitate the exemption of the recordings from public records requirements, but also outweigh any public benefit that may be derived from their disclosure.⁵⁶

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.⁵⁷

Staff Survey Regarding Exemption Under Review

Staff received responses from seven police departments, one university police department, and seven sheriff offices to a joint survey of the House Oversight, Transparency and Public Management Subcommittee and the Senate Committee on Criminal Justice regarding the public records exemption for body camera recordings. Twelve of the fifteen survey respondents recommended retaining the exemption in its current form. Three survey respondents recommended retaining the exemption with some modifications.⁵⁸

III. Effect of Proposed Changes:

The bill saves from repeal the public records exemption in s. 119.071(2)(l), F.S., for body camera recordings.

⁵⁶ Chapter 2015-41, sec. 2, L.O.F.

⁵⁷ Section 119.071(2)(l)8., F.S.

⁵⁸ The survey responses are on file with the Senate Committee on Criminal Justice. One survey respondent recommended clarifying application of Article I, s. 16, of the State Constitution ("Marsy's Law") to victim information contained in body camera recordings. Marsy's Law appears to impact numerous public records exemptions; therefore, any clarification of application of Marsy's Law would necessarily require addressing its application to multiple public records exemptions, not simply the public exemption regarding body camera recordings. Another survey respondent recommended exempting information in body camera recordings identifying public employees. It is unclear if this recommendation pertains to all public employees but the public records exemption regarding body camera recordings does not supersede any current public records exemption pertinent to a public employee. Section 119.071(2)(l)7., F.S. Another survey respondent recommended clarification regarding whether the public records exemption regarding body camera recordings applies to both video and audio recordings. However, the definition of "body camera" pertinent to this public records exemption states that the device includes audio and video data. Section 119.071(2)(1)1.a., F.S. Further, one of the legislative findings in the public necessity statement in support of this public records exemption is that "in certain instances, *audio and video recorded by body cameras* is significantly more likely to capture highly sensitive personal information than other types of law recordings or documents." Chapter 2015-41, sec. 2, L.O.F. (emphasis provided by staff).

Section 119.071(2)(l), F.S., makes a body camera recording, or a portion thereof, confidential and exempt from public disclosure if the recording is taken:

- Within the interior of a private residence;
- Within the interior of a facility that offers health care, mental health care, or social services;
- At the scene of a medical emergency involving a death or involving an injury that requires transport to a medical facility; or
- In a place that a reasonable person would expect to be private.

The public records exemption also specifies when a law enforcement agency may or must provide disclosure, and also provides for court-ordered disclosure and specifies grounds the court must consider in reaching its decision regarding disclosure.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill removes this repeal language.

The bill takes effect October 1, 2020.

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, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, a two-thirds vote of the members present and voting for final passage of the bill is not required.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, the bill does not require a public necessity statement.

Breadth of Exemption

Article I, s. 24(c), of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts body camera recordings in limited circumstances: the interior of a residence; the interior of a health care, mental health care, or social services facility; the scene of a medical emergency involving a death or involving an injury that requires transport to a medical facility; and a place that a reasonable person would expect to be private. Because descriptions of some of these places may require interpretation by agencies having custody of the body camera recordings, specific applications of the exemption could be challenged. However, “exemptions from disclosure are to be narrowly construed,”⁵⁹ and the agency having custody of the records “bears the burden of proving its right to the claimed exemption.”⁶⁰

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Section 119.071(2)(l)2.c., F.S., exempts from public disclosure a body camera recording that is taken in a place that a reasonable person would expect to be private.

Article I, s. 23, of the State Constitution provides:

Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein. This section shall not be construed to limit the public’s right of access to public records and meetings as provided by law.

The Florida Supreme Court has stated that the right of privacy includes a right to “be free from uninvited observation or of interference in those aspect of [Floridians’] lives that fall within the ambit of this zone of privacy unless the intrusion is warranted by the necessity of a compelling state interest.”⁶¹ Referring to a case which predated Article I, s. 23, of the State Constitution, the Florida Supreme Court opined that the people have a fundamental right to control what they reveal about themselves and to whom they chose to reveal themselves, and noted “this power is exercised in varying degrees by differing individuals, the parameters of an individuals’ privacy can be dictated only by that individual.”⁶²

⁵⁹ *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004) (citations omitted), *rev. den.*, 892 So.2d 1015 (Fla. 2004).

⁶⁰ *Id.* (citation omitted).

⁶¹ *Shaktman v. State*, 553 So.2d 148, 150 (Fla. 1998).

⁶² *Id.* at 151.

The Florida Supreme Court found that before the right of privacy attaches “a reasonable expectation of privacy must exist.”⁶³ The test for making that determination is “whether the law recognizes an individual’s legitimate expectation of privacy” in a certain type of record.⁶⁴ The Florida Supreme Court also recognizes the right to be free of observation and interference in aspects of life that fall within a “zone of privacy.”⁶⁵ In determining whether an individual has a legitimate expectation of privacy in a given case, the court must consider all of the circumstances, especially objective manifestations of that expectation.⁶⁶

Courts have used public records exemptions as guideposts of when a privacy interest exists. For example, the Florida Fourth District Court of Appeal relied on the Florida Supreme Court’s finding that financial records were private, but also observed that there was a statutory public records exemption for financial information held by a state agency, and noted that “the legislature has recognized the confidential nature of the exact type of information at issue.”⁶⁷ Likewise, the Second District Court of Appeal of Florida found that people have an expectation of privacy in their social security numbers, and as authority, noted that social security numbers were protected from disclosure by both federal and state law and by various rules of procedure.⁶⁸

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Costs incurred by an agency in responding to public records requests for the body camera information should be offset by authorized fees.⁶⁹ There are also costs associated with retention of the body camera recordings for the minimum period mandated by the public

⁶³ *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Business Regulation*, 477 So.2d 544, 547 (Fla. 1985).

⁶⁴ *Id.*

⁶⁵ *Shaktman*, 553 So.2d at 150.

⁶⁶ *Id.* at 153. In his concurring opinion, Chief Justice Ehrlich opined that “the zone of privacy covered by article I, section 23, can be determined only by reference to the expectations of each individual, and those expectations are protected provided they are not spurious or false. A determination of whether an individual has a legitimate expectation of privacy in any given case must be made by considering all the circumstances, especially objective manifestations of that expectation; for example, in cases where disclosure of purportedly private information is sought, circumstances, such as the kind of information, where it is kept, who has access to it and under what circumstances.” *Id.*

⁶⁷ *Berkley v. Eisen*, 699 So.2d 789, 791 (Fla. 4th DCA 1997).

⁶⁸ *Thomas v. Smith*, 882 So.2d 1037, 1045 (Fla. 2d DCA 2004).

⁶⁹ Section 119.07(2) and (4), F.S.

recording exemption.⁷⁰ However, Florida law does not mandate that a law enforcement agency acquire and use body cameras.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of 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.

⁷⁰ Several law enforcement agencies responding to the joint staff survey (see footnote 57) indicated that they retain body camera recordings for a longer period than the minimum retention period (at least 90 days) required by the public records exemption.

By the Committee on Criminal Justice

591-02255-20

20207032__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides an exemption from public records requirements for body camera recordings obtained by law enforcement officers under certain circumstances; making editorial changes; abrogating the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (1) 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.—

(1)1. As used in this paragraph, the term:

a. "Body camera" means a portable electronic recording device that is worn on a law enforcement officer's body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.

b. "Law enforcement officer" has the same meaning as provided in s. 943.10.

c. "Personal representative" means a parent, a court-appointed guardian, an attorney, or an agent of, or a person holding a power of attorney for, a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent,

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or adult child; the deceased person's attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.

2. A body camera recording, or a portion thereof, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the recording:

- a. Is taken within the interior of a private residence;
- b. Is taken within the interior of a facility that offers health care, mental health care, or social services; or
- c. Is taken in a place that a reasonable person would expect to be private.

3. Notwithstanding subparagraph 2., a body camera recording, or a portion thereof, may be disclosed by a law enforcement agency:

- a. In furtherance of its official duties and responsibilities; or
- b. To another governmental agency in the furtherance of its official duties and responsibilities.

4. Notwithstanding subparagraph 2., a body camera recording, or a portion thereof, shall be disclosed by a law enforcement agency:

- a. To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person's presence in the recording;
- b. To the personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person's presence in the recording;

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c. To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place.

d. Pursuant to a court order.

(I) In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court shall consider whether:

(A) Disclosure is necessary to advance a compelling interest;

(B) The recording contains information that is otherwise exempt or confidential and exempt under the law;

(C) The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;

(D) Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;

(E) Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;

(F) Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;

(G) The recording could be redacted to protect privacy interests; and

(H) There is good cause to disclose all or portions of a recording.

(II) In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the

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recording shall be given reasonable notice of hearings and shall be given an opportunity to participate.

5. A law enforcement agency must retain a body camera recording for at least 90 days.

6. The exemption provided in subparagraph 2. applies retroactively.

7. This exemption does not supersede any other public records exemption that existed before or is created after the effective date of this exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt.

~~8. This paragraph 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.~~

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 29, 2020

I respectfully request that **Senate Bill #7032**, relating to OGSR/Body Camera Recordings Obtained by Law Enforcement , be placed on the:

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



Senator Keith Perry
Florida Senate, District 8

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 218

INTRODUCER: Health Policy Committee and Senator Harrell

SUBJECT: Licensure Requirements for Osteopathic Physicians

DATE: February 28, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Fav/CS
2.	Howard	Kynoch	AP	Favorable
3.	Rossitto-Van Winkle	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 218 updates the osteopathic internship and residency accrediting agencies to include the Accreditation Council for Graduate Medical Education (ACGME) and repeals the Board of Osteopathic Medicine's (BOOM) authority to approve other internship programs upon showing of good cause.

The bill has an insignificant fiscal impact on the Department of Health that can be absorbed within existing resources.

The bill takes effect upon becoming law.

II. Present Situation:

Osteopathic Physicians

There are two types of medical physicians fully licensed to practice in Florida. Those holding the M.D. degree – doctor of allopathic medicine – licensed under ch. 458, F.S.; and those holding the D.O. degree – doctor of osteopathic medicine – licensed under ch. 459, F.S. Both types of physicians are licensed in Florida to perform surgery and prescribe medicine in hospitals, clinics, and private practices, as well as throughout the U.S. Osteopathic physicians offer all the same services as M.D.s.

Osteopathic physicians can specialize in every recognized area of medicine, from neonatology to neurosurgery, but more than half of all osteopathic physicians practice in primary care areas, such as pediatrics, general practice, obstetrics/gynecology, and internal medicine.¹

Osteopathic Residencies and Florida Licensure

After acquiring a four-year undergraduate college degree with requisite science classes, students are accepted into one of the nation's 21 osteopathic medical schools accredited by the Bureau of Professional Education of the American Osteopathic Association (AOA). Following graduation, osteopathic physicians complete an approved 12-month internship. Interns rotate through hospital departments, including internal medicine, family practice, and surgery. They may then choose to complete a residency program in a specialty area, which requires two to six years of additional training.²

Any person desiring to be licensed, or certified, as an osteopathic physician in Florida must:

- Submit an application with a fee;
- Be at least 21 years of age;
- Be of good moral character;
- Have completed at least three years of pre-professional postsecondary education;
- Have not previously committed any act that would constitute a violation of ch. 459, F.S.;
- Not be under investigation anywhere for an act that would constitute a violation of ch. 459, F.S.;
- Have not been denied a license to practice osteopathic medicine, or had his or her osteopathic medicine license revoked, suspended, or otherwise acted against by any jurisdiction;
- Have met the criteria for:
 - A limited license under s. 459.0075, F.S.;
 - An osteopathic faculty certificate under s. 459.0077, F.S.; or,
 - A resident physician, intern, or fellow under s. 459.021, F.S.;
- Demonstrate that he or she is a graduate of a medical college recognized and approved by the AOA;
- Demonstrate that he or she has successfully completed a resident internship of not less than 12 months in a hospital approved by the Board of Trustees of the AOA or any other internship program approved by the Board of Osteopathic Medicine (BOOM) upon a showing of good cause; and
- Demonstrate that he or she has achieved a passing score, established by rule of the BOOM, on all parts of the examination conducted by the National Board of Osteopathic Medical Examiners or other examination approved by the BOOM no more than five years before making application.³

¹ Florida Osteopathic Medical Association, *Osteopathic Medicine*, available at: <http://www.foma.org/osteopathic-medicine.html> (last visited Sept 9, 2019).

² *Id.*

³ Section 459.0055, F.S.

The Accreditation Council for Graduate Medical Education (ACGME)

The ACGME is a non-profit corporation whose mission is to improve health care and population health by assessing and advancing the quality of resident physicians' graduate medical education through accreditation. Accreditation is achieved through a voluntary process of evaluation and review based on published accreditation standards. ACGME accreditation provides assurance that a sponsoring institution or program meets the quality standards (institutional and program requirements) of the specialty or subspecialty practice(s) for which it prepares its graduates.

The ACGME accreditation is overseen by a review committee made up of volunteer specialty experts from the field that set accreditation standards and provide peer evaluation of sponsoring institutions and specialty and subspecialty residency and fellowship programs.⁴

The ACGME was established by five medical organizations in 1981⁵ and, in 2014, was joined by the AOA and the American Association of Colleges of Osteopathic Medicine. A primary responsibility of each of the organizations is to nominate individuals to be considered for membership on the ACGME Board of Directors. The ACGME board currently includes 24 members nominated by member organizations, two resident members, three public directors, four at-large directors, the chair of the Council of Review Committee Chairs, and two non-voting federal representatives.

The ACGME sets standards for graduate medical education (GME) and renders residency accreditation decisions based on compliance with those standards. The member organizations are corporately separate from the ACGME and do not participate in accreditation, pay dues, or make any other monetary contribution to the ACGME. In Academic Year 2018-2019, there were approximately 11,700 ACGME-accredited residency and fellowship programs in 181 specialties and subspecialties at approximately 850 Sponsoring Institutions. There were approximately 140,500 active full and part time residents and fellows. One out of seven active physicians in the United States is a resident or fellow.⁶

By June 2020, all osteopathic residency programs for GME will need to be ACGME accredited. As the AOA guides residency programs through the process, resident physicians will be protected throughout the transition. If a residency program does not achieve ACGME accreditation by June 2020, a resident who has not completed the required training will be able to complete AOA-accredited training and advance to AOA board eligibility. This is the result of an agreement between the AOA, the ACGME, and the American Association of Colleges of Osteopathic Medicine (AACOM) that gives the AOA restricted authority to extend the AOA accreditation date to allow any remaining resident physicians to finish training in an accredited

⁴ American Council of Graduate Medical Education, *What We Do*, available at: <https://www.acgme.org/What-We-Do/Overview> (last visited Sept. 9, 2019).

⁵ American Council of Graduate Medical Education, *Member Organizations*, available at: <https://www.acgme.org/About-Us/Overview/Member-Organizations> (last visited Sept. 9, 2019). The five organizations are: The American Board of Medical Specialists, The American Hospital Association, The American Medical Association, The Association of American Medical Colleges, and Council of Medical Specialty Societies.

⁶ American Council of Graduate Medical Education, *About Us*, available at: <https://www.acgme.org/About-Us/Overview> (last visited Sept. 10, 2019)

program. If a resident physician's program does not achieve ACGME accreditation by June 2020, he or she may also be able to transfer to another ACGME accredited program.⁷

The National Resident Matching Program

The National Resident Matching Program (NRMP) is a private, not-for-profit corporation established in 1952 to optimize the rank-ordered choices of applicants and program directors for residencies and fellowships. The NRMP is not an application processing service. Instead, it provides an impartial venue for matching applicants' and programs' preferences for each other using an internationally recognized mathematical algorithm.

The first Main Residency Match® ("Match") was conducted in 1952 when 10,400 internship positions were available for 6,000 graduating U.S. medical school seniors. By 1973, there were 19,000 positions for just over 10,000 graduating U.S. seniors. Following the demise of internships in 1975, the number of first-year post-graduate (PGY-1) positions declined to 15,700. The number of PGY-1 positions gradually increased through 1994 and then began to decline slowly until 1998. In 2019, there was an all-time high of 32,194 PGY-1 positions offered. The total number of positions offered, including, PGY-1 and second-year post-graduates (PGY-2), was also at an all-time high of 35,185.⁸

Beginning in 2014, osteopathic medical school graduates could participate in the Match, which opened up additional residency programs available to osteopathic medical graduates.⁹ In 2019, 6001 osteopathic candidates applied to the Match and 5077 matched – an 84.6 percent match rate.¹⁰ By June 2020, an osteopathic residency program will need to be accredited by ACGME to participate in the Main Residency Match.¹¹

All residents who have completed an AOA- or ACGME-accredited residency program are eligible for AOA board certification. AOA board certification is a quality marker for patients that highlights the commitment to the uniquely osteopathic approach to patient care and allows engagement in continuous professional development throughout a career. Requirements are slightly different for osteopathic medical physicians pursuing certification through the American Board of Medical Specialties (ABMS). The ABMS requires candidates' residency programs to have been ACGME-accredited for a specified amount of time. Requirements vary by specialty.¹²

⁷ American Osteopathic Association, *What does single GME mean for DO resident physicians?* available at: <https://osteopathic.org/residents/resident-resources/residents-single-gme/> (last visited Oct. 17, 2019).

⁸ The Match, National Resident Matching Program, Results and Data 2019 Main Residency Match, *About the NRMP*, pp. v, 1, available at https://mk0nrmp3oyqui6wqfm.kinstacdn.com/wp-content/uploads/2019/04/NRMP-Results-and-Data-2019_04112019_final.pdf (last visited Sept. 9, 2019).

⁹ The Accreditation Council for Graduate Medical Education, *Member Organizations*, available at: <https://www.acgme.org/About-Us/Member-Organizations>, (last visited Sept. 10, 2019).

¹⁰ *Supra* note 8.

¹¹ The Match, National Residency Match Program, *2020 Match Participation Agreement for Applicants and Programs*, available at: <https://mk0nrmp3oyqui6wqfm.kinstacdn.com/wp-content/uploads/2019/09/2020-MPA-Main-Residency-Match-for-Applicants-and-Programs.pdf> (last visited Sept. 10, 2019).

¹² *Id.*

III. Effect of Proposed Changes:

The bill amends s. 459.0055, F.S., to recognize the agreement between the AOA and the ACGME. Both organizations have committed to improving the patient care delivered by resident and fellow physicians today and in their future independent practice, and to do so in clinical learning environments characterized by excellence in care, safety, and professionalism, thereby creating a single path for GME.

This single path for GME allows osteopathic and allopathic medical school graduates to seek residencies and fellowship programs accreditation by ACGME. This will enable osteopathic medical school graduates, residents, and fellows to apply to the National Resident Match Program and participate in the Main Residency Match for internships, residencies, and fellowships, thereby creating more residency opportunities for osteopathic residents.

The bill deletes reference to the Board of Trustees of the AOA as an internship and residency accrediting organization during the transition to a single path for GME, while maintaining reference to the AOA, and repeals the BOOM's authority to accredit other internship programs upon a showing of good cause.

The bill will take effect upon becoming law.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 218 will have an insignificant fiscal impact on the Department of Health (department). The department will experience an increase in workload associated with applicants for licensure and costs associated with rulemaking that can be absorbed within existing resources.¹³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 459.0055 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 Health Policy on October 22, 2019:**

The CS makes technical changes and repeals the BOOM's authority to approve other internship programs upon a showing of good cause.

B. Amendments:

None.

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

¹³ Florida Department of Health, analysis of SB 218 (October 18, 2019), on file with the Senate Appropriations Subcommittee on Health and Human Services.

By the Committee on Health Policy; and Senator Harrell

588-00987-20

2020218c1

1 A bill to be entitled
 2 An act relating to licensure requirements for
 3 osteopathic physicians; amending s. 459.0055, F.S.;
 4 revising licensure requirements for persons seeking
 5 licensure or certification as an osteopathic
 6 physician; providing an effective date.
 7
 8 Be It Enacted by the Legislature of the State of Florida:
 9
 10 Section 1. Subsection (1) of section 459.0055, Florida
 11 Statutes, is amended to read:
 12 459.0055 General licensure requirements.—
 13 (1) Except as otherwise provided herein, any person
 14 desiring to be licensed or certified as an osteopathic physician
 15 pursuant to this chapter shall:
 16 (a) Complete an application form and submit the appropriate
 17 fee to the department;
 18 (b) Be at least 21 years of age;
 19 (c) Be of good moral character;
 20 (d) Have completed at least 3 years of preprofessional
 21 postsecondary education;
 22 (e) Have not previously committed any act that would
 23 constitute a violation of this chapter, unless the board
 24 determines that such act does not adversely affect the
 25 applicant's present ability and fitness to practice osteopathic
 26 medicine;
 27 (f) Not be under investigation in any jurisdiction for an
 28 act that would constitute a violation of this chapter. If, upon
 29 completion of such investigation, it is determined that the

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30 applicant has committed an act that would constitute a violation
 31 of this chapter, the applicant is ineligible for licensure
 32 unless the board determines that such act does not adversely
 33 affect the applicant's present ability and fitness to practice
 34 osteopathic medicine;
 35 (g) Have not had an application for a license to practice
 36 osteopathic medicine denied or a license to practice osteopathic
 37 medicine revoked, suspended, or otherwise acted against by the
 38 licensing authority of any jurisdiction unless the board
 39 determines that the grounds on which such action was taken do
 40 not adversely affect the applicant's present ability and fitness
 41 to practice osteopathic medicine. A licensing authority's
 42 acceptance of a physician's relinquishment of license,
 43 stipulation, consent order, or other settlement, offered in
 44 response to or in anticipation of the filing of administrative
 45 charges against the osteopathic physician, shall be considered
 46 action against the osteopathic physician's license;
 47 (h) Not have received less than a satisfactory evaluation
 48 from an internship, residency, or fellowship training program,
 49 unless the board determines that such act does not adversely
 50 affect the applicant's present ability and fitness to practice
 51 osteopathic medicine. Such evaluation shall be provided by the
 52 director of medical education from the medical training
 53 facility;
 54 (i) Have met the criteria set forth in s. 459.0075, s.
 55 459.0077, or s. 459.021, whichever is applicable;
 56 (j) Submit to the department a set of fingerprints on a
 57 form and under procedures specified by the department, along
 58 with a payment in an amount equal to the costs incurred by the

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Department of Health for the criminal background check of the applicant;

(k) Demonstrate that he or she is a graduate of a medical college recognized and approved by the American Osteopathic Association;

(l) Demonstrate that she or he has successfully completed an internship or a residency ~~a resident internship~~ of not less than 12 months in a program accredited hospital approved for this purpose by ~~the Board of Trustees of~~ the American Osteopathic Association or the Accreditation Council for Graduate Medical Education ~~any other internship program approved by the board upon a showing of good cause by the applicant~~. This requirement may be waived for an applicant who matriculated in a college of osteopathic medicine during or before 1948; and

(m) Demonstrate that she or he has obtained a passing score, as established by rule of the board, on all parts of the examination conducted by the National Board of Osteopathic Medical Examiners or other examination approved by the board no more than 5 years before making application in this state or, if holding a valid active license in another state, that the initial licensure in the other state occurred no more than 5 years after the applicant obtained a passing score on the examination conducted by the National Board of Osteopathic Medical Examiners or other substantially similar examination approved by the board.

Section 2. This act shall take effect upon becoming a law.



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

February 20, 2020

Senator Lizbeth Benacquisto
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Benacquisto,

I respectfully request that **SB 218 – Licensure Requirements for Osteopathic Physicians** be placed on the next available agenda for the Committee on Rules. SB 218 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,

A handwritten signature in cursive script that reads "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
☐ 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/20
Meeting Date

218
Bill Number (if applicable)

Topic Osteopathic Licensure

Amendment Barcode (if applicable)

Name Steve Winn

Job Title Executive Director

Address 2544 Blairstone Pines Dr.

Phone 878-7364

Street

Tallahassee

City

FL

State

32301

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Osteopathic 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
APPEARANCE RECORD

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

3/2/20

Meeting Date

SB 218

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jeff Scott

Job Title _____

Address 1930 Piedmont Dr. E.

Phone 850 224-6496

Street

Tallahassee

FL

32308

City

State

Zip

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: CS/CS/CS/SB 230

INTRODUCER: Rules Committee; Appropriations Committee; Health Policy Committee; and Senator Harrell

SUBJECT: Department of Health

DATE: March 4, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Fav/CS
2.	Howard	Kynoch	AP	Fav/CS
3.	Rossitto-Van Winkle	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 230 updates numerous provisions relating to health care practitioners and facilities regulated by the Department of Health (DOH), Division of Medical Quality Assurance (MQA). The bill:

- Provides that the Statewide Medical Director for Child Protection reports directly to the DOH's deputy secretary in charge of the state's Children's Medical Services Program and the medical director of each child protection teams reports directly to the statewide medical director;
- Substitutes the term "human immunodeficiency virus" (HIV) in place of "acquired immune deficiency syndrome" (AIDS) to broaden the scope of the DOH's regional patient care networks for persons with AIDS to also include persons with HIV;
- Grants rulemaking authority to the DOH for responsibilities relating to maximizing the use of existing programs and coordinating stakeholders and resources to develop a state strategic plan, including the process of selecting physicians under the Conrad 30 Waiver Program and to encourage qualified physicians to relocate to Florida and practice in medically underserved and rural areas;
- Increases the period of time a cancer center may participate as a Tier 3 cancer center, and is authorized to pursue a National Cancer Institute designation as a cancer center or a comprehensive cancer, from a maximum of six years to until June 30, 2024;

- Modifies the DOH's rule-making authority pertaining to minimal standards governing ground ambulance and vehicle equipment, supplies, design, and construction;
- Defines "useful beam" radiation as that portion of a radiation beam designed to focus on a specific target; and specifies the requirements for the maintaining and operating the useful beam radiation machine, as well as the conditions for use on humans;
- Requires the applicant's date of birth on health care professional licensure applications;
- Revises the DOH's health care practitioner licensing provisions to permit the DOH to issue a temporary license, that expires in 60 days, instead of 30 days, to a non-resident or non-citizen physician who has accepted a residency, internship, or fellowship in Florida and has not yet received a social security number;
- Deletes a health care practitioner's failure to repay student loans, as grounds for discipline by the DOH;
- Authorizes the DOH to issue medical faculty certificates, without examination, to full-time faculty at Nova Southeastern University or Lake Erie College of Osteopathic Medicine;
- Repeals the requirement that the Board of Medicine (BOM) conduct a review of organizations that board-certify physicians in dermatology;
- Updates the osteopathic internship and residency accrediting agencies to include the Accreditation Council for Graduate Medical Education (ACGME) and repeals the Board of Osteopathic Medicine's (BOOM) authority to approve other internship programs upon showing of good cause;
- Deregulates Registered Chiropractic Assistants (RCAs);
- Extends the requirement for the Florida Center for Nursing (FCN) to provide an implementation study and annual report on the availability of nursing programs and production of quality nurses to the Governor, the President of the Senate, and the Speaker of the House of Representatives until January 30, 2025;
- Allows a nursing education program seeking accreditation to apply to the Board of Nursing (BON) for a single extension, of not more than two years if the program meets specific criteria, and grants the BON rulemaking authority on criteria to qualify for the extension of time to become accredited;
- Grants rulemaking authority to the BON to establish standards of practice, including discipline and standards of practice for certified nursing assistants (CNA);
- Recognizes CNA certification in a U.S. territory or the District of Columbia for certification in Florida and eliminates the element of intent for violations of the practice act by CNAs;
- Defines the supplemental general dentistry education required for dental licensure applicants who have not graduated from a dental school accredited by the American Dental Association (ADA) Commission on Dental Accreditation (CODA), to exclude education in an advanced dental specialty;
- Repeals the requirement for Florida dentists and dental hygienists to grade dental and dental hygienist licensure examinations;
- Revives, reenacts, and amends statutory provisions relating to health access dental licenses, notwithstanding their repeal on January 1, 2020;
- Requires dentists and dental hygienists to report adverse incidents to the Board of Dentistry (BOD) and gives the BOD rule making authority;
- Authorizes an employee or independent contractor of a dental laboratory to engage in onsite consultation with a licensed dentist during a dental procedure and requires a dental laboratory to be inspected at least biennially;

- Requires an athletic trainer to work within his or her scope of practice as defined by the Board of Athletic Trainers (BOAT) and revises the educational and internship requirements for licensure;
- Requires the DOH to issue a single prosthetist-orthotist license to qualified applicants and establishes the educational requirements for dual registration;
- Revises massage therapy licensure requirements to:
 - Require passage of a Board of Massage Therapy (BMT) specified national examination;
 - Eliminate massage apprenticeships as a path to licensure by 2023; and
 - Revises the definition of a massage therapy “apprentice” to include only those persons approved by the BMT to study colonic irrigation under a licensed massage therapist;
- Updates the name of the accreditation body for psychology programs and revises the requirements for psychology licensure;
- Limits the Board of Clinical Social Work, Marriage and Family Therapists, and Mental Health Counseling to the issuance of only one additional internship registration;
- Revises the licensure requirements for Marriage and Family Therapists and Licensed Mental Health Counselors; and
- Deletes obsolete language, makes technical and conforming changes, and reenacts references related to the bill.

The bill has an insignificant negative impact on state revenues and expenditures, which can be absorbed within existing resources of the DOH.

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

II. Present Situation:

Child Protection Teams

Description

The Department of Health (DOH) currently contracts with 22 independent, community-based organizations that serve as child protection teams.¹ A child protection team is a group of professionals, directed by a physician, who receive referrals from the investigators of the Department of Children and Families (DCF) and sheriff’s offices when child abuse or neglect is alleged.² The teams perform medical evaluations, assess risks, and provide recommendations for child safety and support services.

Composition and Responsibilities

Each of the 22 teams operates under the oversight of a medical director who is a board-certified pediatrician with special training in child abuse and neglect. In the case of large geographical areas, some may have an associate medical director to ensure adequate coverage. The physician must be approved by Children’s Medical Services at the DOH. Teams consist of additional

¹ Florida Department of Health, *Senate Bill 256 Agency Analysis* (Jan. 8, 2019) (on file with the Senate Committee on Judiciary).

² Department of Health, Children’s Medical Services, *Child Protection Teams*, http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html and s. 39.303(3), F.S.

physicians, attorneys, advanced registered nurse practitioners, psychologists, physician assistants,³ registered nurses, team coordinators, support staff, case coordinators, and support data personnel.⁴

Each office must be available 24 hours per day, every day, to provide immediate medical diagnosis and evaluation, for consultations by phone, or for other assessment services. The groups that the teams target for assessments are children who may be physically abused, sexually abused, and those who lack health care, including medically neglected children.⁵

Services

When a child protection team accepts a referral from DCF or law enforcement, the team may provide these services:

- Medical diagnosis and evaluation services;
- Nursing assessments;
- Child and family social assessments;
- Multidisciplinary case staffings;
- Psychological and psychiatric diagnosis and evaluations;
- Specialized and forensic interviews; and
- Expert medical, psychological, and related professional testimony in court cases.⁶

Cases that must be referred to a Child Protection Team

The following cases involving child abuse, abandonment, or neglect that are reported to the Child Abuse Hotline must be referred to a child protection team:

- Head injuries, bruises to the head or neck, burns, or fractures in a child, regardless of age.
- Bruises that appear anywhere on a child who is five years old or younger.
- Alleged child sexual abuse.
- A sexually transmitted disease that occurs in a prepubescent child.
- Reported malnutrition or failure to thrive.
- Medical neglect.
- Instances of a child or sibling remaining in a home where a child has been pronounced dead on arrival at a hospital or a child has been injured and then died due to suspected abuse, abandonment, or neglect.
- Symptoms of serious emotional issues occurring in a child where emotional or other forms of abuse, abandonment, or neglect are suspected.⁷

³ Florida Department of Health, Children's Medical Services, *Child Protection Team Program Handbook*, pp. 6-7 (June 2015) http://www.floridahealth.gov/AlternateSites/CMS-Kids/providers/prevention/documents/handbook_cpt.pdf.

⁴ Id.

⁵ Id at p. 4

⁶ Id. at p. 6-7

⁷ Section 39.303(4), F.S.

Funding

The Child Protection Team Program receives funding through the DOH's Division of Children's Medical Services.⁸

Human Immunodeficiency Virus (HIV)

Human immunodeficiency virus (HIV)⁹ is a virus spread through certain body fluids that attacks the body's immune system, specifically the CD4 cells, often called T cells. Over time, HIV can destroy so many of these cells that the body cannot fight off infections and disease. Opportunistic infections or cancers take advantage of a very weak immune system, which can lead to acquired immune deficiency syndrome (AIDS).¹⁰

Currently there is no effective cure for a person infected with HIV, but with proper medical care, HIV can be controlled. The medicines used to treat HIV are antiretroviral drugs. If persons with HIV receive prescribed antiretroviral therapy (ART), their viral load (the amount of the HIV in their blood) can become undetectable.¹¹

When people get the HIV and do not receive treatment, they will typically progress through three stages of disease. ART helps people at all stages of the disease. Treatment can slow or prevent the progression from one stage to the next.

Acquired Immunodeficiency Syndrome (AIDS)

AIDS is the most severe phase of an HIV infection. Persons with AIDS have such badly damaged immune systems that they get an increasing number of severe illnesses, called opportunistic infections. Without treatment, persons with AIDS typically survive about three years. Common symptoms of AIDS include:

- Chills;
- Fever;
- Sweats;
- Swollen lymph glands;
- Weakness; and
- Weight loss.

Florida Aids Legislation

In 1988, the Florida Legislature enacted the predecessor of s. 381.0042, F.S., declaring AIDS the nation's and state's number one public health problem, noting that there were over 59,000 known cases in the U.S, and 4,226 in Florida.¹²

⁸ *Child Protection Team Program Handbook*, at p. 4 (June 2015) The Department of Health, Division of Children's Medical Services, Bureau of Child Protection and Special Technologies staff oversees the statewide Child Protection Team system.

⁹ Center for Disease Control and Prevention. HIV, *About HIV/AIDS*, available at <https://www.cdc.gov/hiv/basics/whatishiv.html> (last visited Feb. 6, 2020).

¹⁰ Center for Disease Control and Prevention. HIV, *About HIV/AIDS*, available at <https://www.cdc.gov/hiv/basics/whatishiv.html> (last visited Feb. 6, 2020).

¹¹ Center for Disease Control and Prevention. HIV, *About HIV/AIDS*, available at <https://www.cdc.gov/hiv/basics/whatishiv.html> (last visited Feb. 6, 2020).

¹² CS/HB 1519, Bill Analysis, May 25, 1988 on file with the Senate Health Policy Committee.

Section 381.0042, F.S., authorizes the DOH to establish AIDS patient care networks in each region of the state where the number of cases of AIDS and other human immunodeficiency virus infections justifies the establishment of cost-effective regional patient care networks. The networks are to be delineated by the DOH's rule which must take into account natural trade areas and centers of medical excellence that specialize in the treatment of AIDS, as well as available federal, state, and other funds.

Each patient care network must include representation of the following:

- Persons with HIV;
- Health care providers;
- Business interests;
- The DOH, including its county health departments and other possible agency resources; and
- Local government units.

Each network must plan for the care and treatment of persons with AIDS, and AIDS related complex, in a cost-effective, dignified manner that emphasizes outpatient and home care. Once each year, each network must make its recommendations concerning the needs for patient care to the DOH.

The Conrad 30 Program

The Conrad 30 Program, authorized by the U.S. Department of State and the U.S. Citizenship and Immigration Services, addresses the shortage of qualified doctors in medically underserved areas. The program allows a medical doctor holding a J-1 Visa to apply for a waiver of the two-year residence requirement upon completion of the J-1 Visa exchange visitor program under s. 214(1) of the Immigration and Nationality Act.

State public health agencies are authorized to sponsor up to 30 physicians annually to serve in a designated U.S. Department of Health and Human Services (HHS) Health Professional Shortage Area (HPSA), Medically Underserved Area (MUA), or Medically Underserved Populations (MUP). The program requires a medical doctor holding a J-1 Visa who wishes to participate in a Conrad 30 Program to:

- Agree to be employed full-time in H-1B nonimmigrant status at a health care facility located in an area designated by the U.S. HHS as a HPSA, MUA, or MUP;
- Obtain a contract from the health care facility located in an area designated by U.S. HHS as an HPSA, MUA, or MUP;
- Obtain a "no objection" letter from his or her home country if the home government funded his or her exchange program; and
- Agree to begin employment at the health care facility within 90 days of receipt of the waiver, not the date his or her J-1 visa expires.

The DOH has administered Florida's Conrad 30 Waiver Program since 1994. In recent years, the number of applicants has exceeded the maximum number of 30 slots allowed by the program. The DOH does not have explicit rulemaking authority to establish additional criteria for selecting

the Conrad 30 applicants for sponsorship, thereby limiting the DOH's ability to place qualified foreign physicians in areas of highest need.¹³

Florida Consortium of National Cancer Institute Centers Program

Florida-based cancer centers are authorized in s. 381.915, F.S., to seek National Cancer Institute (NCI) designation to enhance the quality and competitiveness of cancer care in Florida and further a statewide biomedical research strategy directly responsive to the health needs of Florida's citizens. Beginning in 2017, and every 3 years thereafter, the DOH, in conjunction with participating cancer centers, must submit a report to the Cancer Control and Research Advisory Council on specific metrics relating to cancer mortality and external funding for cancer-related research in the state¹⁴

The NCI Cancer Centers Program was created as part of the National Cancer Act of 1971 and is one of the anchors of the nation's cancer research effort. Through this program, NCI recognizes centers around the country that meet rigorous standards for transdisciplinary, state-of-the-art research focused on developing new and better approaches to preventing, diagnosing, and treating cancer. The NCI funds 71 NCI-Designated Cancer Centers, located in 36 states and the District of Columbia, to deliver cutting-edge cancer treatments to patients. Florida currently has two NCI Designated Cancer Centers:

- Moffitt Cancer Center, Tampa; and
- Sylvester Comprehensive Cancer Center, Miami.¹⁵

During Fiscal Year 2019-2020, \$62.2 million is appropriated for the Florida Consortium of NCI Centers Program, and proviso language designates one entity as a Tier One comprehensive cancer center, the H. Lee Moffitt Cancer Center and Research Institute and two entities, the University of Miami (UM) Sylvester Comprehensive Cancer Hospital and the University of Florida (UF) Health Shands Cancer Hospital, as a Tier Three cancer center seeking designation as a NCI cancer center or comprehensive cancer center. In July 2019, the University of Miami (UM) Sylvester Comprehensive Cancer Hospital achieved designation as a NCI-Designated Cancer Center.¹⁶

The funding for the program is distributed based on a competitive statutory formula. The Fiscal Year 2019-2020 appropriation of \$62.2 million is dispersed as follows: Moffitt, \$25.3 million; UF, \$19.5 million; and UM, \$17.4 million. Under current statutory requirements, the University of Florida Health Shand's Caner Center was given six years, or until June 30, 2020, to achieve NCI designation. Otherwise, the NCI-designation incentive funding would revert to the state's other NCI designated cancer centers. While much progress has been made towards the

¹³ Florida Department of Health, *Senate Bill 188 Analysis* (2019) (on file with the Senate Committee on Health Policy), p. 2.

¹⁴ Florida Department of Health, Provider and partner Resources., Research, National Cancer Institute, *Florida Consortium of National Cancer Institute Centers Program*, available at <http://www.floridahealth.gov/provider-and-partner-resources/research/index1.html> (last visited Feb. 6, 2020)

¹⁵ National Cancer Institute, *NCI-Designated Cancer Centers*, available at: <https://www.cancer.gov/research/nci-role/cancer-centers> (last visited Feb. 6, 2020).

¹⁶National Cancer Institute, *Sylvester Comprehensive Cancer Center*, available at: <https://www.cancer.gov/research/nci-role/cancer-centers/find/sylvester-miami> (last visited Feb. 6, 2020).

designation, the UF Health Shands Cancer Hospital needs additional time given the rigorous process involved to receive NCI designation.¹⁷

Emergency Medical Transport Services

In 1973, the Florida Legislature passed and enacted what is known today as the Raymond H. Alexander, M.D., Emergency Medical Transportation Services Act. The Legislature recognized the need for the uniform and systematic provision of emergency medical services to save lives and reduce disability associated with illness and injury.

The emergency medical services (EMS) system of care must be equally capable of assessing, treating, and transporting children, adults, and elderly persons. Today, the Emergency Medical Services Section of the DOH is responsible for the licensure and oversight of over 60,000 emergency medical technicians and paramedics, more than 270 advanced and basic life support agencies, and over 4,500 EMS vehicles. In addition, the section certifies 911 public safety telecommunicators.¹⁸

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 DOH, including:

- The licensure of the emergency medical 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), or air ambulance services (AAS).

Every person or entity owning, operating, conducting, maintaining, or engaging in the business of providing prehospital or inter-facility ALS or BLS transportation services must be licensed before offering such service to the public. The DOH issues licenses for the operation of BLS and ALS services for applicants meeting the following requirements:

- Payment of an application fee;
- Ambulances, equipment, vehicles, personnel, communications systems, staffing patterns, and services of the applicant must meet the requirements for either a BLS service or an ALS service, whichever is applicable;
- Proof of:
 - Personal injury and property damage insurance coverage, in limits set by the DOH, sufficient to cover claims arising out of the injury or death of persons and property damages for which the owner, the business or service would be liable; or
 - Certificate of self-insurance evidencing an adequate self-insurance plan approved by the Office of Insurance Regulation; and
- Certificate of public convenience and necessity from each county in which the applicant will operate.¹⁹

¹⁷ See ch. 2014-51, 2-3, Laws of Fla.

¹⁸ Department of Health, Licensing and Regulation, *Emergency Medical Services System*, available at: <http://www.floridahealth.gov/licensing-and-regulation/ems-system/index.html> (last visited Feb. 6, 2020).

¹⁹ Section 401.25, F.S.

Each BLS and ALS transportation service must also employ or contract with a medical director to supervise and assume direct responsibility for the medical performance of the emergency medical technicians and paramedics operating for that EMS system. The medical director must be:

- A licensed physician;
- A corporation, association, or partnership composed of physicians; or
- Physicians employed by a hospital that delivers in-hospital EMS and employs or contracts with physicians specifically for that purpose.²⁰

The medical director must perform the following duties:

- Advising;
- Consulting;
- Training;
- Counseling; and
- Overseeing of services, including quality assurance.

The medical director's mandated duties do not include administrative and managerial functions. The DOH has rule making authority to regulate medical directors.²¹

Radiation Machines and Components

The DOH's, Division of Emergency Preparedness and Community Support. Bureau of Radiation Control, is charged, through ch. 404, F.S., the Florida Radiation Protection Act, to institute and maintain a program to permit development and utilization of sources of radiation for purposes consistent with the health and safety of the public. The Bureau's activities include: responding to radiation incidents, inspecting facilities that contain radiation sources, issuing certificates and licenses to businesses and individuals who possess and use radiation sources, conducting environmental sampling and radiochemistry, and partnering with law enforcement and other radiation agencies to conduct radiation monitoring and surveillance.²²

Ionizing Radiation Machines

Medical radiation machines make up the largest man-made source of radiation exposure to the public. In 1958, the state Board of Health began a program to inspect radiation machines. Today over 18,000 facilities, including hospitals, doctors' offices, universities, and corporations, have registered more than 50,000 X-ray machines with the DOH.

The radiation machine program works to reduce exposure to workers and the public from machines that emit radiation for medical, scientific, educational, and industrial purposes. The program accomplishes this by:

- Stopping unauthorized uses and users;

²⁰ Section 401.265(1), F.S.

²¹ Id.

²² Florida Department of Health, Statement of Agency Organization and Operation, Organization and Responsibilities Statement of Agency Organization and Operation, Division of Emergency Preparedness and Community Support, *Bureau of Radiation Control*, (August 2017) available at: <http://www.floridahealth.gov/about/documents1/doh-statement-of-agency-organization.pdf> (last visited Feb. 6, 2020).

- Preventing accidental or unintended exposures;
- Ending ineffective or inappropriate uses of radiation; and
- Reducing the amount of exposure needed to accomplish the task.

One way these goals are achieved is through on-site inspections. The DOH regularly inspects each radiation machine according to a schedule that varies depending upon how the machine is used. This schedule ranges from annually for mammography and cancer therapy machines to every five years for dental and podiatry machines. DOH staff performed over 13,000 inspections last year. During these inspections they:

- Check the machine to see that it operates as it was designed,
- Ensure the people who use the machine are qualified to do so, and
- Verify the machine is used safely and appropriately.

If a machine poses an immediate threat to the public health, the DOH requests its immediate removal from service. For less serious problems, the DOH gives machine owners 90 days to correct the deficiencies.²³

The Department of Health's General Health Care Professional Licensing Authority

The DOH's general licensing provisions, authorized under s. 456.013, F.S., require every applicant for licensure to apply to the DOH before sitting for a licensure examination. Section 456.013, F.S., also requires all applications for licensure to be submitted to the DOH on a form that may be submitted electronically. The requirement that an applicant submit his or her application for licensure before sitting for the licensure examination was initially imposed when the DOH developed and administered its own examinations. A strict statutory interpretation of this section requires an applicant, even one who has already passed the licensure examination before applying for a license, to take the examination after applying to the DOH for licensure.

If an applicant has not been issued a social security number at the time of application because the applicant is not a U.S. citizen or resident, the DOH may process the application using a unique personal identification number. If the applicant is otherwise eligible for licensure, the DOH may issue a temporary license, which expires in 30 days after issuance unless a social security number is obtained and submitted in writing to the DOH. Upon receipt of the applicant's social security number, the DOH must issue a new license, which expires at the end of the current biennium.²⁴

Section 456.017, F.S., was amended in 2005 to provide that neither a board²⁵ nor the DOH could administer a state-developed written examination if a national examination was certified by the DOH. National examinations have been certified for all professions, and the requirement for applicants to apply to the DOH to take the state examination has become obsolete. All state examinations have ceased.

²³Department of Health, Environmental Health, Radiation Control, Ionizing Radiation Machines (X-ray), (Oct. 25, 2019) available at <http://www.floridahealth.gov/environmental-health/radiation-control/ion/index.html> (last visited Feb. 6, 2020).

²⁴ Section 456.01 (1)(b), F.S.

²⁵ 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 department or, in some cases, within the department's Division of Medical Quality Assurance.

The provision also requires an applicant to provide his or her social security number (SSN). However, there is no statutory requirement that an applicant provide his or her date of birth. An applicant's birth date is a requirement to fulfill other statutory licensure requirements under ss. 456.039 and 456.0135, F.S., for fingerprinting and fingerprint retention by the Agency for Health Care Administration (AHCA) and the Care Provider Background Screening Clearinghouse.

According to the DOH, the Joint Administrative Procedures Committee (JAPC) has objected to applications for licensure that contained a data field for the applicant's date of birth. The JAPC indicates that the DOH has no statutory authority to ask for a date of birth. To ensure accurate matches through the Florida Department of Law Enforcement, the Federal Bureau of Investigation, and the Sex Offender Registry, the DOH must have available three identifiers: the name, social security number, and date of birth.²⁶

Student Loans Available to Health Care Practitioners

Federal student loan programs were first established in the mid-twentieth century to increase the supply of skilled labor, promote economic and technological development, and provide upward socioeconomic mobility.²⁷ Federal student loans were first offered in 1958 under the National Defense Education Act to help the United States compete with other countries, especially the Soviet Union with the launch of the satellite *Sputnik*. High school students who showed promise in mathematics, science, engineering, and foreign language, or those who wanted to be teachers, were offered grants, scholarships, and loans.²⁸ Federal student loans have provided low-cost credit to millions of students, helped increase educational attainment, while holding administrative costs lower than those of the private sector, and generating a profit for the federal government.²⁹

State Student Loans Available to Health Care Practitioners

Florida Health Service Corps

Florida backed health care student loans, and scholarships with service obligation, began in 1992 with the creation of the Florida Health Services Corps (FHSC), to encourage qualified medical professionals to practice in underserved locations where there are shortages of such personnel. The FHSC was developed by the DOH with the Florida Department of Education (FDOE) and the State University System. The DOH was to award scholarships to qualified students studying medicine, chiropractic, nursing, or dentistry. The program required a student receiving a scholarship to accept an assignment in a public health care program or work in a specific community located in a medically underserved area upon graduation for one year for each school year of financial assistance, up to a maximum of three years.

²⁶ *Id.*, at p. 2.

²⁷ Michael Simkovic, *Risk-Based Student Loans*, 70 Wash. & Lee L. Rev. 527 (2013), available at <https://scholarlycommons.law.wlu.edu/wlulr/vol70/iss1/8> (last visited Feb. 6, 2020).

²⁸ National Defense Education Act of 1958, Pub. L. 85 – 864, 72 Stat. 1580, 20 U.S.C. 401 et seq., available at <https://www.govinfo.gov/content/pkg/STATUTE-72/pdf/STATUTE-72-Pg1580.pdf> (last visited Feb, 2020).

²⁹ *Supra* note 1.

The financial penalties for noncompliance with the participation requirements were determined in the same manner as in the National Health Service Corps (NHSC) scholarship program.³⁰ Noncompliance with participation requirements also resulted in ineligibility for professional licensure under chs. 458, 459, 460, 464, 465, and 466, F.S. For a participant unable to complete his or her service obligation for reasons beyond his or her control, such as a disability, the penalty was the actual amount of financial assistance provided to the participant. The financial penalties collected by the DOH were deposited into the FHSC Trust Fund and used to provide additional scholarship and financial assistance.^{31, 32}

The FHSC was modeled after the NHSC. It offered loan repayment and scholarships for health professionals in return for service in public health care programs or underserved areas. This program was not funded after 1996 and was repealed in 2012.³³ The Office of Student Financial Assistance (OSFA) within the FDOE is the designated guaranty agency for the state of Florida for many years for the Federal Family Education Loans.³⁴

In 2002, the Florida Legislature created the Student Loan Program. Section 1009.85, F.S., required the State Board of Education to adopt rules necessary for participation in the guaranteed student loan program, as provided by the Higher Education Act of 1965, as amended. The intent of this legislation was to authorize student loans when Florida, through the FDOE, become an eligible lender under the provisions of the applicable federal laws providing for the guarantee of loans to students and the partial payment of interest on such loans by the United States Government.³⁵

In 2002, the Legislature revised the grounds for disciplinary action against health care practitioners who failed to pay student loans by amending s. 456.072(1)(k), F.S., and created s. 456.074(4), F.S., to enforce these provisions. When amending s. 456.072(1)(k), F.S., and enacting s. 456.074(4), F.S., the 2002 Legislature made the following specific findings:

- The U.S. Department of Health and Human Services reported 9,454 health care practitioners in the nation, and 556 health care practitioners in Florida, had defaulted on educational loan or service scholarship obligations;
- The U.S. Department of Health and Human Services reported that these defaulters cost taxpayers over \$694 million, of which \$45.6 million was attributable to Florida health care practitioners;
- Needy communities lost the services of essential clinicians when practitioners fail to meet their service obligations;

³⁰ The National Health Service Corps (NHSC) Scholarship Program, enacted by Public Law 94- 484 on October 12, 1976, is a program established to bring health care to regions of the country that have critical shortages of health personnel. See The U.S. Department of Health and Human Services, Health Resources & Services Administration, *National Health Services Corps*, available at: <https://bhwh.hrsa.gov/loans-scholarships/nhsc> (last visited Feb. 6, 2020).

³¹ Chapter 92-33, s. 111, Laws of Fla.

³² Section 381.0302, (1992 – 2012), F.S.

³³ Chapter 2012-184, s. 45, Laws of Fla.

³⁴ The Department of Education, Office of Student Financial Assistance, *FFELP Home*, available at: <http://www.floridastudentfinancialaid.org/FFELP/> (last visited Feb. 6, 2020).

³⁵ Sections 1009.78 – 1009.88, F.S.

- Defaulters had received the substantial economic benefit of a health practitioner career education at taxpayer expense;
- It was imperative that defaulters be required to honor their service obligations;
- Because health care practitioners are licensed by the states and not the federal government, it was anticipated that state licensure discipline of the defaulters would motivate the defaulters to honor their commitments and deter others from defaulting on their student loans and service obligations;
- Taxpayers should not have to foot the bill for individuals who had reneged on the repayment obligation of a federal or state loan or scholarship which gave them access to a career as a health care practitioner;
- Defaulters had been, or would be, excluded from participating in Medicare and Medicaid programs and therefore unable to practice in many of the neediest and most underserved areas;
- Defaulters would not be practicing as health care practitioners had the programs not been available to help finance their education; and, while it was not possible to “repossess” the education these programs allowed them to obtain, it was possible to “repossess” the results of that education by suspending their ability to practice through suspension of their licenses; and
- Florida law at that time provided recourse only for failing to repay certain state student loans through s. 381.0302, F.S., and did not address federal educational loan and service scholarship defaulters.³⁶

In 2010, with the passage of the federal Health Care and Education Reconciliation Act and the Health Care and Education Reconciliation Act, the FDOE, through the OSFA, stopped guaranteeing student loans with first disbursement dates after July 1, 2010. For student loans that had first disbursements dates before July 1, 2010, the OSFA continued to provide support for the life of the loans as long as the loans remained in the state’s portfolio, and FDOE remained the designated guaranty agency for Florida.³⁷

Health Care Practitioner Regulation

The DOH is charged with the regulation of health practitioners for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA), is responsible for the boards and professions within the DOH.³⁸ The health care practitioners licensed by the DOH include the following:

- Acupuncturist;³⁹
- Allopathic physicians and physician assistants;⁴⁰
- Osteopathic physicians and physician assistants;⁴¹
- Chiropractic physicians, physician assistants, and registered chiropractic assistants;⁴²

³⁶ Chapter 2002-254, Preamble, Laws of Fla.

³⁷ The Department of Education, Office of Student Financial Assistance (OSFA), The Federal Family Education Loan Program, *FFELP Home*, available at <http://www.floridastudentfinancialaid.org/FFELP/> (last visited Oct. 21, 2019).

³⁸ Section 20.43, F.S.

³⁹ Chapter 457, F.S.

⁴⁰ Chapter 458, F.S.

⁴¹ Chapter 459, F.S.

⁴² Chapter 460, F.S.

- Podiatric physicians;⁴³
- Naturopathic physicians;⁴⁴
- Optometrists;⁴⁵
- Advanced practice registered nurses, registered nurses, licensed practical nurses and certified nursing assistant;⁴⁶
- Pharmacists;⁴⁷
- Dentists, dental hygienist and dental laboratories;⁴⁸
- Midwives;⁴⁹
- Speech and language pathologists;⁵⁰
- Audiologists;⁵¹
- Occupational therapists;⁵²
- Respiratory therapists;⁵³
- Dieticians and nutritionists;⁵⁴
- Athletic trainers;⁵⁵
- Orthotists, prosthetists, and pedorthists;⁵⁶
- Electrologists;⁵⁷
- Massage therapists;⁵⁸
- Clinical laboratory personnel;⁵⁹
- Medical physicists;⁶⁰
- Opticians;⁶¹
- Hearing aid specialists;⁶²
- Physical therapists;⁶³
- Psychologists and school psychologists;⁶⁴ and
- Clinical social workers, mental health counselors and marriage and family therapists.⁶⁵

⁴³ Chapter 461, F.S.

⁴⁴ Chapter 462, F.S.

⁴⁵ Chapter 463, F.S.

⁴⁶ Chapter 464, F.S.

⁴⁷ Chapter 465, F.S.

⁴⁸ Chapter 466, F.S.

⁴⁹ Chapter 467, F.S.

⁵⁰ Part I, Ch. 468, F.S.

⁵¹ *Id.*

⁵² Part III, Chapter 468, F.S.

⁵³ Part V, Chapter 468, F.S.

⁵⁴ Part X, Chapter 468, F.S.

⁵⁵ Part XIII, Chapter 468, F.S.

⁵⁶ Part XIV, Chapter 468, F.S.

⁵⁷ Chapter 478, F.S.

⁵⁸ Chapter 480, F.S.

⁵⁹ Part II, ch. 483, F.S.

⁶⁰ Part III, ch. 483, F.S.

⁶¹ Part I, ch. 484, F.S.

⁶² Part II, ch. 484, F.S.

⁶³ Chapter 486, F.S.

⁶⁴ Chapter 490, F.S.

⁶⁵ Chapter 491, F.S.

Section 456.0721, F.S., requires the DOH to obtain from the U. S. Department of Health and Human Services (now the U.S. DOE) information necessary to investigate and prosecute health care practitioners for failing to repay a student loan or comply with scholarship service obligations pursuant to s. 456.072(1)(k), F.S. The DOH is further required to obtain from the U.S. Department of Health and Human Services (now U.S. DOE) a list of default health care practitioners each month, along with the information necessary to investigate a complaint. The DOH may obtain evidence to support the investigation and prosecution from any financial institution or educational institution involved in providing the loan or education to a practitioner.

Section 456.0721, F.S., also requires the DOH to report to the Legislature, as part of its annual report, the number of practitioners in default, along with the results of the DOH's investigations and prosecutions, and the amount of fines collected from the practitioners prosecuted for violating s. 456.072(1)(k), F.S. The DOH Annual Reports to the Legislature from state fiscal year 2005-06, (the first year health care practitioners student loan defaults were reported) through 2017-18, show the following data on health care practitioners student loan defaults.

Health Care Providers Student Loan Defaults for Fiscal Years 2005 through 2018

State Fiscal Year	Reports of Defaults Received	Investigations Complete	Emergency Suspension Orders Issued	Probable Cause Found	No Probable Cause Found	Disciplinary Actions Taken	Amount of Fines Collected
2017-18	850	76	26	21	1	0	\$0
2016-17	1	1	1	1	0	0	\$0
2015-16	0	1	0	0	0	0	\$0
2014-15	1	0	0	0	0	1	\$0
2014-13	1	0	1	1	0	0	\$0
2013-12	2	2	1	1	0	1	\$2,500
2012-11	2	1	0	0	1	0	\$0
2011-10	19	0	0	0	0	2	\$16,216
2010-09	11	2	2	3	0	2	\$7,500
2009-08	13	4	3	4	0	2	\$6,000
2008-07	16	1	0	0	0	2	\$9,190
2007-06	0	3	1	2	5	4	\$29,307
2006-05	13	5	6	4	2	7	\$23,886
TOTAL	929	96	41	16	9	21	\$94,600

Section 456.074(4), F.S., further requires the DOH, upon receipt of information that a Florida-licensed health care practitioner has defaulted on his or her student loan issued or guaranteed by the state or the federal government, to notify the licensee by certified mail that he or she is subject to immediate suspension of his or her professional license unless, within 45 days after the date of mailing, the licensee provides proof of new payment terms between all parties to the loan. If, after 45 days from the date of mailing the certified notice, the licensee has failed to provide proof of new student loan payment terms, the DOH must issue an emergency order suspending the licensee's license.

Sections 456.0635(2)(e) and (3)(e), F.S., also require each board, or the DOH if there is no board, to refuse to admit a candidate to any examination, refuse to issue a license, certificate, or

registration, and refuse to renew a license, certificate or registration, if the candidate or practitioner is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities (LEIE).

Section 1128(b)(14) of the Social Security Act and 42 U.S.C. ss. 1320a-7(b)(14), provide that a default on a health education loan or scholarship obligation is permissive grounds for being placed on the LEIE; placement on the exclusion list continues until the default or obligation is resolved. Paragraphs 456.0635(2)(e) and (3)(e), F.S., are not permissible, but mandatory, and require the boards, or the DOH, to refuse to issue, or renew, licenses, certificates, or registrations to a person in default on his or her health education loan or scholarship obligation.

Other States with Licensure Suspension Laws for Student Loan Defaulters

Seven states—Alaska, Hawaii, Iowa, Kentucky, Massachusetts, Tennessee, and Texas—have laws requiring all occupational boards to revoke licenses for defaulting on any type of federal or state education loan. Louisiana will revoke a license only if the professional has defaulted on an education loan issued by the state.⁶⁶

Prior to July 1, 2019, Georgia was included in the above group. During the 2019 Georgia legislative session, the Georgia passed SB 214, which amended the Official Code of Georgia to prohibit a professional licensing board from suspending a person licensed by that board because:

- He or she was a borrower in default under the Georgia Higher Education Loan Program as determined by the Georgia Higher Education Assistance Corporation; or
- He or she had been certified by any entity of the federal government for nonpayment or default or breach of a repayment or service obligation under any federal educational loan, loan repayment, or service conditional scholarship program.⁶⁷

Five states—Arkansas, California, Mississippi, Minnesota and Florida—revoke the licenses only of health care professionals for defaulting on education loans. In Arkansas and Mississippi, the laws are even narrower, applying only to state health care education loans and scholarship agreements. For example, defaulting physicians in Arkansas may have their license suspended for “a period of years equivalent to the number of years that the recipient is obligated to practice medicine in a rural area” if they default on an Arkansas Rural Medical Practice Student Loan.⁶⁸

Two states—Iowa and South Dakota—revoke all state-issued licenses, including driver's licenses and recreational hunting licenses.⁶⁹

Medical Specialists

A physician licensed under ch. 458, F.S., may not hold himself or herself out as a board-certified specialist unless the physician has received formal recognition as a specialist from a specialty board of the American Board of Medical Specialties or other recognizing agency that has been

⁶⁶ Wagner, Andrew; National Conference of State Legislatures, *License Suspension for Student Loan Defaulters*, Vol. 26, No. 40, 2018, available at: <http://www.ncsl.org/research/labor-and-employment/license-suspension-for-student-loan-defaulters.aspx> (last visited Feb. 6, 2020).

⁶⁷ Section 43-1-29, *Suspension of license for nonpayment of student loans prohibited*, Official Code of Georgia

⁶⁸ *Supra* note 93.

⁶⁹ *Supra* note 93.

approved by the Board of Medicine (BOM). A physician may not hold himself or herself out as a board-certified specialist in dermatology unless the recognizing agency, whether authorized in statute or by rule, is triennially reviewed and reauthorized by the BOM.⁷⁰

Medical Faculty Certificates

To become a licensed medical doctor in Florida, an individual generally has two paths to licensure: licensure by examination⁷¹ or licensure by endorsement.⁷² However, s. 458.3145, F.S., provides another limited path to practice in Florida by teaching in a program of medicine. Under s. 458.3145, F.S., the DOH is authorized to issue a medical faculty certificate to a qualified medical physician to practice in conjunction with his or her full-time faculty position at a medical school, if the physician has met specified criteria in current law and accepted a full-time faculty appointment to teach at the following programs in medical schools with campuses in Florida:

- University of Florida;
- University of Miami;
- University of South Florida;
- Florida State University;
- Florida International University;
- University of Central Florida;
- Mayo Clinic College of Medicine and Science in Jacksonville, Florida;
- The Florida Atlantic University; or
- The Johns Hopkins All Children's Hospital in St. Petersburg, Florida.⁷³

The list does not include any medical schools for osteopathic physicians with campuses in Florida.

Currently there are 58 physicians holding medical faculty certificates in Florida, with nine of those residing out of state.⁷⁴

Osteopathic Physicians

There are two types of medical physicians fully licensed to practice in Florida. Those holding the M.D. degree – doctor of allopathic medicine – licensed under ch. 458, F.S., and those holding the D.O. degree – doctor of osteopathic medicine – licensed under ch. 459, F.S. Both types of physicians are licensed in Florida to perform surgery and prescribe medicine in hospitals, clinics, and private practices, as well as throughout the U.S. Osteopathic physicians offer all the same services as M.D.s.

⁷⁰ Section 458.3312, F.S.

⁷¹ See s. 458.311, F.S., and Florida Board of Medicine, *Medical Doctor - Unrestricted*, available at <http://flboardofmedicine.gov/licensing/medical-doctor-unrestricted> (last visited Feb. 6, 2020).

⁷² See s. 458.313, F.S., and Board of Medicine, *Medical Doctor - Unrestricted*, available at <http://flboardofmedicine.gov/licensing/medical-doctor-unrestricted>, (last visited Feb. 6, 2020).

⁷³ Section 458.3145(1)(i), F.S.

⁷⁴ Florida Dep't of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2017-2018*, p. 16, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-1718.pdf> (last visited Feb. 6, 2020).

Osteopathic physicians can specialize in every recognized area of medicine, from neonatology to neurosurgery, but more than half of all osteopathic physicians practice in primary care areas, such as pediatrics, general practice, obstetrics/gynecology, and internal medicine.⁷⁵

Osteopathic Residencies and Florida Licensure

After acquiring a four-year undergraduate college degree with requisite science classes, students are accepted into one of the nation's 21 osteopathic medical schools accredited by the Bureau of Professional Education of the American Osteopathic Association (AOA). Following graduation, osteopathic physicians complete an approved 12-month internship. Interns rotate through hospital departments, including internal medicine, family practice, and surgery. They may then choose to complete a residency program in a specialty area, which requires two to six years of additional training.⁷⁶

Any person desiring to be licensed, or certified, as an osteopathic physician in Florida must:

- Submit an application with a fee;
- Be at least 21 years of age;
- Be of good moral character;
- Have completed at least three years of pre-professional postsecondary education;
- Have not previously committed any act that would constitute a violation of ch. 459, F.S.;
- Not be under investigation anywhere for an act that would constitute a violation of ch. 459, F.S.;
- Have not been denied a license to practice osteopathic medicine, or had his or her osteopathic medicine license revoked, suspended, or otherwise acted against by any jurisdiction;
- Have met the criteria for:
 - A limited license under s. 459.0075, F.S.;
 - An osteopathic faculty certificate under s. 459.0077, F.S.; or
 - A resident physician, intern, or fellow under s. 459.021, F.S.;
- Demonstrate that he or she is a graduate of a medical college recognized and approved by the AOA;
- Demonstrate that he or she has successfully completed a resident internship of not less than 12 months in a hospital approved by the Board of Trustees of the AOA or any other internship program approved by the Board of Osteopathic Medicine (BOOM) upon a showing of good cause; and
- Demonstrate that he or she has achieved a passing score, established by rule of the BOOM, on all parts of the examination conducted by the National Board of Osteopathic Medical Examiners or other examination approved by the BOOM no more than five years before making application.⁷⁷

⁷⁵ Florida Osteopathic Medical Association, *Osteopathic Medicine*, available at: <http://www.foma.org/osteopathic-medicine.html> (last visited Feb. 6 2020).

⁷⁶ *Id.*

⁷⁷ Section 459.0055, F.S.

The Accreditation Council for Graduate Medical Education (ACGME)

The ACGME is a non-profit corporation whose mission is to improve health care and population health by assessing and advancing the quality of resident physicians' graduate medical education through accreditation. Accreditation is achieved through a voluntary process of evaluation and review based on published accreditation standards. ACGME accreditation provides assurance that a sponsoring institution or program meets the quality standards (institutional and program requirements) of the specialty or subspecialty practice(s) for which it prepares its graduates. The ACGME accreditation is overseen by a review committee made up of volunteer specialty experts from the field that set accreditation standards and provide peer evaluation of sponsoring institutions and specialty and subspecialty residency and fellowship programs.⁷⁸

The ACGME was established by five medical organizations in 1981⁷⁹ and, in 2014, was joined by the AOA and the American Association of Colleges of Osteopathic Medicine. A primary responsibility of each of the organizations is to nominate individuals to be considered for membership on the ACGME Board of Directors. The ACGME board currently includes 24 members nominated by member organizations, two resident members, three public directors, four at-large directors, the chair of the Council of Review Committee Chairs, and two non-voting federal representatives.

The ACGME sets the standards for graduate medical education (GME) and renders residency accreditation decisions based on compliance with those standards. The member organizations are corporately separate from the ACGME and do not participate in accreditation, pay dues, or make any other monetary contribution to the ACGME. In academic year 2018-2019, there were approximately 11,700 ACGME-accredited residency and fellowship programs in 181 specialties and subspecialties at approximately 850 sponsoring institutions. There were approximately 140,500 active full and part time residents and fellows. One out of seven active physicians in the United States is a resident or fellow.⁸⁰

By June 2020, all osteopathic residency programs for GME will need to be ACGME accredited. As the AOA guides residency programs through the process, resident physicians will be protected throughout the transition. If a residency program does not achieve ACGME accreditation by June 2020, a resident who has not completed the required training will be able to complete AOA-accredited training and advance to AOA board eligibility. This is the result of an agreement between the AOA, the ACGME, and the American Association of Colleges of Osteopathic Medicine (AACOM) that gives the AOA restricted authority to extend the AOA accreditation date to allow any remaining resident physicians to finish training in an accredited

⁷⁸ American Council of Graduate Medical Education, *What We Do*, available at <https://www.acgme.org/What-We-Do/Overview> (last visited Feb. 6, 2020).

⁷⁹ American Council of Graduate Medical Education, *Member Organizations*, available at <https://www.acgme.org/About-Us/Overview/Member-Organizations> (last visited Feb. 6, 2020). The five organizations are: The American Board of Medical Specialists, The American Hospital Association, The American Medical Association, The Association of American Medical Colleges, and Council of Medical Specialty Societies.

⁸⁰ American Council of Graduate Medical Education, *About Us*, available at <https://www.acgme.org/About-Us/Overview> (last visited Feb. 6, 2020).

program. If a resident physician's program does not achieve ACGME accreditation by June 2020, he or she may also be able to transfer to another ACGME accredited program.⁸¹

The National Residency Matching Program

The National Resident Matching Program (NRMP) is a private, not-for-profit corporation established in 1952 to optimize the rank-ordered choices of applicants and program directors for residencies and fellowships. The NRMP is not an application processing service. Instead, it provides an impartial venue for matching applicants and program preferences for each other using an internationally recognized mathematical algorithm.

The first Main Residency Match® ("Match") was conducted in 1952 when 10,400 internship positions were available for 6,000 graduating U.S. medical school seniors. By 1973, there were 19,000 positions for just over 10,000 graduating U.S. seniors. Following the demise of internships in 1975, the number of first-year post-graduate (PGY-1) positions declined to 15,700. The number of PGY-1 positions gradually increased through 1994 and then began to decline slowly until 1998. In 2019, there was an all-time high of 32,194 PGY-1 positions offered. The total number of positions offered, including, PGY-1 and second-year post-graduates (PGY-2), was also at an all-time high of 35,185.⁸²

Beginning in 2014, osteopathic medical school graduates could participate in the Match, which opened up additional residency programs available to osteopathic medical graduates.⁸³ In 2019, 6,001 osteopathic candidates applied to the Match and 5,077 matched – an 84.6 percent match rate.⁸⁴ By June 2020, an osteopathic residency program will need to be accredited by ACGME to participate in the Main Residency Match.⁸⁵

All residents who have completed an AOA- or ACGME-accredited residency program are eligible for AOA board certification. AOA board certification is a quality marker for patients that highlights the commitment to the uniquely osteopathic approach to patient care and allows engagement in continuous professional development throughout a career. Requirements are slightly different for osteopathic medical physicians pursuing certification through the American Board of Medical Specialties (ABMS). The ABMS requires candidates' residency programs to have been ACGME-accredited for a specified amount of time. Requirements vary by specialty.⁸⁶

⁸¹ American Osteopathic Association, *What does single GME mean for DO resident physicians?* available at <https://osteopathic.org/residents/resident-resources/residents-single-gme/> (last visited Feb. 6, 2020).

⁸² The Match, National Resident Matching Program, Results and Data 2019 Main Residency Match, *About the NRMP*, p. v, 1, available at https://mk0nrmp3oyqui6wqfm.kinstacdn.com/wp-content/uploads/2019/04/NRMP-Results-and-Data-2019_04112019_final.pdf (last visited Feb. 6, 2020).

⁸³ The Accreditation Council for Graduate Medical Education, *Member Organizations*, available at <https://www.acgme.org/About-Us/Member-Organizations>, (last visited Feb. 6, 2020).

⁸⁴ *Supra* note 108.

⁸⁵ The Match, National Residency Match Program, *2020 Match Participation Agreement for Applicants and Programs*, available at <https://mk0nrmp3oyqui6wqfm.kinstacdn.com/wp-content/uploads/2019/09/2020-MPA-Main-Residency-Match-for-Applicants-and-Programs.pdf> (last visited Feb. 6, 2020).

⁸⁶ *Id.*

Registered Chiropractic Assistants

Registered Chiropractic Assistants (RCAs) perform duties not directly related to chiropractic patient care under the direct supervision of a chiropractic physician or chiropractic physician's assistant. There are no regulatory provisions associated with the work of an RCA. The registration is voluntary and not required for an individual to assist with patient care management activities, execute administrative and clinical procedures, or perform managerial and supervisory functions in an office.⁸⁷ According to the DOH, in Fiscal Year 2017-2018, there were 2,659 active in-state RCAs.⁸⁸

Florida Center for Nursing

In 2001, the Florida Legislature created s. 464.0195, F.S., establishing the Florida Center for Nursing (FCN) "to address issues of supply and demand for nursing, including issues of recruitment, retention, and utilization of nurse workforce resources."⁸⁹ The primary statutory goals address collecting and analyzing nursing workforce data; developing and disseminating a strategic plan for nursing; developing and implementing reward and recognition activities for nurses; and promoting nursing excellence programs, image building, and recruiting into the profession. The FCN is further charged to convene various stakeholder groups to review and comment on nursing workforce data and to recommend systemic changes that will improve the recruitment and retention of nurses in Florida.

The FCN conducts an analysis of licensed practical nurses (LPN), registered nurses (RN), and advanced practice registered nurses (APRN) annually to assess Florida's nurse supply, including the numbers of nurses, demographics, education, employment status, and specialization pursuant to s. 467.019, F.S. The FCN submits a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives annually through January 30, 2020.

Board of Nursing Rulemaking Authority to Establish Standards of Practice

Section 464.004, F.S., established the Board of Nursing (BON) within the DOH to license and regulate nursing to ensure that every nurse practicing in this state meets minimum requirements for safe practice. It was the Legislative intent that nurses who fall below minimum competency or who otherwise present a danger to the public should be prohibited from practicing in this state.⁹⁰

The Legislature has granted the BON rulemaking authority to:

- Establish guidelines for remedial courses for those nurses who fail the nursing examination three times;⁹¹

⁸⁷ Section 460.4166, F.S.

⁸⁸ The Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2017-2018*, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-1718.pdf> (last visited Feb. 6, 2020).

⁸⁹ The Florida Center for Nursing, *2018 Annual Report*, available at <https://www.flcenterfornursing.org/AboutUs/AnnualReport.aspx> (last visited Feb. 6, 2020).

⁹⁰ Section 456.002, F.S.

⁹¹ Section 464.008, F.S.

- Administer the certification of clinical nurse specialists;⁹²
- Administer the certification of advanced practice registered nurses, including the appropriate requirements for advanced practice registered nurses in the categories of certified registered nurse anesthetists, certified nurse midwives, and certified nurse practitioners;⁹³
- Establish a procedure for the biennial renewal of licenses and to prescribe continuing education requirements for renewal of licenses;⁹⁴
- Provide application procedures for inactive status, the biennial renewal of inactive licenses, and the reactivation of licenses, including applicable fees;⁹⁵
- Establish the testing procedures for use in certifying nursing assistants, regulating the practice of certified nursing assistants, and specifying the scope of practice and the level of supervision required for the practice of certified nursing assistants;⁹⁶ and
- Establish disciplinary guidelines.⁹⁷

The Legislature did not expressly grant rulemaking authority to the BON to promulgate nursing standards of practice.⁹⁸ The authority to define the scope of practice for nurses is absent from ss. 464.018 and 456.003(6), F.S., which expressly limits the ability of the DOH boards to modify or contravene the lawful scope of practice of a regulated profession.

From 2003 through 2012, the BON proposed various rules on nursing standards of practice for conscious sedation and unprofessional conduct, which were ultimately withdrawn after the JAPC objected.

In 2012, the BON proposed another rule establishing professional guidelines for the administration of conscious sedation and to update the instances of unprofessional conduct. The 2012 rule was met with rule challenges from various associations, and the JAPC objected to the rule as lacking statutory rulemaking authority. The rule was ultimately challenged at the Division of Administrative Hearings (DOAH) in case number 121545RP. That decision found that the BON lacked the statutory authority to define nursing “scope of practice” in the Nurse Practice Act. The decision was affirmed by the First District Court of Appeal in case numbers 1D12-5656, 1D12-5671, and 1D12-5739 (all related to DOAH 12-1545RP).

The Legislature has granted statutory authority to set standards of practice for professions that are authorized to practice independently, including: allopathic and osteopathic physicians,⁹⁹

⁹² Section 464.0115, F.S.

⁹³ Section 464.012, F.S.

⁹⁴ Section 464.013, F.S.

⁹⁵ Section 464.014, F.S.

⁹⁶ Section 464.202, F.S.

⁹⁷ Section 464.018(5), F.S.

⁹⁸ See *Florida Medical Association, Inc., Florida Osteopathic Medical Association, and Florida Podiatric Medical Association vs. Department Of Health, Board Of Nursing*, DOAH Case No. 12-001545 RP, *Summary Final Order*, Nov. 2, 2012; *affirmed per curium*, *Department of Health, Board of Nursing, Florida Association of Nurse Anesthetists and Florida Nurses Association, v. Florida Medical Association, Inc., Florida Osteopathic Medical Association, Inc., and Florida Podiatric Medical Association*, Case Nos. 1D12-5656, 1D12-5671, 1D12-5739 (Fla. 1st DCA, Feb. 12, 2014).

⁹⁹ Sections 458.331(1)(v) and 459.015(1)(z), F.S.

podiatric physicians,¹⁰⁰ pharmacists,¹⁰¹ psychotherapists,¹⁰² clinical social workers,¹⁰³ dentists,¹⁰⁴ optometrists,¹⁰⁵ and opticians.¹⁰⁶

Certified Nursing Assistants (CNAs)

Section 464.201(5), F.S., defines the practice of a CNA as providing care and assisting persons with tasks relating to the activities of daily living. Activities of daily living include tasks associated with: personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, postmortem care, patient socialization and reality orientation, end-of-life care, cardiopulmonary resuscitation and emergency care, patients' rights, documentation of nursing-assistant services, and other tasks that a CNA may perform after training.¹⁰⁷

The BON issues certificates to practice as a certified nursing assistant to any person who demonstrates a minimum competency to read and write, successfully passes the required background screening, and demonstrates:

- Successful completion of an approved training program and achieving no less than a minimum score;
- Achieving a minimum score on the nursing assistant competency examination, and:
 - Having a high school diploma, or its equivalent; or,
 - Being at least 18 years of age;
- Being currently certified in another state and having not been found to have committed abuse, neglect, or exploitation in that state; and
- Having completed the curriculum developed under the Enterprise Florida Jobs and Education Partnership Grant and achieving a minimum score.¹⁰⁸

Section 464.204, F.S., relating to the denial, suspension, or revocation of a CNA certification, sets forth the grounds for the BON to discipline a CNA. Two actions constitute grounds for which the BON may impose disciplinary sanctions:

- Obtaining or attempting to obtain certification or an exemption, or possessing or attempting to possess certification or a letter of exemption, by bribery, misrepresentation, deceit, or through an error of the BON; and
- Intentionally violating any provision of ch. 464, F.S., ch. 456, F.S., or the rules adopted by the BON.

When pursuing discipline against a CNA, the DOH must be prepared to prove that the CNA “intentionally” violated the law or rule.

¹⁰⁰ Section 461.003, F.S.

¹⁰¹ Sections 465.003(13) and 465.0155, F.S.

¹⁰² Section 490.003(4), F.S.

¹⁰³ Section 491.003, F.S.

¹⁰⁴ Section 466.003(3), F.S.

¹⁰⁵ Section 463.005(1)(a), F.S.

¹⁰⁶ Section 463.002(7), F.S.

¹⁰⁷ Section 464.201, F.S.

¹⁰⁸ Section 464.203, F.S.

The BON can only approve applications for licensure by endorsement from currently licensed CNAs in other states. If a CNA from the District of Columbia or a U.S. territory wishes to be licensed in Florida, he or she must apply for licensure by examination instead of endorsement.¹⁰⁹

Nursing Education Program Approval and Accreditation

Florida law requires an educational institution desiring to offer a prelicensure nursing education program to submit an application to the DOH and pay a program review fee for each campus or instructional site. In addition to identifying information about the program, the application must indicate the name of the accrediting agency if the institution is accredited.

The application must document compliance with the following program standards: faculty qualifications; clinical training and clinical simulation requirements, including a requirement that no more than 50 percent of the program's clinical training consist of clinical simulation; faculty-to-student supervision ratios; and curriculum and instruction requirements.¹¹⁰

Once the DOH determines an application is complete, it forwards the application to the BON, which has 90 days to approve the application or to provide the applicant with notice of its intent to deny and the reasons for the denial. An applicant may request a hearing under ch. 120, F.S., on a notice of intent to deny.¹¹¹

Nursing programs currently offered in Florida include: public school districts, community colleges, state universities, private institutions licensed by the Commission for Independent Education (CIE), private institutions that are members of the Independent Colleges and Universities of Florida, and Pensacola Christian College, which is statutorily authorized to offer a bachelor of science in nursing degree by s. 1005.06(1)(e), F.S.

Chapter 464, F.S., recognizes and distinguishes between nursing education programs that are approved by the BON and programs that are approved and accredited.¹¹²

An "accredited program" is accredited by a specialized nursing accrediting agency that is nationally recognized by the United States Secretary of Education to accredit nursing education programs.¹¹³ The specialized nursing accrediting agencies currently recognized by the United States Department of Education include: the Commission on Collegiate Nursing Education and the Accreditation Commission for Education in Nursing.¹¹⁴

¹⁰⁹ *Id.*

¹¹⁰ Section 464.019(1), F.S.

¹¹¹ Section 464.019(2), F.S. If the BON does not act on a program application within the 90-day review period, the program application is deemed approved. *Id.*

¹¹² The program application and approval process, the annual report requirement, the data submission requirements and the pass rate requirements are not applicable to accredited programs.

¹¹³ Section 464.003(1), F.S.

¹¹⁴ United States Department of Education, *Accreditation in the United States: Specialized Accrediting Agencies*, https://www2.ed.gov/admins/finaid/accred/accreditation_pg7.html (last visited March 2, 2020).

A BON-approved nursing education program¹¹⁵ is required to submit an annual report to the BON which includes an affidavit certifying compliance with the program standards and documentation for the previous academic year that sets forth data related to the number of students who applied, were accepted, enrolled, and graduated; retention rates; and accreditation status.¹¹⁶

Approved programs must have a graduate passage rate not lower than ten percent below the national average for two consecutive years. Programs are placed on probation for low performance with NCLEX scores for two consecutive years and are subject to termination. The program director is required to present a plan for remediation to the BON that includes specific benchmarks to identify progress toward a graduate passage rate goal. The program must remain on probationary status until it achieves a graduate passage rate that equals or exceeds the required passage rate for any one calendar year. If the program does not achieve the required passage rate in any one calendar year after a program has been placed on probationary status, the BON is authorized to terminate the program or may extend the probation for one additional year.¹¹⁷ One hundred and ten schools are currently on probation. Of these, 37 are LPN programs, 11 are BSN-RN programs, and 62 are Associate Degree-RN Programs. The following are the 2018-2019 average passage rates, compared to the national average:¹¹⁸

- LPN programs were 76%, compared to 86% nationally;
- AA - RN programs were 68%, compared to 85% nationally; and
- BSN-RN programs were 92% compared to 89% nationally.

An approved program which has been placed on probation must disclose its probationary status in writing to the program's students and applicants.¹¹⁹

If an accredited program ceases to be accredited, the educational institution conducting the program must provide written notice to that effect to the BON, the program's students and applicants, and each entity providing clinical training sites or experiences. It may then apply to be an approved program.¹²⁰

A nursing education program that prepares students for the practice of professional nursing (RNs) to must be accredited within five years of certain triggering dates. A program approved before July 1, 2014, is required to become accredited by July 1, 2019. If a program was approved but had not enrolled students before July 1, 2014, then the program must become accredited

¹¹⁵ Section 464.003(4), F.S., defines an "approved program" as "a program for the pre-licensure education of professional or practical nurses that is conducted in the state at an educational institution and that is approved under s. 464.019, F.S. The term includes such a program placed on probationary status."

¹¹⁶ Section 464.019(3), F.S.

¹¹⁷ Section. 464.019(5)(a)3., F.S.

¹¹⁸ Florida Center for Nursing, 2019 *Annual Report July 2018 - June 2019*, pp. 7 & 9, available at https://www.flcenterfornursing.org/DesktopModules/Bring2mind/DMX/API/Entries/Download?Command=Core_Download&EntryId=1821&PortalId=0&TabId=151 (last visited Mar. 2, 2020). See also Office of Program Policy Analysis and Government Accountability, *Approximately 42% of Nursing Programs Had Licensure Exam Passage Rates Below the Required Legislative Standard in 2016*, Report No. 17-07, 2 (June 2017), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1707rpt.pdf> (last visited Mar. 2, 2020).

¹¹⁸ Section 464.019(5)(c), F.S.

¹¹⁹ Section 464.019(5)(c), F.S.

¹²⁰ Section 464.019(9)(b), F.S.

within five years of enrolling its first students. A program approved after June 30, 2014, has five years after enrolling the program's first students to become accredited.¹²¹ A nursing education program that fails to meet the accreditation requirements shall be terminated and is ineligible for reapproval under its original name or a new program name for a minimum of three years after the date of termination. An institutional name-change or the creation of a new educational institution with the same ownership does not reduce the waiting period for reapplication.

The Legislature has also authorized the BON to conduct on site-evaluations of nursing education program applicants, if necessary, to confirm compliance with the application requirements in s. 464.019(1), F.S., and requiring approved programs to demonstrate a licensure exam passage rate of no more than 10 percent below the average pass rate for all United States educated, first-time exam takers of the National Council Licensure Examination (NCLEX). The BON must terminate a program, whether accredited or non-accredited, which has been placed on probationary status for failing to achieve the examination passage rate if it is not granted a one-year extension or fails to achieve the required passage rate. An accredited or non-accredited program which has been placed on probationary status must disclose to its students and applicants of that status and explain the implications. A program that has been terminated or closed is prohibited from seeking subsequent program approval under its original name, a new program or institutional name, or a new institution with the same ownership, for a minimum of three years after the date of termination or closing.

The BON may also terminate a program if it fails to submit the annual report within six months after it is due or if a program director for an approved program fails to appear before the BON to explain the reason for failing to submit the annual report timely.

The BON has rulemaking authority to adopt rules related to nursing program curricula, including rules relating to the uses and limitations of simulation technology.

Dentistry, Dental Hygiene, Health Access Dental Licensure, and Dental Laboratories

Licensure Examinations for Dentists and Dental Hygienists

Section 466.004, F.S., establishes the Board of Dentistry (BOD) within the DOH to regulate the practice of dentistry and dental hygiene. The requirements for dental licensure by examination are found in s. 466.006, F.S. A person desiring to be licensed as a dentist must apply to the DOH to take the examinations. To take the examination, an applicant must be 18 years of age and be:

- A graduate from a dental school accredited by the American Dental Association (ADA) Commission on Dental Accreditation (CODA) or any other dental accrediting entity recognized by the U.S. Department of Education (DOE); or
- A dental student in the final year of a program at such an ADA CODA accredited dental school who has completed all the coursework necessary to prepare the student to perform the clinical and diagnostic procedures required to pass the examinations.

¹²¹ Section 464.019(11), F.S. Pensacola Christian College is exempt from this certification requirement due to its status under s. 1005.06(1)(e), F.S.

Dental school graduates from a school not accredited by the ADA CODA, the U.S. DOE recognized dental accrediting entity, or approved by the BOD, desiring to take the Florida dental licensure examinations, are not entitled to take the examinations until the applicant:

- Demonstrates completion of a program of study defined by BOD rule, at an accredited American dental school and receipt of a D.D.S. or D.M.D. from the school; or
- Submits proof of successful completion of at least two consecutive years at a full-time supplemental general dentistry program accredited by the ADA CODA.¹²²

The Legislature has authorized the BOD to use the American Dental Licensing Examination (ADLEX), developed by the American Board of Dental Examiners, Inc., in lieu of an independent state-developed practical or clinical examination. Section 466.007, F.S., requires a dental hygiene applicant to pass the American Dental Hygiene Licensing Examination (ADHEX) also developed by the American Board of Dental Examiners, Inc.

Sections 466.006(4)(b) and 466.007(4)(b), F.S., require that the ADLEX examination for dentists, and ADHEX for hygienists, be graded by Florida licensed dentists, and dentists and hygienists, respectively. Such practitioners must be employed by the DOH for this purpose. This provision refers to requirements that were necessary when the ADLEX and ADHEX examinations were purchased and administered by the DOH. This requirement is now obsolete since the BOD has certified national examinations for both dentists and hygienists.

According to the DOH, by limiting the grading to Florida-only licensed dentists and hygienists, this requirement has created a shortage of personnel available to grade the examinations, thus jeopardizing the administration of the ADLEX and the ADHEX.¹²³

Health Access Dental Licensure

In 2008, the Legislature established the health access dental license in order to attract out-of-state dentists to practice in underserved health access settings.¹²⁴ With this license, a dentist actively licensed in good standing in another state, the District of Columbia, or a U.S. territory is authorized to practice dentistry in Florida in a health access setting if the dentist:

- Submits proof he or she graduated from a dental school accredited by the Commission on Dental Accreditation of the ADA or its successor agency;
- Submits proof he or she has successfully completed parts I and II of the National Board of Dental Examiners (NBDE) examination and a state or regional clinical dental licensing examination that the BOD has determined effectively measures the applicant's ability to practice safely;

¹²² Florida Department of Health, *Senate Bill 188 Analysis*, p. 2 (2019) (on file with the Senate Committee on Health Policy) According to the department, it is unclear whether the two years of a full time supplemental general dentistry program includes specialty or advanced education programs.

¹²³ *Id.*, at p. 4.

¹²⁴ A "health access setting" is defined in s. 466.003(14), F.S., as a program or institution of the Department of Children and Families, the Department of Health, or the Department of Juvenile Justice, a nonprofit community health center, a Head Start center, a federally qualified health center (FQHC) or FQHC look-alike as defined by federal law, a school-based prevention program, or a clinic operated by an accredited college of dentistry or an accredited dental hygiene program in this state if such community service programs and institutions immediately report to the Board of Dentistry practice act or standard of care violations related to the actions or inactions of a dentist, dental hygienist, or dental assistant engaged in the delivery of dental care in such settings.

- Submits ADLEX examination scores mailed to the BOD directly from the American Dental Association;
- Submits a final official transcript from a dental school sent to the BOD by the registrar's office;
- Submits a certification of licensure from each state in which he or she currently holds or has held a dental or dental hygiene license;
- Submits proof of training in cardiopulmonary resuscitation (CPR) at the basic support level;
- Files a BOD-approved application and pays the applicable fees;
- Has not been convicted of, nor pled *nolo contendere* to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession;
- Currently holds a valid, active dental license in good standing which has not been revoked, suspended, restricted, or otherwise disciplined from another state, the District of Columbia, or a U.S. territory;
- Has never had a license revoked from another state, the District of Columbia, or a U.S. territory;
- Has never failed an exam under s. 466.006, F.S., unless the applicant was reexamined and received a license to practice in Florida;
- Has not been reported to the NBDE, unless the applicant successfully appealed to have his or her name removed from the data bank;
- Submits proof that he or she has been engaged in the active, clinical practice of dentistry and has provided direct patient care for five years immediately preceding the date of application, or proof of continuous clinical practice, and has provided direct patient care since graduation if the applicant graduated less than five years from his or her application date;¹²⁵
- Submits documentation that she or he has completed, or will complete prior to licensure, continuing education equivalent to this state's requirement for dentists licensed under s. 466.006, F.S., for the last full reporting biennium before applying for a health access dental license;¹²⁶ and
- Successfully completes the examination covering the laws and rules of the practice of dentistry in this state.^{127,128}

A health access dental license is subject to biennial renewal. The BOD will renew a health access dental license if the applicant:

- Submits a renewal application and has paid a renewal fee;
- Submits documentation from the employer in the health access setting that the licensee has at all times pertinent remained an employee;
- Has not been convicted of, nor pled *nolo contendere* to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession;
- Has not failed the examination specified in s. 466.006, F.S., since initially receiving a health access dental license or since the last renewal; and
- Has not been reported to the National Practitioner Data Bank, unless the applicant successfully appealed to have his or her name removed from the data bank.

¹²⁵ Section 466.0067, F.S.

¹²⁶ See ch. 64B5-12.013, Fla. Admin. Code R. (2019) for continuing education requirements.

¹²⁷ Section 466.006(4)(a), F.S.

¹²⁸ Department of Health, Board of Dentistry, *Health Access Dentist*, available at <https://floridasdentistry.gov/licensing/health-access-dentist/> (last visited Feb, 6, 2020).

The BOD may undertake measures to independently verify the health access dental licensee's ongoing employment status in the health access setting.¹²⁹

The BOD may revoke a health access dental license if the licensee is terminated from employment at the health access setting or practices outside of the health access setting, fails the Florida dental examination, or is found by the BOD to have committed a violation of ch. 466, F.S., (the Dental Practice Act), other than a violation that is a citation offense or a minor violation.¹³⁰

Currently, there are 58 health access dental licenses. Of those, 37 are in-state active, two are in-state delinquent, 10 are out-of-state active, two are out-of-state delinquent, and seven are retired.¹³¹

The program is scheduled for repeal effective January 1, 2020, unless reenacted by the Legislature.¹³²

Adverse Incident Reporting in the Practice of Dentistry

There is no statutory requirement for dentists or dental hygienists to report adverse incidents or occurrences in office practice settings. In contrast, the BOM and BOOM have specific statutory authority to require licensees to report adverse incidents in office practice settings.¹³³

The BOD, by rule, defines an “adverse occurrence” and specifies reporting requirements. The rule specifies that an adverse occurrence in a dental office must be reported to the BOD within 48 hours followed by a more specific written report within 30 days. These reports are forwarded to the chair of the Probable Cause Panel to determine if further investigation is necessary. If further investigation is warranted, the report and recommendation are forwarded to the MQA Consumer Services Unit (CSU) for further investigation. All reported mortalities occurring in a dental office are forwarded to the CSU for investigation.

The rule does not provide a penalty for failure to report an adverse occurrence.¹³⁴

Dental Laboratories

Section 466.031, F.S., defines a “dental laboratory” to include any person, firm, or corporation who, for a fee or gratuitously, manufactures artificial substitutes for natural teeth, or who furnishes, supplies, constructs, reproduces, or repairs any prosthetic denture, bridge, or appliance

¹²⁹ Section 466.00671, F.S.

¹³⁰ Section 466.00672, F.S.

¹³¹ *Supra* note 88. “In-State Active” means the licensed practitioner has a Florida mailing address and is authorized to practice. “In-State Delinquent” means the licensed practitioner has a Florida mailing address and is not authorized to practice in the state because of failure to renew the license by the expiration date. “Out-of-State Active” means the licensed practitioner has an out-of-state mailing address and is authorized to practice. “Out-of-State Inactive” means the licensed practitioner has an out-of-state mailing address and is not authorized to practice. “Retired” means the licensed practitioner is not authorized to practice. The practitioner is not obligated to update licensure data. Section 456.036, F.S.

¹³² Section 466.00673, F.S.

¹³³ Sections 458.351 and 459.026, F.S.

¹³⁴ Fla. Admin. Code R. 64B5-14.006 (2019).

to be worn in the human mouth, or which holds itself out as a dental laboratory. The definition specifically excludes a dental laboratory technician who constructs or repairs dental prosthetic appliances in the office of a licensed dentist, for that dentist only, and under the dentist's supervision and work order.

Section 466.032, F.S., sets forth the registration and biennial registration renewal for a dental laboratory. It directs the DOH to issue a certificate upon payment of a fee, which entitles the registrant to operate a dental laboratory for a period of two years. Section 466.032, F.S., sets forth the requirements for a periodic inspection of dental laboratories for required equipment and supplies, mandates 18 hours biennially of continuing education for the dental laboratory owner or at least one employee who must be in programs of learning that contribute directly to the education of the dental technician, and establishes disciplinary guidelines for violations.

According to the DOH, there were 989 dental laboratories in Florida as of June 30, 2018; 792 have active licenses and 197 have delinquent licenses.¹³⁵ In the 2017-2018 fiscal year, the DOH reports that there were four cases opened against dental laboratories, none of which resulted in disciplinary cases.¹³⁶

Athletic Trainers

Section 468.703, F.S., establishes the Board of Athletic Trainers (BOAT) within the DOH to license and regulate the practice of athletic trainers in Florida. Applicants for licensure as an athletic trainer are required to:

- Submit to a background screening;
- Have a baccalaureate or higher degree from a college or university in professional athletic training accredited by the Commission on Accreditation of Athletic Training Education, and have passed the national examination to be certified by the Board of Certification (BOC)¹³⁷ for athletic trainers;
- Have a current certification from the BOC, if they graduated before 2004;¹³⁸ and
- Have current certifications in cardiopulmonary resuscitation (CPR) and the use of an automated external defibrillator (AED).¹³⁹

An athletic trainer must practice under the direction of an allopathic, osteopathic or chiropractic physician licensed under chs. 458, 459, or 460, F.S., or otherwise authorized by Florida law. The physician must communicate his or her direction through oral or written prescriptions or

¹³⁵ *Supra* note 88 at p. 34

¹³⁶ *See supra* note 88.

¹³⁷ The Board of Certification, Inc. (BOC) was incorporated in 1989 as a not-for-profit credentialing agency to provide a certification program for the entry level athletic training profession. The BOC establishes both the standards for the practice of athletic training and the continuing education requirements for BOC Certified Athletic Trainers (ATs). The BOC also works with state regulatory agencies to provide credential information, professional conduct guidelines and regulatory standards on certification issues. The BOC also has the only accredited certification program for ATs in the United States and has mutual recognition agreements with Canada and Ireland. *See* Board of Certification for the Athletic Trainer, *What is BOC?* available at <http://www.bocatc.org/about-us#what-is-the-boc> (last visited Feb. 6, 2020).

¹³⁸ *Supra* note, at 88, p. 4 According to the department prior to 2004, and the inception of athletic training programs, athletic trainers obtained training through a Board of Certification (BOC) internship program to obtain licensure in Florida. Current law does not allow athletic trainers who obtained training through the BOC internship program to become licensed in Florida.

¹³⁹ Section 468.707, F.S.

protocols for the provision of services and care by the athletic trainer, and the athletic trainer must provide service or care as dictated by the physician.¹⁴⁰

The services of an athletic trainer must relate to the prevention, recognition, evaluation, management, disposition, treatment, or rehabilitation of a physically active person who sustained an injury, illness, or other condition involving exercise, sport, recreation, or related physical activity. In providing care and services, an athletic trainer may use physical modalities, including, but not limited to, heat, light, sound, cold, electricity, and mechanical devices.¹⁴¹

The BOAT is authorized to adopt rules to implement the provisions of part XIII, ch. 468, F.S. Such rules must include, but are not limited to:

- The allowable scope of practice regarding the use of equipment, procedures, and medication;
- Mandatory requirements and guidelines for communication between the athletic trainer and a physician, including the reporting to the physician of new or recurring injuries or conditions;
- Licensure requirements;
- Licensure examination;
- Continuing education requirements;
- Fees;
- Records and reports to be filed by licensees;
- Protocols; and,
- Any other requirements necessary to regulate the practice of athletic training.¹⁴²

At renewal, licensed athletic trainers must demonstrate a current BOC certification; however, there is no requirement for that certification to be held without lapse and in good standing.¹⁴³

Orthotics, Prosthetics, and Pedorthics

Section 468.801, F.S., establishes the Board of Orthotists and Prosthetists (BOOP) within the DOH to license and regulate the practice of Prosthetist-Orthotist, Prosthetist,¹⁴⁴ Orthotist,¹⁴⁵ Pedorthist,¹⁴⁶ Orthotic Fitter, and Orthotic Fitter Assistant in Florida. Applicants for licensure under part XIV, ch. 468, F.S., must:

- Submit an application and fee, not to exceed \$500;
- Submit fingerprints for background screening;
- Submit the cost of the state and national criminal background checks;

¹⁴⁰ Section 468.713, F.S.

¹⁴¹ Section 468.701, F.S.

¹⁴² Section 468.705, F.S.

¹⁴³ Section 468.711, F.S.

¹⁴⁴ Section 468.80(15), F.S., defines “prosthetics” as the practice of evaluating, treatment formulating, measuring, designing, fabricating, assembling, fitting, adjusting, servicing, or providing the initial training necessary to accomplish the fitting of a prosthesis.

¹⁴⁵ Section 468.80(9), F.S., defines “orthotics” as the practice of evaluating, treatment formulating, measuring, designing, fabricating, assembling, fitting, adjusting, servicing, or providing the initial training necessary to accomplish the fitting of an orthosis or pedorthic device.

¹⁴⁶ Section 468.80(12), F.S., defines “pedorthics” as the practice of evaluating, treatment formulating, measuring, designing, fabricating, assembling, fitting, adjusting, servicing, or providing the initial training necessary to accomplish the fitting of a pedorthic device.

- Be of good moral character;
- Be 18 years of age or older; and
- Have completed the appropriate educational preparation requirements.¹⁴⁷

Licenses must be granted independently in orthotics, prosthetics, or pedorthics, but a person may be licensed in more than one discipline. A prosthetist-orthotist license may be granted to persons meeting the requirements for both a prosthetist and an orthotist license. Persons seeking to obtain the required orthotics or prosthetics experience in the state must be approved by the BOOP and registered as a resident by the DOH. A registration may be held in both practice fields, but the board may not approve a second registration until at least one year after the issuance of the first registration.¹⁴⁸ Currently, a dual registration is not authorized.¹⁴⁹

Massage Therapy

Section 480.035, F.S., establishes the Board of Massage Therapy (BMT) within the DOH to license and regulate the practice of massage in Florida. Individuals seeking an initial massage therapist license in Florida have two options for meeting the educational requirements:

- They may attend an approved program at a massage therapy school and complete 500 hours of classroom training; or
- They can become an apprentice under a licensed massage therapist for a period of one year. During that year, the sponsor of the massage apprentice is required to file quarterly reports and the apprentice must complete the following courses of study: 300 hours of physiology, 300 hours of anatomy, 20 hours of theory and history of massage, 50 hours of theory and practice of hydro-therapy, five hours of hygiene, 25 hours of statutes and rules of massage practice, 50 hours of introduction to allied modalities, 700 hours of practical massage, and three hours of board-approved HIV/AIDS instruction.¹⁵⁰

Any person may obtain a license to practice as a massage therapist if he or she:

- Submits an application and fee;
- Is at least 18 years of age;
- Has received a high school diploma or high school equivalency diploma;
- Submits to background screening;
- Has completed a course of study at a board-approved massage school or has completed an apprenticeship program that meets standards adopted by the board; and,
- Has received a passing grade on an examination testing general areas of competency specified by the board¹⁵¹ and administered by the DOH.¹⁵²

Rule 64B7-25.001(2), F.A.C., lists five national exams that are approved by the board. The exam currently taken by applicants is the National Examination for State Licensure administered by the National Certification Board for Therapeutic Massage and Bodywork. The DOH does not

¹⁴⁷ Section 468.803, F.S.

¹⁴⁸ *Id.*

¹⁴⁹ *Supra* at note 111, p. 4.

¹⁵⁰ Fla. Admin. Code R. 64B7-29.003, (2019).

¹⁵¹ Section 480.042, F.S.

¹⁵² Section 480.041, F.S.

offer or administer a specific state licensure exam.¹⁵³ According to the DOH, there are 172 approved licensed massage schools in Florida, and 32,387 licensed massage therapists in the 2017-2018 fiscal year. There were only 71 apprentices licensed under the Florida apprenticeship program.¹⁵⁴

The term “massage” is defined as the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not the manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.¹⁵⁵

The BMT also licenses apprentices in colonic hydrotherapy.¹⁵⁶ These individuals are either attending a massage therapy school that does not offer colonic training or are licensed massage therapists who are seeking to add colonic hydrotherapy to their practice. Since there are few schools in the state that offer a colonic hydrotherapy program, apprenticeships are the primary method of training for this service.¹⁵⁷

Psychology

Section 490.004, F.S., creates the Board of Psychology (BOP) within the DOH to license and regulate the practice of psychologists in Florida. The practice of psychology is defined as the observation, description, evaluation, interpretation, and modification of human behavior, by the use of scientific and applied psychological principles, methods, and procedures, for the purpose of describing, preventing, alleviating, or eliminating symptomatic, maladaptive, or undesired behavior and enhancing interpersonal behavioral health and mental or psychological health.¹⁵⁸

Licensure as a psychologist under ch. 490, F.S., requires a doctoral degree in psychology from an educational institution that, at the time the applicant was enrolled and graduated, held institutional accreditation from an approved agency and programmatic accreditation from the American Psychological Association (APA).

Section 490.003(3)(a), F.S., refers to educational requirements in effect prior to July 1, 1999, and are no longer applicable. The outdated language could create confusion among applicants as to the current educational requirements, which are correctly defined in s. 490.003(3)(b), F.S. Section 490.003(3)(b), F.S., generically refers to programs approved and recognized by the U.S. DOE. The only accrediting agency recognized by the U.S. DOE to provide programmatic accreditation for doctoral psychology programs is the APA.

Section 490.005, F.S., refers to educational requirements in effect prior to July 1, 1999, which are no longer applicable to augment a deficient education or show comparability to the current

¹⁵³ *Id.*

¹⁵⁴ *Supra*, at note 88, p. 15.

¹⁵⁵ Section 480.033, F.S.

¹⁵⁶ Colonic hydrotherapy is a method of colon irrigation used to cleanse the colon with the aid of a mechanical device and water. See s. 480.033(6), F.S.

¹⁵⁷ Fla. Admin. Code R. 64B7-29.007, (2019).

¹⁵⁸ Section 490.003(4), F.S.

educational requirements. This section includes an outdated reference to the APA accrediting programs in Canada. Currently, the APA no longer accredits Canadian doctoral programs.¹⁵⁹

Section 490.005(2)(b)1., F.S., refers to school psychology applicants graduating from a college or university accredited and approved by the Commission on Recognition of Postsecondary Accreditation; however, the correct reference is to the Council for Higher Education Accreditation.

Section 490.006, F.S., relating to licensure of a psychologist or school psychologist by endorsement, requires:

- Submission of an application to the DOH and payment of a fee;
- Proof of a valid license or certificate in another jurisdiction provided that, when the applicant secured such license or certificate, the requirements were substantially equivalent to or more stringent than those set forth in ch. 490, F.S. (but, if no Florida law existed at that time the applicant received his or her license or certificate, then the requirements in the other state must have been substantially equivalent to or more stringent than those set forth in ch. 490, F.S., when the application is made);
- Proof of good standing as a diplomat with the American Board of Psychology; or
- Proof of a doctoral degree in psychology as described in s. 490.003, F.S., and at least 20 years of experience as a licensed psychologist in any jurisdiction or territory of the United States within the 25 years preceding the date of application.

Obtaining licensure under the current endorsement standards requires a law-to-law comparison, and applicants who otherwise might qualify for licensure may be denied, or have licensure delayed, until they select a different application method.

Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling

Section 491.004, F.S., creates the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling within the DOH to ensure that every clinical social worker, marriage and family therapist, and mental health counselor practicing in this state meets minimum requirements for safe practice. The Florida Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling is responsible for licensing, monitoring, disciplining, and educating clinical social workers, marriage and family therapists, and mental health counselors to assure competency and safety to practice in Florida.

Section 491.005, F.S., sets out the educational and examination requirements for a clinical social worker, marriage and family therapist, and mental health counselor to obtain a license by examination in Florida. An individual applying for licensure by examination who has satisfied the clinical experience requirements of s. 491.005, F.S., or an individual applying for licensure by endorsement pursuant to s. 491.006, F.S., intending to provide clinical social work, marriage and family therapy, or mental health counseling services in Florida, while satisfying coursework

¹⁵⁹ Florida Department of Health, *Senate Bill 188 Analysis*, p. 10 (2019) (on file with the Senate Committee on Health Policy).

or examination requirements for licensure, must obtain a provisional license in the profession for which he or she is seeking licensure prior to beginning practice.¹⁶⁰

An individual who has not satisfied the postgraduate or post-master's level of experience requirements under s. 491.005, F.S., must register as an intern in the profession for which he or she is seeking licensure before commencing the post-master's experience requirement. An individual who intends to satisfy part of the required graduate-level practicum, internship, or field experience, outside the academic arena for any profession, must register as an intern in the profession for which he or she is seeking licensure before commencing the practicum, internship, or field experience.¹⁶¹

Section 491.0045(6), F.S., specifies the length of time an intern registration for clinical social work, marriage and family therapy, and mental health counseling is valid. A footnote to this section points out that, through multiple amendatory acts to s. 491.0045(6), F.S., during the same legislative session, two irreconcilable versions of the section were created, and the editors were thus required to publish both versions of the amended provision.

Section 491.0045(6), F.S., states, "An intern registration issued on or before March 31, 2017, expires March 31, 2022, and may not be renewed or reissued. A registration issued after March 31, 2017, expires 60 months after the date of issuance. No subsequent intern registration may be issued unless the candidate has passed the theory and practice examination described in s. 491.005(1)(d), (3)(d), and (4)(d)." The footnote refers to an April 1, 2017, date, rather than the March 31, 2017 in the statute.

Section 491.005(3)(b), F.S., relating to licensure by examination for marriage and family therapists requires:

- A master's degree with major emphasis in marriage and family therapy or a closely related field;
- Specific coursework in 12 content areas; and
- A practicum, internship, or field experience of 180 hours providing direct client contact hours of marriage and family services under the supervision of a licensed marriage and family therapist with at least five years of experience.

Section 491.005(3)(c), F.S., is inconsistent as it requires both two years, and three years, of clinical experience for a marriage and family therapy licensure applicant. According to the DOH, the three years of clinical experience was a technical error and is inconsistent with other statutory requirements. Only two years of clinical experience for a marriage and family therapy applicant is required.¹⁶²

Section 491.005(4), F.S., relating to licensure by examination for mental health counselors names the Professional Examination Service for the National Academy of Certified Clinical Mental Health Counselors as the required examination for a mental health counselor. The correct name of the examination required for licensure as a mental health counselor is the National

¹⁶⁰ Section 491.0046, F.S.

¹⁶¹ Section 491.0045, F.S.

¹⁶² *Id.*

Clinical Mental Health Counseling Examination. The examination was developed by, and is administered by, the National Board for Certified Counselors.

Section 491.005(4), F.S., contains a 300-hour difference between the hours of practicum, internship, or field experience required for graduates from a Council for Accreditation of Counseling and Related Educational Programs (CACREP) and non-CACREP graduates. A mental health counselor applicant who graduated from a program not accredited by CACREP is required to complete 1,000 hours of practicum, internship, or field experience. A Mental Health Counseling (MHC) applicant who graduated from a CACREP accredited program is required to meet the CACREP standards to complete 700 hours of practicum or internship.¹⁶³

Section 491.006, F.S., relating to licensure or certification by endorsement requires an applicant for licensure by endorsement in the practice of clinical social work, marriage and family therapy, or mental health counseling to demonstrate to the board that he or she:

- Has knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling;
- Holds an active valid license to practice, and has actively practiced the profession in another state, for three of the last five years immediately preceding licensure;
- Meets the education requirements of ch. 491, F.S., in the profession for which the applicant seeks licensure;
- Has passed a substantially equivalent licensure examination in another state, or has passed the licensure examination in this state in the profession for which the applicant seeks licensure;
- Holds a license in good standing; and
- Is not under investigation for, nor has been found to have committed, an act that would constitute a violation of ch. 491, F.S.

To satisfy the education requirements of s. 491.005, F.S., specific particular course work, rather than a degree from an accredited school or college, or proof of licensure in another state, is required of an applicant for licensure by endorsement under ch. 491, F.S. The endorsement applicant must show proof that he or she completed certain statutorily-specified courses, which may not have been available at the time he or she graduated. Current law places barriers on licensure by endorsement by requiring many applicants to complete additional courses often difficult to obtain when the applicant is not a full-time graduate student.

Section 491.007(3), F.S., provides for the renewal of a license, registration, or certificate for clinical social workers, marriage and family therapists, and mental health counselors, and gives the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling rulemaking authority to prescribe the requirements for renewal of an intern registration. Section 491.0045(6), F.S., now addresses renewal of an intern registration; therefore, rulemaking authority is no longer necessary.

Section 491.009, F.S., sets out what acts by a clinical social worker, marriage and family therapist, or mental health counselor constitute grounds for discipline, or denial of licensure.

¹⁶³ Council for Accreditation of Counseling & Related Educational Programs, *2016 CACREP Standards*, available at <http://www.cacrep.org/wp-content/uploads/2018/05/2016-Standards-with-Glossary-5.3.2018.pdf> (last visited Feb. 6, 2020).

However, s. 491.009(2), F.S., incorrectly references psychologists, who are not licensed under ch. 491, F.S., and does not include the certified master social worker profession regulated by the DOH.

III. Effect of Proposed Changes:

Section 1: Florida's Child Protection Teams

The bill amends s. 39.303, F.S., to require the Statewide Medical Director for Child Protection to report to the Department of Health's (DOH) deputy secretary in charge of the state's Children's Medical Services Program; and requires the local medical directors of the state's 22 child protection teams to report directly to the Statewide Medical Director for Child Protection.

Section 2: Human Immunodeficiency Virus (HIV)

The bill amends s. 381.0042, F.S., the statute for patient care for persons with Acquired Immunodeficiency Syndrome (AIDS), to replace the term "acquired immune deficiency syndrome" with "human immunodeficiency virus" to broaden the purpose of the DOH regional patient care networks to include persons with HIV, who might not have developed AIDS, as well as patients with AIDS.

Section 3: The Conrad 30 Waiver Program

The bill amends s. 381.4018(3), F.S., to authorize the DOH to adopt rules to implement that subsection, which includes the implementation of the federal Conrad 30 Waiver Program to encourage qualified physicians to relocate to Florida and practice in medically underserved and rural areas.

Section 4: Florida Consortium of National Cancer Institute Centers Program

The bill amends s. 381.915(4), F.S., relating to the Florida Consortium of National Cancer Institute Centers Program, to increase the period of time a cancer center may participate as a Tier 3 cancer center from a maximum of six years to until June 30, 2024, and increases the period of time a cancer center that qualifies as a designated Tier 3 center is authorized to pursue a National Cancer Institute designation as a cancer center or a comprehensive cancer center from a maximum of six years after qualification to until June 30, 2024.

Section 5: Emergency Medical Transport Services

The bill amends s. 401.35, F.S., and modifies the DOH's directive to develop rules for emergency medical transportation services, and:

- Requires the DOH rules provide at least minimal standards governing ground ambulance and vehicle equipment and supplies that a licensee with a valid vehicle permit under s. 401.26 F.S., is required to maintain for providing basic life support and advanced life support;
- Deletes the requirement that the DOH rules on ambulance and EMS equipment and supplies be at least as comprehensive as standards published in the most current edition of the American College of Surgeons' Committee on Trauma;

- Deletes the requirement that the standards for the DOH rules on ambulance and EMS vehicle design and construction be at least equal to those most currently recommended by the U.S. General Services Administration; and
- Requires the DOH rules on ground ambulance or vehicle design and construction to be based on national standards recognized by the DOH and interpreted by department rule.

Sections 6 and 7: Radiation Machines and Components

The bill amends s. 404.031, F.S., to add the definition of “Useful beam.” A Useful beam is a portion of the radiation emitted from a radiation machine through the aperture of the machine’s beam-limiting device which is designed to focus the radiation on the intended target in order to accomplish the machine’s purpose when the machine’s exposure controls are in a mode to cause the system to produce radiation.

The bill amends s. 404.22, F.S., to regulate the use and operation of radiation machines intentionally exposing humans to useful beams. Specifically, these radiation machines:

- Must be maintained and operated according to manufacturer standards or nationally recognized consensus standards accepted by the DOH;
- Must be operated at the lowest exposure that will achieve the intended purpose; and
- May not be modified in a manner that causes the original parts to operate in a way that differs from the original manufacturer’s design specification or the parameters approved for the machine and its components by the United States Food and Drug Administration.

A human being may be exposed to the useful beam of a radiation machine only under the following conditions:

- If a licensed health care practitioner operating within the scope of his or her practice has determined that the exposure provides a medical or health benefit greater than the health risks posed by the exposure and the health care practitioner uses the results of the exposure in the medical or health care of the exposed individual; or
- If an individual trained in evaluating and calculating comparative mortality and morbidity risks according to standards set by the DOH determines that the exposure will provide a life safety benefit to the individual exposed which is greater than the health risk posed by the exposure. To be valid, the calculation and method of making the determination must be submitted to and accepted by the DOH.

The DOH is authorized to adopt rules to set limits on the annual total exposure based on nationally recognized limits or relevant consensus standards.

Section 8: General Health Care Professional Licensing Provisions

The bill amends s. 456.013, F.S., to eliminate obsolete language regarding applying to the DOH to take an examination. The bill adds the date of birth as a required element on the application, which provides an increased likelihood of a confirmation of a criminal background check for the DOH.

The bill also permits the DOH to issue a temporary license to a non-resident or non-citizen, eligible applicant, who has accepted a position with a residency, internship, or fellowship

program in Florida and is applying for registration under ss. 458.345 or 459.021, F.S. The temporary license expires in 60 days, instead of 30, unless the applicant is issued a social security number and submits it in writing to the DOH.

Sections 9, 10 and 11: Health Care Practitioner Discipline

The bill amends s. 456.072(1)(k), F.S., to provide that the failure of a licensed health care practitioner to repay a state or federal student loan issued or guaranteed by the state or the federal government does not constitute a failure to perform a statutory or legal obligation.

The bill repeals s. 456.0721, F.S., which authorizes the DOH to obtain from the U.S. Department of Health and Human Services (now the U.S. Department of Education) information necessary to investigate and prosecute health care practitioners for failing to repay a student loan or comply with scholarship service obligations.

The bill amends s. 456.074(4), F.S., to delete the requirement for the DOH to notify a practitioner whose student loan is in default, and of the DOH's intent to suspend his or her license if the practitioner does not provide proof that new payment terms have been agreed upon by all parties to the loan.

Section 12: Medical Faculty Certificates

The bill amends s. 458.3145, F.S., to authorize the DOH to issue medical faculty certificates, without examination, to qualified foreign physicians, and qualified physicians licensed in another jurisdiction, who have been offered, and accepted, full-time faculty positions in a program of medicine at Nova Southeastern University or Lake Erie College of Osteopathic Medicine, in addition to those programs of medicine already listed in current law.

Section 13: Medical Specialists

The bill amends s. 458.3312, F.S., relating to holding oneself out as a medical specialist, to repeal the requirement that the Board of Medicine (BOM) conduct a review of organizations that board-certify physicians in dermatology every three years in order for a physician to hold himself or herself out as board-certified in dermatology.

Section 14: Osteopathic Internships and Residencies

The bill amends s. 459.0055, F.S., to recognize the agreement between the American Osteopathic Association (AOA) and the Accreditation Council for Graduate Medical Education (ACGME). Both organizations have committed to improving the patient care delivered by resident and fellow physicians today and in their future independent practice, and to do so in clinical learning environments characterized by excellence in care, safety, and professionalism, thereby creating a single path for Graduate Medical Education (GME).

This single path for GME allows osteopathic and allopathic medical school graduates to seek residencies and fellowship programs accreditation by ACGME. This will enable osteopathic medical school graduates, residents, and fellows to apply to the National Resident Match

Program and participate in the Main Residency Match for internships, residencies, and fellowships, thereby creating more residency opportunities for osteopathic residents.

The bill deletes reference to the Board of Trustees of the AOA as an internship and residency accrediting organization during the transition to a single path for GME, while maintaining reference to the AOA, and repeals the BOOM's authority to accredit other internship programs upon a showing of good cause.

Section 15: Registered Chiropractic Assistants (RCAs)

The bill repeals s. 460.4166, F.S., thus deregulating the profession of RCAs, as the duties an RCA performs are not directly related to patient safety and the registration is voluntary.

Sections 16 through 19: The Florida Center for Nursing (FCN), Board of Nursing (BON) Rulemaking Authority, and Certified Nursing Assistants

The bill amends s. 464.019, F.S., to extend the requirement for the FCN to provide an implementation study and annual report on the availability of nursing programs and production of quality nurses to the Governor, the President of the Senate, and the Speaker of the House of Representatives until January 30, 2025, as opposed to January 30, 2020, under current law.

The bill further allow nursing education programs seeking accreditation to apply to the BON for a single extension, of not more than two years, if the school:

- Applies at least 90 days before the accreditation deadline;
- Has a graduate passage rate of 60 percent plus on the FLEX-RN exam in the most recent calendar year;
- Meets the majority of the BON's additional criteria, including, the following:
 - A student retention rate of 60 percent or higher for the most recent calendar year;
 - A graduate work placement rate of 70 percent or higher for the most recent calendar year;
 - The program has applied for approval or been approved by an institutional or programmatic accreditor recognized by the United States Department of Education;
 - The program is in full compliance with the program application and reporting requirements; and
 - The program is not currently in its second year of probationary status.

The bill tolls applicable deadline from the date the program applies for the extension until the date on which the BON issues a decision on the requested extension. The bill also gives the BON authority to adopt rules relating to criteria to qualify for the extension of time to become accredited.

The bill amends ss. 464.202, 464.203, and 464.204, F.S., relating to rulemaking, duties, and powers of the BON, to authorize the BON to create rules detailing standards of practice for its licensees, which include: Advanced practice registered nurses (APRNs), clinical nurse specialists, registered nurses (RNs), licensed practical nurses (LPNs), and certified nursing assistants (CNAs).

The bill authorizes the BON to grant licenses by endorsement, for CNA applicants with certifications in U.S. territories or Washington, D.C. This will expedite licensure as a CNA because the applicant would no longer have to apply for licensure by examination.

The bill amends s. 464.204, F.S., to eliminate the element of intent to violate the laws or rules relating to CNAs, which will align CNA prosecution with the law for disciplining registered nurses and licensed practical nurses.

Sections 20 and 24: Examinations for Dental and Hygiene Graduates

The bill amends ss. 466.006(3), F.S., to clarify that a “supplemental general dentistry program” does not include an advanced education program in a dental specialty and amends ss. 406.006(4) and 466.007, F.S., to delete the requirement that the American Dental Licensing Examination (ADLEX) and American Dental Hygiene Licensing Examination (ADHEX) given in Florida must be graded by a Florida licensed dentist, or dentist and hygienist, respectively.

The bill amends ss. 466.006 and 466.007, F.S., to eliminate obsolete dental and dental hygiene licensure examination requirements.

Sections 21, 22, 23, and 48: Health Access Dental Licensure

The bill revives, reenacts, and amends ss. 466.0067, 466.00671, and 466.00672, F.S., notwithstanding the January 1, 2020, repeal date for those sections. The bill’s amendments to those sections are for the purpose of grammatical corrections only. The bill includes a statement of legislative intent that the reenactments are remedial in nature and apply retroactively to January 1, 2020. The bill provides that this legislative intent is effective upon the bill becoming a law.

Section 25: Dental Adverse Incident Reporting

The bill amends s. 466.017, F.S., to require dentists and dental hygienists to report adverse incidents to the DOH, which is currently only required by a Board of Dentistry (BOD) rule. This new section requires the reporting of deaths, or any incident that results in the temporary or permanent physical or mental injury, that requires hospitalization or emergency room treatment of a dental patient that occurred during or as a result of the use of anesthesia or sedation, and creates grounds for discipline for the failure to report an adverse incident.

Sections 26 and 27: Dental Laboratories

The bill amends s. 466.031, F.S., to authorize an employee or independent contractor of a dental laboratory, acting as an agent of that dental laboratory, to engage in onsite consultation with a licensed dentist during a dental procedure.

The bill amends s. 466.036, F.S., to require that a dental laboratory must be inspected at least biennially.

Sections 28 through 32: Athletic Trainers

The bill amends s. 468.701, F.S., to remove a substantive statutory provision from the definition of “athletic trainer” and relocate that provision to s. 468.713, F.S. The provision in question restricts a licensed athletic trainer from providing, offering to provide, or representing that he or she is qualified to provide any care or services that he or she lacks the education, training, or experience to provide, or that he or she is otherwise prohibited by law from providing.

The bill also specifies within s. 468.713, F.S., that an athletic trainer must work within his or her allowable scope of practice as specified in Board of Athletic Trainers (BOAT) rule under s. 468.705, F.S.

The bill amends the licensure requirements for an athletic trainer in s. 468.707, F.S., to create a new licensure pathway for applicants who hold a bachelor’s degree, have completed the Board of Certification (BOC) internship requirements, and hold a current certification from the BOC to become licensed in Florida.

The bill amends s. 468.711, F.S., relating to licensure renewal requirements to require an athletic trainer to maintain his or her BOC certification in good standing without lapse. Licensees will have to demonstrate continuous good standing of his or her BOC certification at the time of renewal.

The bill amends 468.723, F.S., to give the BOAT rulemaking authority to further define the supervision between an athletic training student and a licensed athletic trainer rather than relying on compliance with standards set by the Commission on Accreditation of Athletic Training Education.

Section 33: Orthotics, Prosthetics, and Pedorthics

The bill amends s. 468.803, F.S., to authorize the DOH to issue a joint registration in orthotics and prosthetics as a dual registration rather than requiring separate registrations and to recognize the dual residency program and educational requirements for dual registration.

Sections 34, 35, and 36: Massage Therapy

The bill amends the definition of “apprentice” in s. 480.033(5), F.S., to eliminate the statutory authority for massage therapy apprenticeships, except for apprentices studying colonic hydrotherapy. The bill allows apprentices licensed before July 1, 2020, to maintain their apprentice license until its expiration date, but no later than July 1, 2023, and to qualify for licensure based on that apprenticeship.

The bill amends s. 480.041, F.S., to specify that the licensure examination is a national examination designated by the Board of Massage Therapy (BMT), not an examination administered by the BMT.

The bill repeals s. 480.042, F.S., relating to a massage therapy examination by the board, which is obsolete.

Sections 37, 38, and 39: Psychology

The bill amends s. 490.003, F.S., to eliminate outdated language in s. 490.003(3)(a), F.S.

The bill amends and renumbers s. 490.003(3)(b), F.S., to delete the generic reference to programs accredited by an agency recognized and approved by the U.S. Department of Education (DOE), and inserts a specific reference to the American Psychological Association (APA), which is the only accrediting agency recognized by the U.S. DOE to provide program accreditation for doctoral psychology programs. A specific reference to the APA clarifies current education requirements, but does not impose any new requirements.

The bill amends s. 490.005, F.S., relating to licensure by examination for psychologists. The bill eliminates the specific reference to Canada, which will allow applicants who obtained their education anywhere outside the U.S. to demonstrate they have an education comparable to an APA accredited program.

The bill removes outdated language referencing an augmented or comparable doctoral education pathway. The ability of applicants who obtained their degree in the United States, to augment an insufficient degree or show comparability to an APA accredited program, is no longer available.

The bill eliminates an outdated reference to the school psychology educational accrediting agency, the Commission on Recognition of Postsecondary Accreditation, and updates the reference with the successor agency, the Council for Higher Education Accreditation.

The bill amends s. 490.006, F.S., relating to a psychologist licensure by endorsement, to eliminate the requirement that the licensing provisions of the other state must have been substantially equivalent to, or more stringent than, those of either the law in Florida at the time the applicant obtained an out-of-state license or the current Florida law. The bill reduces from 20 years of licensed psychology experience, to 10 years of experience, within the preceding 25 years from the date of application. Licensure of qualified applicants will be expedited by amending these provisions.

Sections 40 through 44: Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling

The bill amends s. 491.0045, F.S., to clarify conflicting language passed in the same legislative session to permit the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling to make a one-time exception for an additional intern registration for interns registered on or before March 31, 2017. For those interns who's registration expires March 31, 2022, the board may grant an additional intern registration in emergency or hardship cases, as defined by board rule, if the candidate has passed the theory and practice examination described in ss. 491.005(1)(d), (3)(d), and (4)(d), F.S.

The bill amends s. 491.005(3), F.S., relating to licensure by examination for marriage and family therapists, to require:

- A master's degree with major emphasis in marriage and family therapy from a program accredited by the Commission of Accreditation for Marriage and Family Therapy Education; or,
- A master's degree with major emphasis in marriage and family therapy from a Florida university program accredited by the Council for Accreditation of Counseling and Related Education Programs and graduate courses approved by the board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling.

The bill eliminates the requirement for marriage and family therapists to complete 12 specific content areas and 180 practicum hours. This change will simplify the education review process, eliminate the course requirement review, and expedite licensure.

The bill amends s. 491.005(3)(c), F.S., to correct a technical discrepancy in the number of years of clinical experience required for a marriage and family therapist applicant from three years to two years.

The bill amends s. 491.005(4), F.S., relating to mental health counseling applicants to update the name of the examination to be taken by mental health counselor applicants. The bill amends s. 491.005(4)(b)1.c., F.S., to reduce the number of practicum, internship, or field experience hours for those applicants who graduated from a non- Counseling and Related Educational Programs (CACREP) accredited program, from 1,000 hours to 700 hours, to bring this provision in line with graduates from CACREP accredited programs.

The bill amends s. 491.006, F.S., relating to licensure, or certification by endorsement, for applicants for licensure in clinical social work, marriage and family therapy, or mental health counseling. The bill removes the requirement for endorsement applicants to meet the same educational requirements required of new applicants, provided the applicant for endorsement meets the requirements to have an active, valid license and has actively practiced the profession in another state for three of the last five years. Amending this provision will increase licensure portability for applicants applying by endorsement for licensure as marriage and family therapists in Florida.

The bill amends s. 491.007, F.S., relating to renewal of a license, registration, or certificate, to delete obsolete board rulemaking authority regarding intern registration renewal.

The bill amends s. 491.009(2), F.S., to delete an inaccurate reference to psychologists who are licensed under ch. 490, F.S., and to add the profession of certified master social worker that is licensed under ch. 491, F.S. The bill corrects a reference to the DOH, and places the correct reference of authority with the board to take disciplinary action for certain violations. By adding certified master social worker to this provision, the bill gives the DOH authority to enter an order denying licensure to a certified master social worker or impose discipline against any certified master social worker who is found guilty of violating any provision in ch. 491, F.S.

Sections 45 through 47: Technical Changes

The bill makes additional technical amendments to ss. 491.0046 and 945.42, F.S., to conform cross-references and makes a technical change to s. 945.42, F.S., to conform the definition of psychological professional in cross-references.

The bill reenacts s. 459.021(6), F.S., to incorporate by reference a related statutory change in the bill.

Section 49 provides an effective date of July 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.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/CS/CS/SB 230 has an insignificant negative impact on state revenues and expenditures. The deregulation of chiropractic assistants will result in an insignificant negative impact on state revenues associated with the licensure of chiropractic assistants, which will be offset by the reduction in expenditures associated with regulating

chiropractic assistants. The DOH will experience an insignificant increase in workload associated with rulemaking activities required in the bill. These costs can be absorbed within existing resources of the DOH.¹⁶⁴ The amendment to s. 381.915, F.S., related to Tier 3 National Cancer Center designations will have no impact on state expenditures.

The entities providing student loans for licensed healthcare practitioners may be negatively impacted since the bill removes punitive actions related to failure to repay the loan. The DOH's workload associated with notifying practitioners should decrease.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.303, 381.0042, 381.4018, 381.915, 401.35, 404.031, 404.22, 456.013, 456.072, 456.074, 458.3145, 458.3312, 459.0055, 464.019, 464.202, 464.203, 464.204, 466.006, 466.0067, 466.00671, 466.00672, 466.007, 466.017, 466.031, 466.036, 468.701, 468.707, 468.711, 468.713, 468.723, 468.803, 480.033, 480.041, 490.003, 490.005, 490.006, 491.0045, 491.005, 491.006, 491.007, 491.009, 491.0046, and 945.42.

This bill repeals the following sections of the Florida Statutes: 460.4166, 456.0721, and 480.042.

This bill reenacts the following sections of the Florida Statutes: 459.021 and 459.0055.

This bill creates one non-statutory section of the Laws of Florida.

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 March 2, 2020:

The CS:

- Amends s. 464.019 F.S., to allow nursing education programs seeking accreditation to apply to the BON for an extension of the deadline for achieving accreditation, of not more than two years, if the program meets certain criteria;
- Grants the BON rulemaking authority on criteria to qualify for the extension of time to become accredited; and

¹⁶⁴ Florida Department of Health, Agency Analysis of SB 230 (October 11, 2019) and email correspondence from the Department of Health (January 6, 2020) (on file with the Senate Appropriations Subcommittee on Health and Human Services).

- Amends the bill's statement of Legislative intent for the reenactments of statutes relating to the health access dental program are remedial in nature and apply retroactively to January 1, 2020. The bill provides that this Legislative intent is effective upon the bill becoming a law.

CS/CS by Appropriations on February 5, 2020:**The CS:**

- Requires that the Statewide Medical Director for Child Protection to report directly to the DOH's deputy secretary in charge of the state's Children's Medical Services Program and the medical directors of each child protection team reports directly to the statewide medical director.
- Requires an increase in the period of time a cancer center, participation in the Florida Consortium of National Cancer Institute Centers Program, may participate as a Tier 3 cancer center, and is authorized to pursue a National Cancer Institute designation as a cancer center or a comprehensive cancer, from a maximum of six years until June 30, 2024;
- Deletes a health care practitioner's failure to repay student loans, as grounds for discipline by the DOH;
- Modifies the DOH's rule-making authority pertaining to minimal standards governing ground ambulance and vehicle equipment, supplies, design, and construction;
- Defines "useful beam" radiation as that portion of a radiation beam designed to focus on a specific target; and specifies the requirements for maintaining and operating the useful beam radiation machine, as well as the conditions for use on humans.

CS by Health Policy on October 15, 2019:**The CS:**

- Replaces the term "acquired immune deficiency syndrome" with "human immunodeficiency virus" to broaden the purpose of the DOH's regional patient care networks to include persons with Human Immunodeficiency Virus (HIV), who might not have developed Acquired Immunodeficiency Syndrome (AIDS), as well as patients with AIDS;
- Modifies the DOH's rule-making authority pertaining to minimal standards governing ambulance and emergency medical services vehicle equipment, supplies, design, and construction;
- Revises the DOH's health care practitioner licensing provisions to allow the DOH to issue a temporary license, that expires in 60 days, instead of 30 days, to a non-resident or non-citizen physician who has accepted a residency, internship, or fellowship in Florida and has not yet received a social security number; and
- Authorizes the DOH to issue medical faculty certificates, without examination, to full-time faculty at Nova Southeastern University or Lake Erie College of Osteopathic Medicine.

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: WD	.	
03/03/2020	.	
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The Committee on Rules (Harrell) recommended the following:

Senate Amendment (with title amendment)

Between lines 368 and 369
insert:

Section 5. Paragraph (f) of subsection (4) and paragraph
(e) of subsection (8) of section 381.986, Florida Statutes, are
amended to read:

381.986 Medical use of marijuana.—

(4) PHYSICIAN CERTIFICATION.—

(f) A qualified physician may not issue a physician
certification for more than three 70-day supply limits of



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marijuana; ~~or~~ more than six 35-day supply limits of marijuana in a form for smoking; or, to a qualified patient under 21 years of age, marijuana with a concentration of tetrahydrocannabinol which exceeds 10 percent, except that a physician may certify such qualified patient for any concentration of tetrahydrocannabinol if the qualified patient is diagnosed with a terminal condition and the qualified physician indicates this fact on the qualified patient's certification. The department shall quantify by rule a daily dose amount with equivalent dose amounts for each allowable form of marijuana dispensed by a medical marijuana treatment center. The department shall use the daily dose amount to calculate a 70-day supply.

1. A qualified physician may request an exception to the daily dose amount limit, the 35-day supply limit of marijuana in a form for smoking, ~~and~~ the 4-ounce possession limit of marijuana in a form for smoking established in paragraph (14) (a), and the tetrahydrocannabinol concentration limits established in this paragraph. The request shall be made electronically on a form adopted by the department in rule and must include, at a minimum:

a. The qualified patient's qualifying medical condition.

b. The dosage and route of administration that was insufficient to provide relief to the qualified patient.

c. A description of how the patient will benefit from an increased amount.

d. The minimum daily dose amount of marijuana and tetrahydrocannabinol concentration, as applicable, that would be sufficient for the treatment of the qualified patient's qualifying medical condition.



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41 2. A qualified physician must provide the qualified
42 patient's records upon the request of the department.

43 3. The department shall approve or disapprove the request
44 within 14 days after receipt of the complete documentation
45 required by this paragraph. The request shall be deemed approved
46 if the department fails to act within this time period.

47 (8) MEDICAL MARIJUANA TREATMENT CENTERS.—

48 (e) A licensed medical marijuana treatment center shall
49 cultivate, process, transport, and dispense marijuana for
50 medical use. A licensed medical marijuana treatment center may
51 not contract for services directly related to the cultivation,
52 processing, and dispensing of marijuana or marijuana delivery
53 devices, except that a medical marijuana treatment center
54 licensed pursuant to subparagraph (a)1. may contract with a
55 single entity for the cultivation, processing, transporting, and
56 dispensing of marijuana and marijuana delivery devices. A
57 licensed medical marijuana treatment center must, at all times,
58 maintain compliance with the criteria demonstrated and
59 representations made in the initial application and the criteria
60 established in this subsection. Upon request, the department may
61 grant a medical marijuana treatment center a variance from the
62 representations made in the initial application. Consideration
63 of such a request shall be based upon the individual facts and
64 circumstances surrounding the request. A variance may not be
65 granted unless the requesting medical marijuana treatment center
66 can demonstrate to the department that it has a proposed
67 alternative to the specific representation made in its
68 application which fulfills the same or a similar purpose as the
69 specific representation in a way that the department can



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reasonably determine will not be a lower standard than the specific representation in the application. A variance may not be granted from the requirements in subparagraph 2. and subparagraphs (b)1. and 2.

1. A licensed medical marijuana treatment center may transfer ownership to an individual or entity who meets the requirements of this section. A publicly traded corporation or publicly traded company that meets the requirements of this section is not precluded from ownership of a medical marijuana treatment center. To accommodate a change in ownership:

a. The licensed medical marijuana treatment center shall notify the department in writing at least 60 days before the anticipated date of the change of ownership.

b. The individual or entity applying for initial licensure due to a change of ownership must submit an application that must be received by the department at least 60 days before the date of change of ownership.

c. Upon receipt of an application for a license, the department shall examine the application and, within 30 days after receipt, notify the applicant in writing of any apparent errors or omissions and request any additional information required.

d. Requested information omitted from an application for licensure must be filed with the department within 21 days after the department's request for omitted information or the application shall be deemed incomplete and shall be withdrawn from further consideration and the fees shall be forfeited.

Within 30 days after the receipt of a complete application, the



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department shall approve or deny the application.

2. A medical marijuana treatment center, and any individual or entity who directly or indirectly owns, controls, or holds with power to vote 5 percent or more of the voting shares of a medical marijuana treatment center, may not acquire direct or indirect ownership or control of any voting shares or other form of ownership of any other medical marijuana treatment center.

3. A medical marijuana treatment center may not enter into any form of profit-sharing arrangement with the property owner or lessor of any of its facilities where cultivation, processing, storing, or dispensing of marijuana and marijuana delivery devices occurs.

4. All employees of a medical marijuana treatment center must be 21 years of age or older and have passed a background screening pursuant to subsection (9).

5. Each medical marijuana treatment center must adopt and enforce policies and procedures to ensure employees and volunteers receive training on the legal requirements to dispense marijuana to qualified patients.

6. When growing marijuana, a medical marijuana treatment center:

a. May use pesticides determined by the department, after consultation with the Department of Agriculture and Consumer Services, to be safely applied to plants intended for human consumption, but may not use pesticides designated as restricted-use pesticides pursuant to s. 487.042.

b. Must grow marijuana within an enclosed structure and in a room separate from any other plant.

c. Must inspect seeds and growing plants for plant pests



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that endanger or threaten the horticultural and agricultural interests of the state in accordance with chapter 581 and any rules adopted thereunder.

d. Must perform fumigation or treatment of plants, or remove and destroy infested or infected plants, in accordance with chapter 581 and any rules adopted thereunder.

7. Each medical marijuana treatment center must produce and make available for purchase at least one low-THC cannabis product.

8. A medical marijuana treatment center that produces edibles must hold a permit to operate as a food establishment pursuant to chapter 500, the Florida Food Safety Act, and must comply with all the requirements for food establishments pursuant to chapter 500 and any rules adopted thereunder. Edibles may not contain more than 200 milligrams of tetrahydrocannabinol, and a single serving portion of an edible may not exceed 10 milligrams of tetrahydrocannabinol. Edibles may have a potency variance of no greater than 15 percent. Edibles may not be attractive to children; be manufactured in the shape of humans, cartoons, or animals; be manufactured in a form that bears any reasonable resemblance to products available for consumption as commercially available candy; or contain any color additives. To discourage consumption of edibles by children, the department shall determine by rule any shapes, forms, and ingredients allowed and prohibited for edibles. Medical marijuana treatment centers may not begin processing or dispensing edibles until after the effective date of the rule. The department shall also adopt sanitation rules providing the standards and requirements for the storage, display, or



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dispensing of edibles.

9. Within 12 months after licensure, a medical marijuana treatment center must demonstrate to the department that all of its processing facilities have passed a Food Safety Good Manufacturing Practices, such as Global Food Safety Initiative or equivalent, inspection by a nationally accredited certifying body. A medical marijuana treatment center must immediately stop processing at any facility which fails to pass this inspection until it demonstrates to the department that such facility has met this requirement.

10. A medical marijuana treatment center that produces prerolled marijuana cigarettes may not use wrapping paper made with tobacco or hemp.

11. When processing marijuana, a medical marijuana treatment center must:

a. Process the marijuana within an enclosed structure and in a room separate from other plants or products.

b. Comply with department rules when processing marijuana with hydrocarbon solvents or other solvents or gases exhibiting potential toxicity to humans. The department shall determine by rule the requirements for medical marijuana treatment centers to use such solvents or gases exhibiting potential toxicity to humans.

c. Comply with federal and state laws and regulations and department rules for solid and liquid wastes. The department shall determine by rule procedures for the storage, handling, transportation, management, and disposal of solid and liquid waste generated during marijuana production and processing. The Department of Environmental Protection shall assist the



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department in developing such rules.

d. Test the processed marijuana using a medical marijuana testing laboratory before it is dispensed. Results must be verified and signed by two medical marijuana treatment center employees. Before dispensing, the medical marijuana treatment center must determine that the test results indicate that low-THC cannabis meets the definition of low-THC cannabis, the concentration of tetrahydrocannabinol meets the potency requirements of this section, the labeling of the concentration of tetrahydrocannabinol and cannabidiol is accurate, and all marijuana is safe for human consumption and free from contaminants that are unsafe for human consumption. The department shall determine by rule which contaminants must be tested for and the maximum levels of each contaminant which are safe for human consumption. The Department of Agriculture and Consumer Services shall assist the department in developing the testing requirements for contaminants that are unsafe for human consumption in edibles. The department shall also determine by rule the procedures for the treatment of marijuana that fails to meet the testing requirements of this section, s. 381.988, or department rule. The department may select a random sample from edibles available for purchase in a dispensing facility which shall be tested by the department to determine that the edible meets the potency requirements of this section, is safe for human consumption, and the labeling of the tetrahydrocannabinol and cannabidiol concentration is accurate. A medical marijuana treatment center may not require payment from the department for the sample. A medical marijuana treatment center must recall edibles, including all edibles made from the same batch of



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marijuana, which fail to meet the potency requirements of this section, which are unsafe for human consumption, or for which the labeling of the tetrahydrocannabinol and cannabidiol concentration is inaccurate. The medical marijuana treatment center must retain records of all testing and samples of each homogenous batch of marijuana for at least 9 months. The medical marijuana treatment center must contract with a marijuana testing laboratory to perform audits on the medical marijuana treatment center's standard operating procedures, testing records, and samples and provide the results to the department to confirm that the marijuana or low-THC cannabis meets the requirements of this section and that the marijuana or low-THC cannabis is safe for human consumption. A medical marijuana treatment center shall reserve two processed samples from each batch and retain such samples for at least 9 months for the purpose of such audits. A medical marijuana treatment center may use a laboratory that has not been certified by the department under s. 381.988 until such time as at least one laboratory holds the required certification, but in no event later than July 1, 2018.

e. Package the marijuana in compliance with the United States Poison Prevention Packaging Act of 1970, 15 U.S.C. ss. 1471 et seq.

f. Package the marijuana in a receptacle that has a firmly affixed and legible label stating the following information:

(I) The marijuana or low-THC cannabis meets the requirements of sub-subparagraph d.

(II) The name of the medical marijuana treatment center from which the marijuana originates.



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(III) The batch number and harvest number from which the marijuana originates and the date dispensed.

(IV) The name of the physician who issued the physician certification.

(V) The name of the patient.

(VI) The product name, if applicable, and dosage form, including concentration of tetrahydrocannabinol and cannabidiol. The product name may not contain wording commonly associated with products marketed by or to children.

(VII) The recommended dose.

(VIII) A warning that it is illegal to transfer medical marijuana to another person.

(IX) A marijuana universal symbol developed by the department.

12. The medical marijuana treatment center shall include in each package a patient package insert with information on the specific product dispensed related to:

- a. Clinical pharmacology.
- b. Indications and use.
- c. Dosage and administration.
- d. Dosage forms and strengths.
- e. Contraindications.
- f. Warnings and precautions.
- g. Adverse reactions.

13. In addition to the packaging and labeling requirements specified in subparagraphs 11. and 12., marijuana in a form for smoking must be packaged in a sealed receptacle with a legible and prominent warning to keep away from children and a warning that states marijuana smoke contains carcinogens and may



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negatively affect health. Such receptacles for marijuana in a form for smoking must be plain, opaque, and white without depictions of the product or images other than the medical marijuana treatment center's department-approved logo and the marijuana universal symbol.

14. The department shall adopt rules to regulate the types, appearance, and labeling of marijuana delivery devices dispensed from a medical marijuana treatment center. The rules must require marijuana delivery devices to have an appearance consistent with medical use.

15. Each edible shall be individually sealed in plain, opaque wrapping marked only with the marijuana universal symbol. Where practical, each edible shall be marked with the marijuana universal symbol. In addition to the packaging and labeling requirements in subparagraphs 11. and 12., edible receptacles must be plain, opaque, and white without depictions of the product or images other than the medical marijuana treatment center's department-approved logo and the marijuana universal symbol. The receptacle must also include a list of all the edible's ingredients, storage instructions, an expiration date, a legible and prominent warning to keep away from children and pets, and a warning that the edible has not been produced or inspected pursuant to federal food safety laws.

16. When dispensing marijuana or a marijuana delivery device, a medical marijuana treatment center:

a. May dispense any active, valid order for low-THC cannabis, medical cannabis and cannabis delivery devices issued pursuant to former s. 381.986, Florida Statutes 2016, which was entered into the medical marijuana use registry before July 1,



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2017.

b. May not dispense more than a 70-day supply of marijuana within any 70-day period to a qualified patient or caregiver. May not dispense more than one 35-day supply of marijuana in a form for smoking within any 35-day period to a qualified patient or caregiver. A 35-day supply of marijuana in a form for smoking may not exceed 2.5 ounces unless an exception to this amount is approved by the department pursuant to paragraph (4)(f).

c. Must have the medical marijuana treatment center's employee who dispenses the marijuana or a marijuana delivery device enter into the medical marijuana use registry his or her name or unique employee identifier.

d. Must verify that the qualified patient and the caregiver, if applicable, each have an active registration in the medical marijuana use registry and an active and valid medical marijuana use registry identification card, the amount and type of marijuana dispensed matches the physician certification in the medical marijuana use registry for that qualified patient, and the physician certification has not already been filled.

e. May not dispense marijuana to a qualified patient who is younger than 18 years of age. If the qualified patient is younger than 18 years of age, marijuana may only be dispensed to the qualified patient's caregiver.

f. May not dispense marijuana with a concentration of tetrahydrocannabinol which exceeds 10 percent to a qualified patient 18 to 21 years of age, to his or her caregiver, or to the caregiver of a qualified patient under 18 years of age for the qualified patient's medical use. However, if a qualified



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patient younger than 21 years of age has an exception approved by the department under paragraph (4)(f) relating to the concentration of tetrahydrocannabinol or the qualified patient's certification indicates that he or she is diagnosed with a terminal condition, marijuana with a concentration of tetrahydrocannabinol which exceeds 10 percent may be dispensed to such a qualified patient who is 18 years of age or older or to his or her caregiver or to such a qualified patient's caregiver if the patient is younger than 18 years of age, for the qualified patient's medical use.

~~g.f.~~ May not dispense or sell any other type of cannabis, alcohol, or illicit drug-related product, including pipes or wrapping papers made with tobacco or hemp, other than a marijuana delivery device required for the medical use of marijuana and which is specified in a physician certification.

~~h.g.~~ Must, upon dispensing the marijuana or marijuana delivery device, record in the registry the date, time, quantity, and form of marijuana dispensed; the type of marijuana delivery device dispensed; and the name and medical marijuana use registry identification number of the qualified patient or caregiver to whom the marijuana delivery device was dispensed.

~~i.h.~~ Must ensure that patient records are not visible to anyone other than the qualified patient, his or her caregiver, and authorized medical marijuana treatment center employees.

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

And the title is amended as follows:

Delete line 19

and insert:



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360 Program; amending s. 381.986, F.S.; prohibiting
361 qualified physicians from certifying for certain
362 qualified patients marijuana with concentration of
363 tetrahydrocannabinol exceeding a certain amount;
364 providing exceptions; prohibiting medical marijuana
365 treatment centers from dispensing for certain
366 qualified patients marijuana with a concentration of
367 tetrahydrocannabinol exceeding a certain amount;
368 providing exceptions; amending s. 401.35, F.S.;
369 clarifying



309044

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/03/2020	.	
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The Committee on Rules (Harrell) recommended the following:

Senate Substitute for Amendment (850798) (with title amendment)

Between lines 368 and 369
insert:

Section 5. Paragraphs (a) and (f) of subsection (4) and paragraph (e) of subsection (8) of section 381.986, Florida Statutes, are amended, and paragraph (i) is added to subsection (14) of that section, to read:

381.986 Medical use of marijuana.—

(4) PHYSICIAN CERTIFICATION.—



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(a) A qualified physician may issue a physician certification only if the qualified physician:

1. Conducted a physical examination while physically present in the same room as the patient and a full assessment of the medical history of the patient.

2. Diagnosed the patient with at least one qualifying medical condition.

3. Determined that the medical use of marijuana would likely outweigh the potential health risks for the patient, and such determination must be documented in the patient's medical record. If a patient is younger than 18 years of age, a second physician must concur with this determination, and such concurrence must be documented in the patient's medical record.

4. Determined whether the patient is pregnant and documented such determination in the patient's medical record. A physician may not issue a physician certification, except for low-THC cannabis, to a patient who is pregnant.

5. Reviewed the patient's controlled drug prescription history in the prescription drug monitoring program database established pursuant to s. 893.055.

6. Reviews the medical marijuana use registry and confirmed that the patient does not have an active physician certification from another qualified physician.

7. Registers as the issuer of the physician certification for the named qualified patient on the medical marijuana use registry in an electronic manner determined by the department, and:

a. Enters into the registry the contents of the physician certification, including all of the patient's qualifying



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41 conditions for which the qualified physician is issuing the
42 certification ~~condition~~ and the dosage not to exceed the daily
43 dose amount determined by the department, the amount and forms
44 of marijuana authorized for the patient, and any types of
45 marijuana delivery devices needed by the patient for the medical
46 use of marijuana.

47 b. Updates the registry within 7 days after any change is
48 made to the original physician certification to reflect such
49 change.

50 c. Deactivates the registration of the qualified patient
51 and the patient's caregiver when the physician no longer
52 recommends the medical use of marijuana for the patient.

53 8. Obtains the voluntary and informed written consent of
54 the patient for medical use of marijuana each time the qualified
55 physician issues a physician certification for the patient,
56 which shall be maintained in the patient's medical record. The
57 patient, or the patient's parent or legal guardian if the
58 patient is a minor, must sign the informed consent acknowledging
59 that the qualified physician has sufficiently explained its
60 content. The qualified physician must use a standardized
61 informed consent form adopted in rule by the Board of Medicine
62 and the Board of Osteopathic Medicine, which must include, at a
63 minimum, information related to:

64 a. The Federal Government's classification of marijuana as
65 a Schedule I controlled substance.

66 b. The approval and oversight status of marijuana by the
67 Food and Drug Administration.

68 c. The current state of research on the efficacy of
69 marijuana to treat the qualifying conditions set forth in this



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section.

d. The potential for addiction.

e. The potential effect that marijuana may have on a patient's coordination, motor skills, and cognition, including a warning against operating heavy machinery, operating a motor vehicle, or engaging in activities that require a person to be alert or respond quickly.

f. The potential side effects of marijuana use, including the negative health risks associated with smoking marijuana and the negative health effects of marijuana use on persons under 21 years of age.

g. The risks, benefits, and drug interactions of marijuana.

h. That the patient's de-identified health information contained in the physician certification and medical marijuana use registry may be used for research purposes.

(f) A qualified physician may not issue a physician certification for more than three 70-day supply limits of marijuana; ~~or~~ more than six 35-day supply limits of marijuana in a form for smoking; or, to a qualified patient under 21 years of age, marijuana with a concentration of tetrahydrocannabinol which exceeds 10 percent, except that a physician may certify such qualified patient for any concentration of tetrahydrocannabinol if the qualified patient is diagnosed with a terminal condition and the qualified physician indicates this fact on the qualified patient's certification. The department shall quantify by rule a daily dose amount with equivalent dose amounts for each allowable form of marijuana dispensed by a medical marijuana treatment center. The department shall use the daily dose amount to calculate a 70-day supply.



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1. A qualified physician may request an exception to the daily dose amount limit, the 35-day supply limit of marijuana in a form for smoking, ~~and~~ the 4-ounce possession limit of marijuana in a form for smoking established in paragraph (14) (a), and the tetrahydrocannabinol concentration limits established in this paragraph. The request shall be made electronically on a form adopted by the department in rule and must include, at a minimum:

a. The qualified patient's qualifying medical condition.

b. The dosage and route of administration that was insufficient to provide relief to the qualified patient.

c. A description of how the patient will benefit from an increased amount.

d. The minimum daily dose amount of marijuana and tetrahydrocannabinol concentration, as applicable, that would be sufficient for the treatment of the qualified patient's qualifying medical condition.

2. A qualified physician must provide the qualified patient's records upon the request of the department.

3. The department shall approve or disapprove the request within 14 days after receipt of the complete documentation required by this paragraph. The request shall be deemed approved if the department fails to act within this time period.

(8) MEDICAL MARIJUANA TREATMENT CENTERS.—

(e) A licensed medical marijuana treatment center shall cultivate, process, transport, and dispense marijuana for medical use. A licensed medical marijuana treatment center may not contract for services directly related to the cultivation, processing, and dispensing of marijuana or marijuana delivery



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devices, except that a medical marijuana treatment center licensed pursuant to subparagraph (a)1. may contract with a single entity for the cultivation, processing, transporting, and dispensing of marijuana and marijuana delivery devices. A licensed medical marijuana treatment center must, at all times, maintain compliance with the criteria demonstrated and representations made in the initial application and the criteria established in this subsection. Upon request, the department may grant a medical marijuana treatment center a variance from the representations made in the initial application. Consideration of such a request shall be based upon the individual facts and circumstances surrounding the request. A variance may not be granted unless the requesting medical marijuana treatment center can demonstrate to the department that it has a proposed alternative to the specific representation made in its application which fulfills the same or a similar purpose as the specific representation in a way that the department can reasonably determine will not be a lower standard than the specific representation in the application. A variance may not be granted from the requirements in subparagraph 2. and subparagraphs (b)1. and 2.

1. A licensed medical marijuana treatment center may transfer ownership to an individual or entity who meets the requirements of this section. A publicly traded corporation or publicly traded company that meets the requirements of this section is not precluded from ownership of a medical marijuana treatment center. To accommodate a change in ownership:

a. The licensed medical marijuana treatment center shall notify the department in writing at least 60 days before the



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anticipated date of the change of ownership.

b. The individual or entity applying for initial licensure due to a change of ownership must submit an application that must be received by the department at least 60 days before the date of change of ownership.

c. Upon receipt of an application for a license, the department shall examine the application and, within 30 days after receipt, notify the applicant in writing of any apparent errors or omissions and request any additional information required.

d. Requested information omitted from an application for licensure must be filed with the department within 21 days after the department's request for omitted information or the application shall be deemed incomplete and shall be withdrawn from further consideration and the fees shall be forfeited.

Within 30 days after the receipt of a complete application, the department shall approve or deny the application.

2. A medical marijuana treatment center, and any individual or entity who directly or indirectly owns, controls, or holds with power to vote 5 percent or more of the voting shares of a medical marijuana treatment center, may not acquire direct or indirect ownership or control of any voting shares or other form of ownership of any other medical marijuana treatment center.

3. A medical marijuana treatment center may not enter into any form of profit-sharing arrangement with the property owner or lessor of any of its facilities where cultivation, processing, storing, or dispensing of marijuana and marijuana delivery devices occurs.



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186 4. All employees of a medical marijuana treatment center
187 must be 21 years of age or older and have passed a background
188 screening pursuant to subsection (9).

189 5. Each medical marijuana treatment center must adopt and
190 enforce policies and procedures to ensure employees and
191 volunteers receive training on the legal requirements to
192 dispense marijuana to qualified patients.

193 6. When growing marijuana, a medical marijuana treatment
194 center:

195 a. May use pesticides determined by the department, after
196 consultation with the Department of Agriculture and Consumer
197 Services, to be safely applied to plants intended for human
198 consumption, but may not use pesticides designated as
199 restricted-use pesticides pursuant to s. 487.042.

200 b. Must grow marijuana within an enclosed structure and in
201 a room separate from any other plant.

202 c. Must inspect seeds and growing plants for plant pests
203 that endanger or threaten the horticultural and agricultural
204 interests of the state in accordance with chapter 581 and any
205 rules adopted thereunder.

206 d. Must perform fumigation or treatment of plants, or
207 remove and destroy infested or infected plants, in accordance
208 with chapter 581 and any rules adopted thereunder.

209 7. Each medical marijuana treatment center must produce and
210 make available for purchase at least one low-THC cannabis
211 product.

212 8. A medical marijuana treatment center that produces
213 edibles must hold a permit to operate as a food establishment
214 pursuant to chapter 500, the Florida Food Safety Act, and must



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comply with all the requirements for food establishments pursuant to chapter 500 and any rules adopted thereunder. Edibles may not contain more than 200 milligrams of tetrahydrocannabinol, and a single serving portion of an edible may not exceed 10 milligrams of tetrahydrocannabinol. Edibles may have a potency variance of no greater than 15 percent of the 10 milligrams of tetrahydrocannabinol per single serving limit or the 200 milligrams of tetrahydrocannabinol per product limit. Edibles may not be attractive to children; be manufactured in the shape of humans, cartoons, or animals; be manufactured in a form that bears any reasonable resemblance to products available for consumption as commercially available candy; or contain any color additives. To discourage consumption of edibles by children, the department shall determine by rule any shapes, forms, and ingredients allowed and prohibited for edibles. Medical marijuana treatment centers may not begin processing or dispensing edibles until after the effective date of the rule. The department shall also adopt sanitation rules providing the standards and requirements for the storage, display, or dispensing of edibles.

9. Within 12 months after licensure, a medical marijuana treatment center must demonstrate to the department that all of its processing facilities have passed a Food Safety Good Manufacturing Practices, such as Global Food Safety Initiative or equivalent, inspection by a nationally accredited certifying body. A medical marijuana treatment center must immediately stop processing at any facility which fails to pass this inspection until it demonstrates to the department that such facility has met this requirement.



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10. A medical marijuana treatment center that produces prerolled marijuana cigarettes may not use wrapping paper made with tobacco or hemp.

11. When processing marijuana, a medical marijuana treatment center must:

a. Process the marijuana within an enclosed structure and in a room separate from other plants or products.

b. Comply with department rules when processing marijuana with hydrocarbon solvents or other solvents or gases exhibiting potential toxicity to humans. The department shall determine by rule the requirements for medical marijuana treatment centers to use such solvents or gases exhibiting potential toxicity to humans.

c. Comply with federal and state laws and regulations and department rules for solid and liquid wastes. The department shall determine by rule procedures for the storage, handling, transportation, management, and disposal of solid and liquid waste generated during marijuana production and processing. The Department of Environmental Protection shall assist the department in developing such rules.

12.d. A medical marijuana treatment center must test the
~~processed~~ marijuana using a medical marijuana testing laboratory before it is dispensed. Results must be verified and signed by two medical marijuana treatment center employees. Before dispensing, the medical marijuana treatment center must determine that the test results indicate that low-THC cannabis meets the definition of low-THC cannabis, the concentration of tetrahydrocannabinol meets the potency requirements of this section, the labeling of the concentration of



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tetrahydrocannabinol and cannabidiol is accurate, and all marijuana is safe for human consumption and free from contaminants that are unsafe for human consumption. The department shall determine by rule which contaminants must be tested for and the maximum levels of each contaminant which are safe for human consumption. The Department of Agriculture and Consumer Services shall assist the department in developing the testing requirements for contaminants that are unsafe for human consumption in edibles. The department shall also determine by rule the procedures for the treatment of marijuana that fails to meet the testing requirements of this section, s. 381.988, or department rule. The department may select ~~a~~ random samples of marijuana, sample from edibles available in a cultivation facility, processing facility, or for purchase in a dispensing facility which shall be tested by the department to determine that the marijuana edible meets the potency requirements of this section, is safe for human consumption, and the labeling of the tetrahydrocannabinol and cannabidiol concentration is accurate. A medical marijuana treatment center may not require payment from the department for the sample. A medical marijuana treatment center must recall edibles, including all edibles made from the same batch of marijuana, which fail to meet the potency requirements of this section, which are unsafe for human consumption, or for which the labeling of the tetrahydrocannabinol and cannabidiol concentration is inaccurate. The medical marijuana treatment center must retain records of all testing and samples of each homogenous batch of marijuana for at least 9 months. The medical marijuana treatment center must contract with a marijuana testing laboratory to



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perform audits on the medical marijuana treatment center's standard operating procedures, testing records, and samples and provide the results to the department to confirm that the marijuana or low-THC cannabis meets the requirements of this section and that the marijuana or low-THC cannabis is safe for human consumption. A medical marijuana treatment center shall reserve two processed samples from each batch and retain such samples for at least 9 months for the purpose of such audits. A medical marijuana treatment center may use a laboratory that has not been certified by the department under s. 381.988 until such time as at least one laboratory holds the required certification, but in no event later than July 1, 2021 ~~2018~~.

13. When packaging marijuana, a medical marijuana treatment center must:

a.e. Package the marijuana in compliance with the United States Poison Prevention Packaging Act of 1970, 15 U.S.C. ss. 1471 et seq.

b.f. Package the marijuana in a receptacle that has a firmly affixed and legible label stating the following information:

(I) The marijuana or low-THC cannabis meets the requirements of subparagraph 12 ~~sub-subparagraph d~~.

(II) The name of the medical marijuana treatment center from which the marijuana originates.

(III) The batch number and harvest number from which the marijuana originates and the date dispensed.

(IV) The name of the physician who issued the physician certification.

(V) The name of the patient.



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(VI) The product name, if applicable, and dosage form, including concentration of tetrahydrocannabinol and cannabidiol. The product name may not contain wording commonly associated with products marketed by or to children.

(VII) The recommended dose.

(VIII) A warning that it is illegal to transfer medical marijuana to another person.

(IX) A marijuana universal symbol developed by the department.

14.12. The medical marijuana treatment center shall include in each package a patient package insert with information on the specific product dispensed related to:

- a. Clinical pharmacology.
- b. Indications and use.
- c. Dosage and administration.
- d. Dosage forms and strengths.
- e. Contraindications.
- f. Warnings and precautions.
- g. Adverse reactions.

15.13. In addition to the packaging and labeling requirements specified in subparagraphs 11. and 14.12., marijuana in a form for smoking must be packaged in a sealed receptacle with a legible and prominent warning to keep away from children and a warning that states marijuana smoke contains carcinogens and may negatively affect health. Such receptacles for marijuana in a form for smoking must be plain, opaque, and white without depictions of the product or images other than the medical marijuana treatment center's department-approved logo and the marijuana universal symbol.



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~~16.14.~~ The department shall adopt rules to regulate the types, appearance, and labeling of marijuana delivery devices dispensed from a medical marijuana treatment center. The rules must require marijuana delivery devices to have an appearance consistent with medical use.

~~17.15.~~ Each edible shall be individually sealed in plain, opaque wrapping marked only with the marijuana universal symbol. Where practical, each edible shall be marked with the marijuana universal symbol. In addition to the packaging and labeling requirements in subparagraphs 11. and ~~14. 12.~~, edible receptacles must be plain, opaque, and white without depictions of the product or images other than the medical marijuana treatment center's department-approved logo and the marijuana universal symbol. The receptacle must also include a list of all the edible's ingredients, storage instructions, an expiration date, a legible and prominent warning to keep away from children and pets, and a warning that the edible has not been produced or inspected pursuant to federal food safety laws.

~~18.16.~~ When dispensing marijuana or a marijuana delivery device, a medical marijuana treatment center:

a. May dispense any active, valid order for low-THC cannabis, medical cannabis and cannabis delivery devices issued pursuant to former s. 381.986, Florida Statutes 2016, which was entered into the medical marijuana use registry before July 1, 2017.

b. May not dispense more than a 70-day supply of marijuana within any 70-day period to a qualified patient or caregiver. May not dispense more than one 35-day supply of marijuana in a form for smoking within any 35-day period to a qualified patient



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or caregiver. A 35-day supply of marijuana in a form for smoking may not exceed 2.5 ounces unless an exception to this amount is approved by the department pursuant to paragraph (4)(f).

c. Must have the medical marijuana treatment center's employee who dispenses the marijuana or a marijuana delivery device enter into the medical marijuana use registry his or her name or unique employee identifier.

d. Must verify that the qualified patient and the caregiver, if applicable, each have an active registration in the medical marijuana use registry and an active and valid medical marijuana use registry identification card, the amount and type of marijuana dispensed matches the physician certification in the medical marijuana use registry for that qualified patient, and the physician certification has not already been filled.

e. May not dispense marijuana to a qualified patient who is younger than 18 years of age. If the qualified patient is younger than 18 years of age, marijuana may only be dispensed to the qualified patient's caregiver.

f. May not dispense marijuana with a concentration of tetrahydrocannabinol which exceeds 10 percent to a qualified patient 18 to 21 years of age, to his or her caregiver, or to the caregiver of a qualified patient under 18 years of age for the qualified patient's medical use. However, if a qualified patient younger than 21 years of age has an exception approved by the department under paragraph (4)(f) relating to the concentration of tetrahydrocannabinol or the qualified patient's certification indicates that he or she is diagnosed with a terminal condition, marijuana with a concentration of



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tetrahydrocannabinol which exceeds 10 percent may be dispensed to such a qualified patient who is 18 years of age or older or to his or her caregiver or to such a qualified patient's caregiver if the patient is younger than 18 years of age, for the qualified patient's medical use.

~~g.f.~~ May not dispense or sell any other type of cannabis, alcohol, or illicit drug-related product, including pipes or wrapping papers made with tobacco or hemp, other than a marijuana delivery device required for the medical use of marijuana and which is specified in a physician certification.

~~h.g.~~ Must, upon dispensing the marijuana or marijuana delivery device, record in the registry the date, time, quantity, and form of marijuana dispensed; the type of marijuana delivery device dispensed; and the name and medical marijuana use registry identification number of the qualified patient or caregiver to whom the marijuana delivery device was dispensed.

~~i.h.~~ Must ensure that patient records are not visible to anyone other than the qualified patient, his or her caregiver, and authorized medical marijuana treatment center employees.

(14) EXCEPTIONS TO OTHER LAWS.—

(i) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, the department, including an employee of the department acting within the scope of his or her employment, may acquire, possess, test, transport, and lawfully dispose of marijuana as provided in this section.

Section 6. Present subsection (11) of section 381.988, Florida Statutes, is redesignated as subsection (12), and a new subsection (11) is added to that section, to read:



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381.988 Medical marijuana testing laboratories; marijuana tests conducted by a certified laboratory.—

(11) A certified medical marijuana testing laboratory and its officers, directors, and employees may not have a direct or indirect economic interest in, or a financial relationship with, a medical marijuana treatment center. Nothing in this subsection may be construed to prohibit a certified medical marijuana testing laboratory from contracting with a medical marijuana treatment center to provide testing services.

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

And the title is amended as follows:

Delete line 19
and insert:

Program; amending s. 381.986, F.S.; revising requirements for qualified physicians who issue physician certifications for the medical use of marijuana; prohibiting qualified physicians from certifying for certain qualified patients marijuana with concentration of tetrahydrocannabinol exceeding a specified amount; providing exceptions; revising a provision related to the tetrahydrocannabinol limits for edibles; revising provisions related to the testing, processing, and packaging of marijuana for medical use; prohibiting medical marijuana treatment centers from dispensing for certain qualified patients marijuana with a concentration of tetrahydrocannabinol exceeding a certain amount; providing exceptions; authorizing the department and its employees to



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476 acquire, possess, test, transport, and lawfully
477 dispose of marijuana under certain circumstances;
478 amending s. 381.988, F.S.; prohibiting certified
479 medical marijuana testing laboratories and their
480 officers, directors, and employees from having an
481 economic interest in, or a financial relationship
482 with, a medical marijuana treatment center; providing
483 construction; amending s. 401.35, F.S.; clarifying



341294

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/03/2020	.	
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The Committee on Rules (Brandes) recommended the following:

**Senate Amendment to Substitute Amendment (309044) (with
title amendment)**

Between lines 121 and 122

insert:

381.986 Medical use of marijuana.—

(8) MEDICAL MARIJUANA TREATMENT CENTERS.—

(b) An applicant for licensure as a medical marijuana treatment center shall apply to the department on a form prescribed by the department and adopted in rule. The department shall adopt rules pursuant to ss. 120.536(1) and 120.54



341294

12 establishing a procedure for the issuance and biennial renewal
13 of licenses, including initial application and biennial renewal
14 fees sufficient to cover the costs of implementing and
15 administering this section, and establishing supplemental
16 licensure fees for payment beginning May 1, 2018, sufficient to
17 cover the costs of administering ss. 381.989 and 1004.4351. The
18 department shall refuse to renew the license of a medical
19 marijuana treatment center that has not begun to cultivate,
20 process, and dispense marijuana by the date that the medical
21 marijuana treatment center is required to renew its license. The
22 department shall identify applicants with strong diversity plans
23 reflecting this state's commitment to diversity and implement
24 training programs and other educational programs to enable
25 minority persons and minority business enterprises, as defined
26 in s. 288.703, and veteran business enterprises, as defined in
27 s. 295.187, to compete for medical marijuana treatment center
28 licensure and contracts. Subject to the requirements in
29 subparagraphs (a)2.-4., the department shall issue a license to
30 an applicant if the applicant meets the requirements of this
31 section and pays the initial application fee. The department
32 shall renew the licensure of a medical marijuana treatment
33 center biennially if the licensee meets the requirements of this
34 section and pays the biennial renewal fee. An individual may not
35 be an applicant, owner, officer, board member, or manager on
36 more than one application for licensure as a medical marijuana
37 treatment center. An individual or entity may not be awarded
38 more than one license as a medical marijuana treatment center.
39 An applicant for licensure as a medical marijuana treatment
40 center must demonstrate:



341294

41 1. That, for the 5 consecutive years before submitting the
42 application, the applicant has been registered to do business in
43 the state.

44 2. Possession of a valid certificate of registration issued
45 by the Department of Agriculture and Consumer Services pursuant
46 to s. 581.131.

47 3. The technical and technological ability to cultivate and
48 produce marijuana, including, but not limited to, low-THC
49 cannabis.

50 4. The ability to secure the premises, resources, and
51 personnel necessary to operate as a medical marijuana treatment
52 center.

53 5. The ability to maintain accountability of all raw
54 materials, finished products, and any byproducts to prevent
55 diversion or unlawful access to or possession of these
56 substances.

57 6. An infrastructure reasonably located to dispense
58 marijuana to registered qualified patients statewide or
59 regionally as determined by the department.

60 7. The financial ability to maintain operations for the
61 duration of the 2-year approval cycle, including the provision
62 of certified financial statements to the department.

63 a. Upon approval, the applicant must post a \$5 million
64 performance bond issued by an authorized surety insurance
65 company rated in one of the three highest rating categories by a
66 nationally recognized rating service. However, a medical
67 marijuana treatment center serving at least 1,000 qualified
68 patients is only required to maintain a \$2 million performance
69 bond.



341294

b. In lieu of the performance bond required under sub-subparagraph a., the applicant may provide an irrevocable letter of credit payable to the department or provide cash to the department. If provided with cash under this sub-subparagraph, the department shall deposit the cash in the Grants and Donations Trust Fund within the Department of Health, subject to the same conditions as the bond regarding requirements for the applicant to forfeit ownership of the funds. If the funds deposited under this sub-subparagraph generate interest, the amount of that interest shall be used by the department for the administration of this section.

8. That all owners, officers, board members, and managers have passed a background screening pursuant to subsection (9).

9. The employment of a medical director to supervise the activities of the medical marijuana treatment center.

10. A diversity plan that promotes and ensures the involvement of minority persons and minority business enterprises, as defined in s. 288.703, or veteran business enterprises, as defined in s. 295.187, in ownership, management, and employment. An applicant for licensure renewal must show the effectiveness of the diversity plan by including the following with his or her application for renewal:

a. Representation of minority persons and veterans in the medical marijuana treatment center's workforce;

b. Efforts to recruit minority persons and veterans for employment; and

c. A record of contracts for services with minority business enterprises and veteran business enterprises.



341294

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

And the title is amended as follows:

Delete line 467

and insert:

specified amount; providing exceptions; requiring the
Department of Health to refuse to renew a medical
marijuana treatment center's license under certain
circumstances; revising a



628052

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2020	.	
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The Committee on Rules (Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete lines 652 - 701
and insert:

Section 16. Effective upon this act becoming a law,
subsections (8) and (10) of section 464.019, Florida Statutes,
are amended, and paragraph (f) is added to subsection (11) of
that section, to read:

464.019 Approval of nursing education programs.—

(8) RULEMAKING.—The board does not have rulemaking
authority to administer this section, except that the board



628052

shall adopt rules that prescribe the format for submitting program applications under subsection (1) and annual reports under subsection (3), and to administer the documentation of the accreditation of nursing education programs under subsection (11). The board may adopt rules relating to the nursing curriculum, including rules relating to the uses and limitations of simulation technology, and rules relating to the criteria to qualify for an extension of time to meet the accreditation requirements under paragraph (11)(f). The board may not impose any condition or requirement on an educational institution submitting a program application, an approved program, or an accredited program, except as expressly provided in this section.

(10) IMPLEMENTATION STUDY.—The Florida Center for Nursing shall study the administration of this section and submit reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives annually by January 30, through January 30, 2025 ~~2020~~. The annual reports shall address the previous academic year; provide data on the measures specified in paragraphs (a) and (b), as such data becomes available; and include an evaluation of such data for purposes of determining whether this section is increasing the availability of nursing education programs and the production of quality nurses. The department and each approved program or accredited program shall comply with requests for data from the Florida Center for Nursing.

(a) The Florida Center for Nursing shall evaluate program-specific data for each approved program and accredited program conducted in the state, including, but not limited to:



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41 1. The number of programs and student slots available.
42 2. The number of student applications submitted, the number
43 of qualified applicants, and the number of students accepted.
44 3. The number of program graduates.
45 4. Program retention rates of students tracked from program
46 entry to graduation.
47 5. Graduate passage rates on the National Council of State
48 Boards of Nursing Licensing Examination.
49 6. The number of graduates who become employed as practical
50 or professional nurses in the state.
51 (b) The Florida Center for Nursing shall evaluate the
52 board's implementation of the:
53 1. Program application approval process, including, but not
54 limited to, the number of program applications submitted under
55 subsection (1), ~~+~~ the number of program applications approved and
56 denied by the board under subsection (2), ~~+~~ the number of denials
57 of program applications reviewed under chapter 120, ~~+~~ and a
58 description of the outcomes of those reviews.
59 2. Accountability processes, including, but not limited to,
60 the number of programs on probationary status, the number of
61 approved programs for which the program director is required to
62 appear before the board under subsection (5), the number of
63 approved programs terminated by the board, the number of
64 terminations reviewed under chapter 120, and a description of
65 the outcomes of those reviews.
66 (c) The Florida Center for Nursing shall complete an annual
67 assessment of compliance by programs with the accreditation
68 requirements of subsection (11), include in the assessment a
69 determination of the accreditation process status for each



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program, and submit the assessment as part of the reports required by this subsection.

(11) ACCREDITATION REQUIRED.—

(f) To increase the supply of available nurses, it is the intent of the Legislature to accommodate nursing education programs that are in substantial compliance with this subsection. An approved nursing education program may, no sooner than 90 days before the deadline for meeting the accreditation requirements of this subsection, apply to the board for an extension of the accreditation deadline for a period which does not exceed 2 years. An additional extension may not be granted. In order to be eligible for the extension, the approved program must establish that it has a graduate passage rate of 60 percent or higher on the National Council of State Boards of Nursing Licensing Examination for the most recent calendar year and must meet a majority of the board's additional criteria, including, but not limited to, all of the following:

1. A student retention rate of 60 percent or higher for the most recent calendar year.

2. A graduate work placement rate of 70 percent or higher for the most recent calendar year.

3. The program has applied for approval or been approved by an institutional or programmatic accreditor recognized by the United States Department of Education.

4. The program is in full compliance with subsections (1) and (3) and paragraph (5) (b).

5. The program is not currently in its second year of probationary status under subsection (5).



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The applicable deadline under this paragraph is tolled from the date on which an approved program applies for an extension until the date on which the board issues a decision on the requested extension.

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

And the title is amended as follows:

Delete lines 59 - 62

and insert:

464.019, F.S.; authorizing the Board of Nursing to adopt specified rules; extending through 2025 the Florida Center for Nursing's responsibility to study and issue an annual report on the implementation of nursing education programs; providing legislative intent; authorizing certain nursing education programs to apply for an extension for accreditation within a specified timeframe; providing limitations on and eligibility criteria for the extension; providing a tolling provision; amending s. 464.202, F.S.;



473796

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/03/2020	.	
	.	
	.	
	.	

The Committee on Rules (Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete line 1868

and insert:

Section 49. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2020.

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

And the title is amended as follows:



473796

12 Delete line 151
13 and insert:
14 specified provisions; providing effective dates.



512696

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2020	.	
	.	
	.	
	.	

The Committee on Rules (Harrell) recommended the following:

Senate Substitute for Amendment (473796) (with title amendment)

Delete lines 1867 - 1869
and insert:
January 1, 2020. This section shall take effect upon this act becoming a law.

Section 49. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2020.



512696

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 151

16 and insert:

17 specified provisions; providing effective dates.



444270

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/03/2020	.	
	.	
	.	
	.	

The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1868 - 1869
and insert:

Section 49. Effective upon this act becoming a law,
subsection (10) is added to section 381.0031, Florida Statutes,
to read:

381.0031 Epidemiological research; report of diseases of
public health significance to department.—

(10) Notwithstanding subsection (6) or any other state law,
if the United States Department of Health and Human Services,



444270

the Florida Department of Health, or other executive agencies designated by the Governor has declared an outbreak of an infectious disease as a public health emergency the department shall publish a report of the following information related to that infectious disease during the public health emergency, excluding patient-identifying information or information that would identify individual healthcare providers or facilities:

(a) The total number of confirmed cases of the infectious disease in this state, differentiated by county.

(b) The total number of individuals who have been tested for the infectious disease in this state, differentiated by county.

(c) The total number of individuals who are currently being tested or monitored for the infectious disease in this state, differentiated by county.

(d) The total number of individuals who have been quarantined for testing or monitoring of the infectious disease in this state, differentiated by county.

(e) Any other information the department determines is relevant to prevent or eliminate the spread of the infectious disease or otherwise protect and promote public health in this state.

Section 50. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect on July 1, 2020.

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

And the title is amended as follows:



444270

41 Delete line 151
42 and insert:
43 specified provisions; amending s. 381.0031, F.S.;
44 requiring the department to publish a certain report
45 during certain public health emergencies; providing
46 requirements for the contents of such report;
47 providing effective dates.



639090

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/03/2020	.	
	.	
	.	
	.	

The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment to Amendment (444270)

Delete lines 12 - 16
and insert:
the department, or any other executive agency designated by the
Governor has declared an outbreak of an infectious disease as a
public health emergency, the department shall provide to the
public a daily report, published on the department's website, of
all of the following information related to that infectious
disease for the duration of the declared public health
emergency,

By the Committees on Appropriations; and Health Policy; and
Senator Harrell

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1 A bill to be entitled
2 An act relating to the Department of Health; amending
3 s. 39.303, F.S.; specifying direct reporting
4 requirements for certain positions within the
5 Children's Medical Services Program; amending s.
6 381.0042, F.S.; revising the purpose of patient care
7 networks from serving patients with acquired immune
8 deficiency syndrome to serving those with human
9 immunodeficiency virus; conforming provisions to
10 changes made by the act; deleting obsolete language;
11 amending s. 381.4018, F.S.; requiring the department
12 to develop strategies to maximize federal-state
13 partnerships that provide incentives for physicians to
14 practice in medically underserved or rural areas;
15 authorizing the department to adopt certain rules;
16 amending s. 381.915, F.S.; revising term limits for
17 Tier 3 cancer center designations within the Florida
18 Consortium of National Cancer Institute Centers
19 Program; amending s. 401.35, F.S.; clarifying
20 applicability of certain ambulance rules to include
21 emergency medical services vehicles; deleting the
22 requirement that the department base rules governing
23 medical supplies and equipment required in ambulances
24 and emergency medical services vehicles on a certain
25 association's standards; deleting the requirement that
26 the department base rules governing ambulance or
27 emergency medical services vehicle design and
28 construction on a certain agency's standards and
29 instead requiring the department to base such rules on

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30 national standards recognized by the department;
31 amending s. 404.031, F.S.; defining the term "useful
32 beam"; amending s. 404.22, F.S.; providing limitations
33 on the maintenance, operation, and modification of
34 certain radiation machines; providing conditions for
35 the authorized exposure of human beings to the
36 radiation emitted from a radiation machine; amending
37 s. 456.013, F.S.; revising health care practitioner
38 licensure application requirements; authorizing the
39 board or department to issue a temporary license to
40 certain applicants which expires after 60 days;
41 amending s. 456.072, F.S.; revising grounds for
42 certain disciplinary actions to conform to changes
43 made by the act; repealing s. 456.0721, F.S., relating
44 to health care practitioners in default on student
45 loan or scholarship obligations; amending s. 456.074,
46 F.S.; conforming provisions to changes made by the
47 act; amending s. 458.3145, F.S.; revising the list of
48 individuals who may be issued a medical faculty
49 certificate without examination; amending s. 458.3312,
50 F.S.; removing a prohibition against physicians
51 representing themselves as board-certified specialists
52 in dermatology unless the recognizing agency is
53 reviewed and reauthorized on a specified basis by the
54 Board of Medicine; amending s. 459.0055, F.S.;
55 revising licensure requirements for a person seeking
56 licensure or certification as an osteopathic
57 physician; repealing s. 460.4166, F.S., relating to
58 registered chiropractic assistants; amending s.

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59 464.019, F.S.; extending through 2025 the Florida
60 Center for Nursing's responsibility to study and issue
61 an annual report on the implementation of nursing
62 education programs; amending s. 464.202, F.S.;
63 requiring the Board of Nursing to adopt rules that
64 include disciplinary procedures and standards of
65 practice for certified nursing assistants; amending s.
66 464.203, F.S.; revising certification requirements for
67 nursing assistants; amending s. 464.204, F.S.;
68 revising grounds for board-imposed disciplinary
69 sanctions; amending s. 466.006, F.S.; revising certain
70 examination requirements for applicants seeking dental
71 licensure; reviving, reenacting, and amending s.
72 466.0067, F.S., relating to the application for a
73 health access dental license; reviving, reenacting,
74 and amending s. 466.00671, F.S., relating to the
75 renewal of such a license; reviving and reenacting s.
76 466.00672, F.S., relating to the revocation of such a
77 license; amending s. 466.007, F.S.; revising
78 requirements for examinations of dental hygienists;
79 amending s. 466.017, F.S.; requiring dentists and
80 certified registered dental hygienists to report in
81 writing certain adverse incidents to the department
82 within a specified timeframe; providing for
83 disciplinary action by the Board of Dentistry for
84 violations; defining the term "adverse incident";
85 authorizing the board to adopt rules; amending s.
86 466.031, F.S.; making technical changes; authorizing
87 an employee or an independent contractor of a dental

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88 laboratory, acting as an agent of that dental
89 laboratory, to engage in onsite consultation with a
90 licensed dentist during a dental procedure; amending
91 s. 466.036, F.S.; revising the frequency of dental
92 laboratory inspections during a specified period;
93 amending s. 468.701, F.S.; revising the definition of
94 the term "athletic trainer"; deleting a requirement
95 that is relocated to another section; amending s.
96 468.707, F.S.; revising athletic trainer licensure
97 requirements; amending s. 468.711, F.S.; requiring
98 certain licensees to maintain certification in good
99 standing without lapse as a condition of renewal of
100 their athletic trainer licenses; amending s. 468.713,
101 F.S.; requiring that an athletic trainer work within a
102 specified scope of practice; relocating an existing
103 requirement that was stricken from another section;
104 amending s. 468.723, F.S.; requiring the direct
105 supervision of an athletic training student to be in
106 accordance with rules adopted by the Board of Athletic
107 Training; amending s. 468.803, F.S.; revising
108 orthotic, prosthetic, and pedorthic licensure,
109 registration, and examination requirements; amending
110 s. 480.033, F.S.; revising the definition of the term
111 "apprentice"; amending s. 480.041, F.S.; revising
112 qualifications for licensure as a massage therapist;
113 specifying that massage apprentices licensed before a
114 specified date may continue to perform massage therapy
115 as authorized under their licenses; authorizing
116 massage apprentices to apply for full licensure upon

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117 completion of their apprenticeships, under certain
 118 conditions; repealing s. 480.042, F.S., relating to
 119 examinations for licensure as a massage therapist;
 120 amending s. 490.003, F.S.; revising the definition of
 121 the terms "doctoral-level psychological education" and
 122 "doctoral degree in psychology"; amending s. 490.005,
 123 F.S.; revising requirements for licensure by
 124 examination of psychologists and school psychologists;
 125 amending s. 490.006, F.S.; revising requirements for
 126 licensure by endorsement of psychologists and school
 127 psychologists; amending s. 491.0045, F.S.; exempting
 128 clinical social worker interns, marriage and family
 129 therapist interns, and mental health counselor interns
 130 from registration requirements, under certain
 131 circumstances; amending s. 491.005, F.S.; revising
 132 requirements for the licensure by examination of
 133 marriage and family therapists; revising requirements
 134 for the licensure by examination of mental health
 135 counselors; amending s. 491.006, F.S.; revising
 136 requirements for licensure by endorsement or
 137 certification for specified professions; amending s.
 138 491.007, F.S.; removing a biennial intern registration
 139 fee; amending s. 491.009, F.S.; authorizing the Board
 140 of Clinical Social Work, Marriage and Family Therapy,
 141 and Mental Health Counseling or, under certain
 142 circumstances, the department to enter an order
 143 denying licensure or imposing penalties against an
 144 applicant for licensure under certain circumstances;
 145 amending ss. 491.0046 and 945.42, F.S.; conforming

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146 cross-references; reenacting s. 459.021(6), F.S.,
 147 relating to registration of osteopathic resident
 148 physicians, interns, and fellows, to incorporate the
 149 amendment made to s. 459.0055, F.S., in a reference
 150 thereto; providing for retroactive applicability of
 151 specified provisions; providing an effective date.
 152

153 Be It Enacted by the Legislature of the State of Florida:
 154

155 Section 1. Paragraphs (a) and (b) of subsection (2) of
 156 section 39.303, Florida Statutes, are amended to read:

157 39.303 Child Protection Teams and sexual abuse treatment
 158 programs; services; eligible cases.—

159 (2) (a) The Statewide Medical Director for Child Protection
 160 must be a physician licensed under chapter 458 or chapter 459
 161 who is a board-certified pediatrician with a subspecialty
 162 certification in child abuse from the American Board of
 163 Pediatrics. The Statewide Medical Director for Child Protection
 164 shall report directly to the Deputy Secretary for Children's
 165 Medical Services.

166 (b) Each Child Protection Team medical director must be a
 167 physician licensed under chapter 458 or chapter 459 who is a
 168 board-certified physician in pediatrics or family medicine and,
 169 within 2 years after the date of employment as a Child
 170 Protection Team medical director, obtains a subspecialty
 171 certification in child abuse from the American Board of
 172 Pediatrics or within 2 years meet the minimum requirements
 173 established by a third-party credentialing entity recognizing a
 174 demonstrated specialized competence in child abuse pediatrics

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pursuant to paragraph (d). Each Child Protection Team medical director employed on July 1, 2015, must, by July 1, 2019, either obtain a subspecialty certification in child abuse from the American Board of Pediatrics or meet the minimum requirements established by a third-party credentialing entity recognizing a demonstrated specialized competence in child abuse pediatrics pursuant to paragraph (d). Child Protection Team medical directors shall be responsible for oversight of the teams in the circuits. Each Child Protection Team medical director shall report directly to the Statewide Medical Director for Child Protection.

Section 2. Section 381.0042, Florida Statutes, is amended to read:

381.0042 Patient care for persons with HIV infection.—The department may establish human immunodeficiency virus ~~acquired immune deficiency syndrome~~ patient care networks in each region of the state where the number ~~numbers~~ of cases of acquired ~~immune deficiency syndrome and other~~ human immunodeficiency virus transmission infections justifies the establishment of cost-effective regional patient care networks. Such networks shall be delineated by rule of the department which shall take into account natural trade areas and centers of medical excellence that specialize in the treatment of human ~~immunodeficiency virus acquired immune deficiency syndrome~~, as well as available federal, state, and other funds. Each patient care network shall include representation of persons with human immunodeficiency virus infection; health care providers; business interests; the department, including, but not limited to, county health departments; and local units of government.

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Each network shall plan for the care and treatment of persons with human immunodeficiency virus ~~acquired immune deficiency syndrome and acquired immune deficiency syndrome-related complex~~ in a cost-effective, dignified manner ~~that which~~ emphasizes outpatient and home care. Once ~~per each year, beginning April 1989,~~ each network shall make its recommendations concerning the needs for patient care to the department.

Section 3. Subsection (3) of section 381.4018, Florida Statutes, is amended to read:

381.4018 Physician workforce assessment and development.—

(3) GENERAL FUNCTIONS.—The department shall maximize the use of existing programs under the jurisdiction of the department and other state agencies and coordinate governmental and nongovernmental stakeholders and resources in order to develop a state strategic plan and assess the implementation of such strategic plan. In developing the state strategic plan, the department shall:

(a) Monitor, evaluate, and report on the supply and distribution of physicians licensed under chapter 458 or chapter 459. The department shall maintain a database to serve as a statewide source of data concerning the physician workforce.

(b) Develop a model and quantify, on an ongoing basis, the adequacy of the state's current and future physician workforce as reliable data becomes available. Such model must take into account demographics, physician practice status, place of education and training, generational changes, population growth, economic indicators, and issues concerning the "pipeline" into medical education.

(c) Develop and recommend strategies to determine whether

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the number of qualified medical school applicants who might become competent, practicing physicians in this state will be sufficient to meet the capacity of the state's medical schools. If appropriate, the department shall, working with representatives of appropriate governmental and nongovernmental entities, develop strategies and recommendations and identify best practice programs that introduce health care as a profession and strengthen skills needed for medical school admission for elementary, middle, and high school students, and improve premedical education at the precollege and college level in order to increase this state's potential pool of medical students.

(d) Develop strategies to ensure that the number of graduates from the state's public and private allopathic and osteopathic medical schools is adequate to meet physician workforce needs, based on the analysis of the physician workforce data, so as to provide a high-quality medical education to students in a manner that recognizes the uniqueness of each new and existing medical school in this state.

(e) Pursue strategies and policies to create, expand, and maintain graduate medical education positions in the state based on the analysis of the physician workforce data. Such strategies and policies must take into account the effect of federal funding limitations on the expansion and creation of positions in graduate medical education. The department shall develop options to address such federal funding limitations. The department shall consider options to provide direct state funding for graduate medical education positions in a manner that addresses requirements and needs relative to accreditation

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of graduate medical education programs. The department shall consider funding residency positions as a means of addressing needed physician specialty areas, rural areas having a shortage of physicians, and areas of ongoing critical need, and as a means of addressing the state's physician workforce needs based on an ongoing analysis of physician workforce data.

(f) Develop strategies to maximize federal and state programs that provide for the use of incentives to attract physicians to this state or retain physicians within the state. Such strategies should explore and maximize federal-state partnerships that provide incentives for physicians to practice in federally designated shortage areas, in otherwise medically underserved areas, or in rural areas. Strategies shall also consider the use of state programs, such as the Medical Education Reimbursement and Loan Repayment Program pursuant to s. 1009.65, which provide for education loan repayment or loan forgiveness and provide monetary incentives for physicians to relocate to underserved areas of the state.

(g) Coordinate and enhance activities relative to physician workforce needs, undergraduate medical education, graduate medical education, and reentry of retired military and other physicians into the physician workforce provided by the Division of Medical Quality Assurance, area health education center networks established pursuant to s. 381.0402, and other offices and programs within the department as designated by the State Surgeon General.

(h) Work in conjunction with and act as a coordinating body for governmental and nongovernmental stakeholders to address matters relating to the state's physician workforce assessment

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and development for the purpose of ensuring an adequate supply of well-trained physicians to meet the state's future needs. Such governmental stakeholders shall include, but need not be limited to, the State Surgeon General or his or her designee, the Commissioner of Education or his or her designee, the Secretary of Health Care Administration or his or her designee, and the Chancellor of the State University System or his or her designee, and, at the discretion of the department, other representatives of state and local agencies that are involved in assessing, educating, or training the state's current or future physicians. Other stakeholders shall include, but need not be limited to, organizations representing the state's public and private allopathic and osteopathic medical schools; organizations representing hospitals and other institutions providing health care, particularly those that currently provide or have an interest in providing accredited medical education and graduate medical education to medical students and medical residents; organizations representing allopathic and osteopathic practicing physicians; and, at the discretion of the department, representatives of other organizations or entities involved in assessing, educating, or training the state's current or future physicians.

(i) Serve as a liaison with other states and federal agencies and programs in order to enhance resources available to the state's physician workforce and medical education continuum.

(j) Act as a clearinghouse for collecting and disseminating information concerning the physician workforce and medical education continuum in this state.

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The department may adopt rules to implement this subsection, including rules that establish guidelines to implement the federal Conrad 30 Waiver Program created under s. 214(l) of the Immigration and Nationality Act.

Section 4. Paragraph (c) of subsection (4) of section 381.915, Florida Statutes, is amended to read:

381.915 Florida Consortium of National Cancer Institute Centers Program.—

(4) Tier designations and corresponding weights within the Florida Consortium of National Cancer Institute Centers Program are as follows:

(c) Tier 3: Florida-based cancer centers seeking designation as either a NCI-designated cancer center or NCI-designated comprehensive cancer center, which shall be weighted at 1.0.

1. A cancer center shall meet the following minimum criteria to be considered eligible for Tier 3 designation in any given fiscal year:

a. Conducting cancer-related basic scientific research and cancer-related population scientific research;

b. Offering and providing the full range of diagnostic and treatment services on site, as determined by the Commission on Cancer of the American College of Surgeons;

c. Hosting or conducting cancer-related interventional clinical trials that are registered with the NCI's Clinical Trials Reporting Program;

d. Offering degree-granting programs or affiliating with universities through degree-granting programs accredited or approved by a nationally recognized agency and offered through

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the center or through the center in conjunction with another institution accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;

e. Providing training to clinical trainees, medical trainees accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, and postdoctoral fellows recently awarded a doctorate degree; and

f. Having more than \$5 million in annual direct costs associated with their total NCI peer-reviewed grant funding.

2. The General Appropriations Act or accompanying legislation may limit the number of cancer centers which shall receive Tier 3 designations or provide additional criteria for such designation.

3. A cancer center's participation in Tier 3 may not extend beyond June 30, 2024 ~~shall be limited to 6 years.~~

4. A cancer center that qualifies as a designated Tier 3 center under the criteria provided in subparagraph 1. by July 1, 2014, is authorized to pursue NCI designation as a cancer center or a comprehensive cancer center until June 30, 2024 ~~for 6 years after qualification.~~

Section 5. Paragraphs (c) and (d) of subsection (1) of section 401.35, Florida Statutes, are amended to read:

401.35 Rules.—The department shall adopt rules, including definitions of terms, necessary to carry out the purposes of this part.

(1) The rules must provide at least minimum standards governing:

(c) Ground ambulance and vehicle equipment and supplies that a licensee with a valid vehicle permit under s. 401.26 is

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required to maintain to provide basic or advanced life support services at least as comprehensive as those published in the most current edition of the American College of Surgeons, Committee on Trauma, list of essential equipment for ambulances, ~~as interpreted by rules of the department.~~

(d) Ground ambulance or vehicle design and construction based on national standards recognized by the department and at least equal to those most currently recommended by the United States General Services Administration as interpreted by department rule ~~rules of the department.~~

Section 6. Subsection (21) is added to section 404.031, Florida Statutes, to read:

404.031 Definitions.—As used in this chapter, unless the context clearly indicates otherwise, the term:

(21) "Useful beam" means that portion of the radiation emitted from a radiation machine through the aperture of the machine's beam-limiting device which is designed to focus the radiation on the intended target in order to accomplish the machine's purpose when the machine's exposure controls are in a mode to cause the system to produce radiation.

Section 7. Subsections (7) and (8) are added to section 404.22, Florida Statutes, to read:

404.22 Radiation machines and components; inspection.—

(7) Radiation machines that are used to intentionally expose a human being to the useful beam:

(a) Must be maintained and operated according to manufacturer standards or nationally recognized consensus standards accepted by the department;

(b) Must be operated at the lowest exposure that will

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achieve the intended purpose of the exposure; and

(c) May not be modified in a manner that causes the original parts to operate in a way that differs from the original manufacturer's design specification or the parameters approved for the machine and its components by the United States Food and Drug Administration.

(8) A human being may be exposed to the useful beam of a radiation machine only under the following conditions:

(a) For the purpose of medical or health care, if a licensed health care practitioner operating within the scope of his or her practice has determined that the exposure provides a medical or health benefit greater than the health risks posed by the exposure and the health care practitioner uses the results of the exposure in the medical or health care of the exposed individual; or

(b) For the purpose of providing security for facilities or other venues, if the exposure is determined to provide a life safety benefit to the individual exposed which is greater than the health risk posed by the exposure. Such determination must be made by an individual trained in evaluating and calculating comparative mortality and morbidity risks according to standards set by the department. To be valid, the calculation and method of making the determination must be submitted to and accepted by the department. Limits to annual total exposure for security purposes must be adopted by department rule based on nationally recognized limits or relevant consensus standards.

Section 8. Paragraphs (a) and (b) of subsection (1) of section 456.013, Florida Statutes, are amended to read:

456.013 Department; general licensing provisions.—

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(1) (a) Any person desiring to be licensed in a profession within the jurisdiction of the department ~~must shall~~ apply to the department in writing ~~to take the licensure examination~~. The application ~~must shall~~ be made on a form prepared and furnished by the department. The application form must be available on the ~~Internet, World Wide Web~~ and the department may accept electronically submitted applications. The application shall require the social security number and date of birth of the applicant, except as provided in paragraphs (b) and (c). The form shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application which takes place between the initial filing of the application and the final grant or denial of the license and which might affect the decision of the department. If an application is submitted electronically, the department may require supplemental materials, including an original signature of the applicant and verification of credentials, to be submitted in a nonelectronic format. An incomplete application shall expire 1 year after initial filing. In order to further the economic development goals of the state, and notwithstanding any law to the contrary, the department may enter into an agreement with the county tax collector for the purpose of appointing the county tax collector as the department's agent to accept applications for licenses and applications for renewals of licenses. The agreement must specify the time within which the tax collector must forward any applications and accompanying application fees to the department.

(b) If an applicant has not been issued a social security number by the Federal Government at the time of application

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because the applicant is not a citizen or resident of this country, the department may process the application using a unique personal identification number. If such an applicant is otherwise eligible for licensure, the board, or the department when there is no board, may issue a temporary license to the applicant, which shall expire 30 days after issuance unless a social security number is obtained and submitted in writing to the department. A temporary license issued under this paragraph to an applicant who has accepted a position with an accredited residency, internship, or fellowship program in this state and is applying for registration under s. 458.345 or s. 459.021 shall expire 60 days after issuance unless the applicant obtains a social security number and submits it in writing to the department. Upon receipt of the applicant's social security number, the department shall issue a new license, which shall expire at the end of the current biennium.

Section 9. Paragraph (k) of subsection (1) of section 456.072, Florida Statutes, is amended to read:

456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(k) Failing to perform any statutory or legal obligation placed upon a licensee. For purposes of this section, failing to repay a student loan issued or guaranteed by the state or the Federal Government in accordance with the terms of the loan is not or failing to comply with service scholarship obligations shall be considered a failure to perform a statutory or legal obligation, ~~and the minimum disciplinary action imposed shall be~~

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~~a suspension of the license until new payment terms are agreed upon or the scholarship obligation is resumed, followed by probation for the duration of the student loan or remaining scholarship obligation period, and a fine equal to 10 percent of the defaulted loan amount.~~ Fines collected shall be deposited into the Medical Quality Assurance Trust Fund.

Section 10. Section 456.0721, Florida Statutes, is repealed.

Section 11. Subsection (4) of section 456.074, Florida Statutes, is amended to read:

456.074 Certain health care practitioners; immediate suspension of license.—

~~(4) Upon receipt of information that a Florida licensed health care practitioner has defaulted on a student loan issued or guaranteed by the state or the Federal Government, the department shall notify the licensee by certified mail that he or she shall be subject to immediate suspension of license unless, within 45 days after the date of mailing, the licensee provides proof that new payment terms have been agreed upon by all parties to the loan. The department shall issue an emergency order suspending the license of any licensee who, after 45 days following the date of mailing from the department, has failed to provide such proof. Production of such proof shall not prohibit the department from proceeding with disciplinary action against the licensee pursuant to s. 456.073.~~

Section 12. Subsection (1) of section 458.3145, Florida Statutes, is amended to read:

458.3145 Medical faculty certificate.—

(1) A medical faculty certificate may be issued without

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examination to an individual who:

(a) Is a graduate of an accredited medical school or its equivalent, or is a graduate of a foreign medical school listed with the World Health Organization;

(b) Holds a valid, current license to practice medicine in another jurisdiction;

(c) Has completed the application form and remitted a nonrefundable application fee not to exceed \$500;

(d) Has completed an approved residency or fellowship of at least 1 year or has received training which has been determined by the board to be equivalent to the 1-year residency requirement;

(e) Is at least 21 years of age;

(f) Is of good moral character;

(g) Has not committed any act in this or any other jurisdiction which would constitute the basis for disciplining a physician under s. 458.331;

(h) For any applicant who has graduated from medical school after October 1, 1992, has completed, before entering medical school, the equivalent of 2 academic years of preprofessional, postsecondary education, as determined by rule of the board, which must include, at a minimum, courses in such fields as anatomy, biology, and chemistry; and

(i) Has been offered and has accepted a full-time faculty appointment to teach in a program of medicine at:

1. The University of Florida;
2. The University of Miami;
3. The University of South Florida;
4. The Florida State University;

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5. The Florida International University;

6. The University of Central Florida;

7. The Mayo Clinic College of Medicine and Science in Jacksonville, Florida;

8. The Florida Atlantic University; ~~or~~

9. The Johns Hopkins All Children's Hospital in St. Petersburg, Florida;

10. Nova Southeastern University; or

11. Lake Erie College of Osteopathic Medicine.

Section 13. Section 458.3312, Florida Statutes, is amended to read:

458.3312 Specialties.—A physician licensed under this chapter may not hold himself or herself out as a board-certified specialist unless the physician has received formal recognition as a specialist from a specialty board of the American Board of Medical Specialties or other recognizing agency that has been approved by the board. However, a physician may indicate the services offered and may state that his or her practice is limited to one or more types of services when this accurately reflects the scope of practice of the physician. ~~A physician may not hold himself or herself out as a board-certified specialist in dermatology unless the recognizing agency, whether authorized in statute or by rule, is triennially reviewed and reauthorized by the Board of Medicine.~~

Section 14. Subsection (1) of section 459.0055, Florida Statutes, is amended to read:

459.0055 General licensure requirements.—

(1) Except as otherwise provided herein, any person desiring to be licensed or certified as an osteopathic physician

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581 pursuant to this chapter shall:

582 (a) Complete an application form and submit the appropriate
583 fee to the department;

584 (b) Be at least 21 years of age;

585 (c) Be of good moral character;

586 (d) Have completed at least 3 years of preprofessional
587 postsecondary education;

588 (e) Have not previously committed any act that would
589 constitute a violation of this chapter, unless the board
590 determines that such act does not adversely affect the
591 applicant's present ability and fitness to practice osteopathic
592 medicine;

593 (f) Not be under investigation in any jurisdiction for an
594 act that would constitute a violation of this chapter. If, upon
595 completion of such investigation, it is determined that the
596 applicant has committed an act that would constitute a violation
597 of this chapter, the applicant is ineligible for licensure
598 unless the board determines that such act does not adversely
599 affect the applicant's present ability and fitness to practice
600 osteopathic medicine;

601 (g) Have not had an application for a license to practice
602 osteopathic medicine denied or a license to practice osteopathic
603 medicine revoked, suspended, or otherwise acted against by the
604 licensing authority of any jurisdiction unless the board
605 determines that the grounds on which such action was taken do
606 not adversely affect the applicant's present ability and fitness
607 to practice osteopathic medicine. A licensing authority's
608 acceptance of a physician's relinquishment of license,
609 stipulation, consent order, or other settlement, offered in

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610 response to or in anticipation of the filing of administrative
611 charges against the osteopathic physician, shall be considered
612 action against the osteopathic physician's license;

613 (h) Not have received less than a satisfactory evaluation
614 from an internship, residency, or fellowship training program,
615 unless the board determines that such act does not adversely
616 affect the applicant's present ability and fitness to practice
617 osteopathic medicine. Such evaluation shall be provided by the
618 director of medical education from the medical training
619 facility;

620 (i) Have met the criteria set forth in s. 459.0075, s.
621 459.0077, or s. 459.021, whichever is applicable;

622 (j) Submit to the department a set of fingerprints on a
623 form and under procedures specified by the department, along
624 with a payment in an amount equal to the costs incurred by the
625 Department of Health for the criminal background check of the
626 applicant;

627 (k) Demonstrate that he or she is a graduate of a medical
628 college recognized and approved by the American Osteopathic
629 Association;

630 (l) Demonstrate that she or he has successfully completed
631 an internship or residency ~~a resident internship~~ of not less
632 than 12 months in a program accredited ~~hospital approved~~ for
633 this purpose by ~~the Board of Trustees of the American~~
634 Osteopathic Association or the Accreditation Council for
635 Graduate Medical Education ~~any other internship program approved~~
636 ~~by the board upon a showing of good cause by the applicant~~. This
637 requirement may be waived for an applicant who matriculated in a
638 college of osteopathic medicine during or before 1948; and

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639 (m) Demonstrate that she or he has obtained a passing
 640 score, as established by rule of the board, on all parts of the
 641 examination conducted by the National Board of Osteopathic
 642 Medical Examiners or other examination approved by the board no
 643 more than 5 years before making application in this state or, if
 644 holding a valid active license in another state, that the
 645 initial licensure in the other state occurred no more than 5
 646 years after the applicant obtained a passing score on the
 647 examination conducted by the National Board of Osteopathic
 648 Medical Examiners or other substantially similar examination
 649 approved by the board.

650 Section 15. Section 460.4166, Florida Statutes, is
 651 repealed.

652 Section 16. Subsection (10) of section 464.019, Florida
 653 Statutes, is amended to read:

654 464.019 Approval of nursing education programs.—

655 (10) IMPLEMENTATION STUDY.—The Florida Center for Nursing
 656 shall study the administration of this section and submit
 657 reports to the Governor, the President of the Senate, and the
 658 Speaker of the House of Representatives annually by January 30,
 659 through January 30, 2025 ~~2020~~. The annual reports shall address
 660 the previous academic year; provide data on the measures
 661 specified in paragraphs (a) and (b), as such data becomes
 662 available; and include an evaluation of such data for purposes
 663 of determining whether this section is increasing the
 664 availability of nursing education programs and the production of
 665 quality nurses. The department and each approved program or
 666 accredited program shall comply with requests for data from the
 667 Florida Center for Nursing.

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668 (a) The Florida Center for Nursing shall evaluate program-
 669 specific data for each approved program and accredited program
 670 conducted in the state, including, but not limited to:

- 671 1. The number of programs and student slots available.
- 672 2. The number of student applications submitted, the number
 673 of qualified applicants, and the number of students accepted.
- 674 3. The number of program graduates.
- 675 4. Program retention rates of students tracked from program
 676 entry to graduation.
- 677 5. Graduate passage rates on the National Council of State
 678 Boards of Nursing Licensing Examination.
- 679 6. The number of graduates who become employed as practical
 680 or professional nurses in the state.

681 (b) The Florida Center for Nursing shall evaluate the
 682 board's implementation of the:

- 683 1. Program application approval process, including, but not
 684 limited to, the number of program applications submitted under
 685 subsection (1), ~~+~~ the number of program applications approved and
 686 denied by the board under subsection (2), ~~+~~ the number of denials
 687 of program applications reviewed under chapter 120, ~~+~~ and a
 688 description of the outcomes of those reviews.

- 689 2. Accountability processes, including, but not limited to,
 690 the number of programs on probationary status, the number of
 691 approved programs for which the program director is required to
 692 appear before the board under subsection (5), the number of
 693 approved programs terminated by the board, the number of
 694 terminations reviewed under chapter 120, and a description of
 695 the outcomes of those reviews.

696 (c) The Florida Center for Nursing shall complete an annual

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assessment of compliance by programs with the accreditation requirements of subsection (11), include in the assessment a determination of the accreditation process status for each program, and submit the assessment as part of the reports required by this subsection.

Section 17. Section 464.202, Florida Statutes, is amended to read:

464.202 Duties and powers of the board.—The board shall maintain, or contract with or approve another entity to maintain, a state registry of certified nursing assistants. The registry must consist of the name of each certified nursing assistant in this state; other identifying information defined by board rule; certification status; the effective date of certification; other information required by state or federal law; information regarding any crime or any abuse, neglect, or exploitation as provided under chapter 435; and any disciplinary action taken against the certified nursing assistant. The registry shall be accessible to the public, the certificateholder, employers, and other state agencies. The board shall adopt by rule testing procedures for use in certifying nursing assistants and shall adopt rules regulating the practice of certified nursing assistants, including disciplinary procedures and standards of practice, and specifying the scope of practice authorized and the level of supervision required for the practice of certified nursing assistants. The board may contract with or approve another entity or organization to provide the examination services, including the development and administration of examinations. The board shall require that the contract provider offer

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certified nursing assistant applications via the Internet, and may require the contract provider to accept certified nursing assistant applications for processing via the Internet. The board shall require the contract provider to provide the preliminary results of the certified nursing examination on the date the test is administered. The provider shall pay all reasonable costs and expenses incurred by the board in evaluating the provider's application and performance during the delivery of services, including examination services and procedures for maintaining the certified nursing assistant registry.

Section 18. Paragraph (c) of subsection (1) of section 464.203, Florida Statutes, is amended to read:

464.203 Certified nursing assistants; certification requirement.—

(1) The board shall issue a certificate to practice as a certified nursing assistant to any person who demonstrates a minimum competency to read and write and successfully passes the required background screening pursuant to s. 400.215. If the person has successfully passed the required background screening pursuant to s. 400.215 or s. 408.809 within 90 days before applying for a certificate to practice and the person's background screening results are not retained in the clearinghouse created under s. 435.12, the board shall waive the requirement that the applicant successfully pass an additional background screening pursuant to s. 400.215. The person must also meet one of the following requirements:

(c) Is currently certified in another state or territory of the United States or in the District of Columbia; is listed on

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that ~~jurisdiction's state's~~ certified nursing assistant registry; and has not been found to have committed abuse, neglect, or exploitation in that ~~jurisdiction state~~.

Section 19. Paragraph (b) of subsection (1) of section 464.204, Florida Statutes, is amended to read:

464.204 Denial, suspension, or revocation of certification; disciplinary actions.—

(1) The following acts constitute grounds for which the board may impose disciplinary sanctions as specified in subsection (2):

(b) ~~Intentionally~~ Violating any provision of this chapter, chapter 456, or the rules adopted by the board.

Section 20. Subsections (3) and (4) of section 466.006, Florida Statutes, are amended to read:

466.006 Examination of dentists.—

(3) If an applicant is a graduate of a dental college or school not accredited in accordance with paragraph (2)(b) or of a dental college or school not approved by the board, the applicant is not entitled to take the examinations required in this section to practice dentistry until she or he satisfies one of the following:

(a) Completes a program of study, as defined by the board by rule, at an accredited American dental school and demonstrates receipt of a D.D.S. or D.M.D. from said school; or

(b) Submits proof of having successfully completed at least 2 consecutive academic years at a full-time supplemental general dentistry program accredited by the American Dental Association Commission on Dental Accreditation. This program must provide didactic and clinical education at the level of a D.D.S. or

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D.M.D. program accredited by the American Dental Association Commission on Dental Accreditation. For purposes of this paragraph, a supplemental general dentistry program does not include an advanced education program in a dental specialty.

(4) Notwithstanding any other provision of law in chapter 456 pertaining to the clinical dental licensure examination or national examinations, to be licensed as a dentist in this state, an applicant must successfully complete both of the following:

(a) A written examination on the laws and rules of the state regulating the practice of dentistry.~~+~~

(b)~~1-~~ A practical or clinical examination, which must ~~shall~~ be the American Dental Licensing Examination produced by the American Board of Dental Examiners, Inc., or its successor entity, if any, that is administered in this state ~~and graded by dentists licensed in this state and employed by the department for just such purpose~~, provided that the board has attained, and continues to maintain thereafter, representation on the board of directors of the American Board of Dental Examiners, the examination development committee of the American Board of Dental Examiners, and such other committees of the American Board of Dental Examiners as the board deems appropriate by rule to assure that the standards established herein are maintained organizationally. A passing score on the American Dental Licensing Examination administered in this state ~~and graded by dentists who are licensed in this state~~ is valid for 365 days after the date the official examination results are published.

1.2-a. As an alternative to such practical or clinical examination ~~the requirements of subparagraph 1-~~, an applicant

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may submit scores from an American Dental Licensing Examination previously administered in a jurisdiction other than this state after October 1, 2011, and such examination results shall be recognized as valid for the purpose of licensure in this state. A passing score on the American Dental Licensing Examination administered out of state ~~out-of-state~~ shall be the same as the passing score for the American Dental Licensing Examination administered in this state ~~and graded by dentists who are licensed in this state~~. The examination results are valid for 365 days after the date the official examination results are published. The applicant must have completed the examination after October 1, 2011.

~~b.~~ This subparagraph may not be given retroactive application.

~~2.3.~~ If the date of an applicant's passing American Dental Licensing Examination scores from an examination previously administered in a jurisdiction other than this state under subparagraph 1. ~~subparagraph 2.~~ is older than 365 days, ~~then~~ such scores are ~~shall~~ nevertheless ~~be recognized as~~ valid for the purpose of licensure in this state, but only if the applicant demonstrates that all of the following additional standards have been met:

a. ~~(I)~~ The applicant completed the American Dental Licensing Examination after October 1, 2011.

~~(II)~~ This sub-subparagraph may not be given retroactive application;

b. The applicant graduated from a dental school accredited by the American Dental Association Commission on Dental Accreditation or its successor entity, if any, or any other

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dental accrediting organization recognized by the United States Department of Education. Provided, however, if the applicant did not graduate from such a dental school, the applicant may submit proof of having successfully completed a full-time supplemental general dentistry program accredited by the American Dental Association Commission on Dental Accreditation of at least 2 consecutive academic years at such accredited sponsoring institution. Such program must provide didactic and clinical education at the level of a D.D.S. or D.M.D. program accredited by the American Dental Association Commission on Dental Accreditation. For purposes of this paragraph, a supplemental general dentistry program does not include an advanced education program in a dental specialty;

c. The applicant currently possesses a valid and active dental license in good standing, with no restriction, which has never been revoked, suspended, restricted, or otherwise disciplined, from another state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico;

d. The applicant submits proof that he or she has never been reported to the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank, or the American Association of Dental Boards Clearinghouse. This sub-subparagraph does not apply if the applicant successfully appealed to have his or her name removed from the data banks of these agencies;

e. (I) (A) ~~In the 5 years immediately preceding the date of application for licensure in this state,~~ The applicant submits ~~must submit~~ proof of having been consecutively engaged in the

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871 full-time practice of dentistry in another state or territory of
 872 the United States, the District of Columbia, or the Commonwealth
 873 of Puerto Rico in the 5 years immediately preceding the date of
 874 application for licensure in this state; or,

875 (B) If the applicant has been licensed in another state or
 876 territory of the United States, the District of Columbia, or the
 877 Commonwealth of Puerto Rico for less than 5 years, the applicant
 878 submits ~~must submit~~ proof of having been engaged in the full-
 879 time practice of dentistry since the date of his or her initial
 880 licensure.

881 (II) As used in this section, "full-time practice" is
 882 defined as a minimum of 1,200 hours per year for each and every
 883 year in the consecutive 5-year period or, when ~~where~~ applicable,
 884 the period since initial licensure, and must include any
 885 combination of the following:

886 (A) Active clinical practice of dentistry providing direct
 887 patient care.

888 (B) Full-time practice as a faculty member employed by a
 889 dental or dental hygiene school approved by the board or
 890 accredited by the American Dental Association Commission on
 891 Dental Accreditation.

892 (C) Full-time practice as a student at a postgraduate
 893 dental education program approved by the board or accredited by
 894 the American Dental Association Commission on Dental
 895 Accreditation.

896 (III) The board shall develop rules to determine what type
 897 of proof of full-time practice is required and to recoup the
 898 cost to the board of verifying full-time practice under this
 899 section. Such proof must, at a minimum, be:

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900 (A) Admissible as evidence in an administrative proceeding;

901 (B) Submitted in writing;

902 (C) Submitted by the applicant under oath with penalties of
 903 perjury attached;

904 (D) Further documented by an affidavit of someone unrelated
 905 to the applicant who is familiar with the applicant's practice
 906 and testifies with particularity that the applicant has been
 907 engaged in full-time practice; and

908 (E) Specifically found by the board to be both credible and
 909 admissible.

910 (IV) An affidavit of only the applicant is not acceptable
 911 proof of full-time practice unless it is further attested to by
 912 someone unrelated to the applicant who has personal knowledge of
 913 the applicant's practice. If the board deems it necessary to
 914 assess credibility or accuracy, the board may require the
 915 applicant or the applicant's witnesses to appear before the
 916 board and give oral testimony under oath;

917 f. The applicant submits ~~must submit~~ documentation that he
 918 or she has completed, or will complete before he or she is
 919 licensed, ~~prior to licensure~~ in this state, continuing education
 920 equivalent to this state's requirements for the last full
 921 reporting biennium;

922 g. The applicant proves ~~must prove~~ that he or she has never
 923 been convicted of, or pled nolo contendere to, regardless of
 924 adjudication, any felony or misdemeanor related to the practice
 925 of a health care profession in any jurisdiction;

926 h. The applicant has ~~must~~ successfully passed ~~pass~~ a
 927 written examination on the laws and rules of this state
 928 regulating the practice of dentistry and ~~must successfully pass~~

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the computer-based diagnostic skills examination; and

i. The applicant ~~submits must submit~~ documentation that he or she has successfully completed the applicable examination administered by the Joint Commission on National Dental Examinations or its successor organization ~~National Board of Dental Examiners dental examination.~~

Section 21. Notwithstanding the January 1, 2020, repeal of section 466.0067, Florida Statutes, that section is revived, reenacted, and amended, to read:

466.0067 Application for health access dental license.—The Legislature finds that there is an important state interest in attracting dentists to practice in underserved health access settings in this state and further, that allowing out-of-state dentists who meet certain criteria to practice in health access settings without the supervision of a dentist licensed in this state is substantially related to achieving this important state interest. Therefore, notwithstanding the requirements of s. 466.006, the board shall grant a health access dental license to practice dentistry in this state in health access settings as defined in s. 466.003 to an applicant who ~~that~~:

(1) Files an appropriate application approved by the board;

(2) Pays an application license fee for a health access dental license, laws-and-rule exam fee, and an initial licensure fee. The fees specified in this subsection may not differ from an applicant seeking licensure pursuant to s. 466.006;

(3) Has not been convicted of or pled nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession;

(4) Submits proof of graduation from a dental school

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accredited by the Commission on Dental Accreditation of the American Dental Association or its successor agency;

(5) Submits documentation that she or he has completed, or will obtain ~~before~~ prior to licensure, continuing education equivalent to this state's requirement for dentists licensed under s. 466.006 for the last full reporting biennium before applying for a health access dental license;

(6) Submits proof of her or his successful completion of parts I and II of the dental examination by the National Board of Dental Examiners and a state or regional clinical dental licensing examination that the board has determined effectively measures the applicant's ability to practice safely;

(7) Currently holds a valid, active, ~~dental~~ dental license in good standing which has not been revoked, suspended, restricted, or otherwise disciplined from another of the United States, the District of Columbia, or a United States territory;

(8) Has never had a license revoked from another of the United States, the District of Columbia, or a United States territory;

(9) Has never failed the examination specified in s. 466.006, unless the applicant was reexamined pursuant to s. 466.006 and received a license to practice dentistry in this state;

(10) Has not been reported to the National Practitioner Data Bank, unless the applicant successfully appealed to have his or her name removed from the data bank;

(11) Submits proof that he or she has been engaged in the active, clinical practice of dentistry providing direct patient care for 5 years immediately preceding the date of application,

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or in instances when the applicant has graduated from an accredited dental school within the preceding 5 years, submits proof of continuous clinical practice providing direct patient care since graduation; and

(12) Has passed an examination covering the laws and rules of the practice of dentistry in this state as described in s. 466.006(4)(a).

Section 22. Notwithstanding the January 1, 2020, repeal of section 466.00671, Florida Statutes, that section is revived, reenacted, and amended to read:

466.00671 Renewal of the health access dental license.—

(1) A health access dental licensee shall apply for renewal each biennium. At the time of renewal, the licensee shall sign a statement that she or he has complied with all continuing education requirements of an active dentist licensee. The board shall renew a health access dental license for an applicant who ~~that~~:

(a) Submits documentation, as approved by the board, from the employer in the health access setting that the licensee has at all times pertinent remained an employee;

(b) Has not been convicted of or pled nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession;

(c) Has paid a renewal fee set by the board. The fee specified herein may not differ from the renewal fee adopted by the board pursuant to s. 466.013. The department may provide payment for these fees through the dentist's salary, benefits, or other department funds;

(d) Has not failed the examination specified in s. 466.006

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since initially receiving a health access dental license or since the last renewal; and

(e) Has not been reported to the National Practitioner Data Bank, unless the applicant successfully appealed to have his or her name removed from the data bank.

(2) The board may undertake measures to independently verify the health access dental licensee's ongoing employment status in the health access setting.

Section 23. Notwithstanding the January 1, 2020, repeal of section 466.00672, Florida Statutes, that section is revived and reenacted to read:

466.00672 Revocation of health access dental license.—

(1) The board shall revoke a health access dental license upon:

(a) The licensee's termination from employment from a qualifying health access setting;

(b) Final agency action determining that the licensee has violated any provision of s. 466.027 or s. 466.028, other than infractions constituting citation offenses or minor violations; or

(c) Failure of the Florida dental licensure examination.

(2) Failure of an individual licensed pursuant to s. 466.0067 to limit the practice of dentistry to health access settings as defined in s. 466.003 constitutes the unlicensed practice of dentistry.

Section 24. Paragraph (b) of subsection (4) and paragraph (a) of subsection (6) of section 466.007, Florida Statutes, are amended to read:

466.007 Examination of dental hygienists.—

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(4) Effective July 1, 2012, to be licensed as a dental hygienist in this state, an applicant must successfully complete the following:

(b) A practical or clinical examination approved by the board. The examination shall be the Dental Hygiene Examination produced by the American Board of Dental Examiners, Inc. (ADEX) or its successor entity, if any, if the board finds that the successor entity's clinical examination meets or exceeds the provisions of this section. The board shall approve the ADEX Dental Hygiene Examination if the board has attained and continues to maintain representation on the ADEX House of Representatives, the ADEX Dental Hygiene Examination Development Committee, and such other ADEX Dental Hygiene committees as the board deems appropriate through rulemaking to ensure that the standards established in this section are maintained organizationally. The ADEX Dental Hygiene Examination or the examination produced by its successor entity is a comprehensive examination in which an applicant must demonstrate skills within the dental hygiene scope of practice on a live patient and any other components that the board deems necessary for the applicant to successfully demonstrate competency for the purpose of licensure. ~~The ADEX Dental Hygiene Examination or the examination by the successor entity administered in this state shall be graded by dentists and dental hygienists licensed in this state who are employed by the department for this purpose.~~

(6) (a) A passing score on the ADEX Dental Hygiene Examination administered out of state must ~~shall~~ be considered the same as a passing score for the ADEX Dental Hygiene Examination administered in this state ~~and graded by licensed~~

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~~dentists and dental hygienists.~~

Section 25. Subsections (9) through (15) are added to section 466.017, Florida Statutes, to read:

466.017 Prescription of drugs; anesthesia.—

(9) Any adverse incident that occurs in an office maintained by a dentist must be reported to the department. The required notification to the department must be submitted in writing by certified mail and postmarked within 48 hours after the incident occurs.

(10) A dentist practicing in this state must notify the board in writing by certified mail within 48 hours after any adverse incident that occurs in the dentist's outpatient facility. A complete written report must be filed with the board within 30 days after the incident occurs.

(11) Any certified registered dental hygienist administering local anesthesia must notify the board in writing by registered mail within 48 hours after any adverse incident that was related to or the result of the administration of local anesthesia. A complete written report must be filed with the board within 30 days after the mortality or other adverse incident.

(12) A failure by the dentist or dental hygienist to timely and completely comply with all the reporting requirements in this section is the basis for disciplinary action by the board pursuant to s. 466.028(1).

(13) The department shall review each adverse incident and determine whether it involved conduct by a health care professional subject to disciplinary action, in which case s. 466.073 applies. Disciplinary action, if any, shall be taken by

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the board under which the health care professional is licensed.

(14) As used in subsections (9)-(13), the term "adverse incident" means any mortality that occurs during or as the result of a dental procedure, or an incident that results in a temporary or permanent physical or mental injury that requires hospitalization or emergency room treatment of a dental patient which occurs during or as a direct result of the use of general anesthesia, deep sedation, moderate sedation, pediatric moderate sedation, oral sedation, minimal sedation (anxiolysis), nitrous oxide, or local anesthesia.

(15) The board may adopt rules to administer this section.

Section 26. Section 466.031, Florida Statutes, is amended to read:

466.031 "Dental laboratories ~~laboratory~~" defined.—

(1) As used in this chapter, the term "dental laboratory" ~~as used in this chapter.~~

~~(1)~~ includes any person, firm, or corporation ~~that who~~ performs for a fee of any kind, gratuitously, or otherwise, directly or through an agent or an employee, by any means or method, or ~~who in any way~~ supplies or manufactures artificial substitutes for the natural teeth; ~~or who~~ furnishes, supplies, constructs, or reproduces or repairs any prosthetic denture, bridge, or appliance to be worn in the human mouth; ~~or who in~~ any way represents ~~holds~~ itself ~~out~~ as a dental laboratory.

~~(2)~~ The term does not include a ~~Excludes any~~ dental laboratory technician who constructs or repairs dental prosthetic appliances in the office of a licensed dentist exclusively for that ~~such~~ dentist ~~only and~~ under her or his supervision and work order.

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(2) An employee or independent contractor of a dental laboratory, acting as an agent of that dental laboratory, may engage in onsite consultation with a licensed dentist during a dental procedure.

Section 27. Section 466.036, Florida Statutes, is amended to read:

466.036 Information; periodic inspections; equipment and supplies.—The department may require from the applicant for a registration certificate to operate a dental laboratory any information necessary to carry out the purpose of this chapter, including proof that the applicant has the equipment and supplies necessary to operate as determined by rule of the department, and shall require periodic inspection of all dental laboratories operating in this state at least once each biennial registration period. Such inspections ~~must~~ shall include, but need not be limited to, inspection of sanitary conditions, equipment, supplies, and facilities on the premises. The department shall specify dental equipment and supplies that are not allowed ~~permitted~~ in a registered dental laboratory.

Section 28. Subsection (1) of section 468.701, Florida Statutes, is amended to read:

468.701 Definitions.—As used in this part, the term:

(1) "Athletic trainer" means a person licensed under this part who has met the requirements ~~of under~~ this part, including the education requirements ~~established as set forth~~ by the Commission on Accreditation of Athletic Training Education or its successor organization and necessary credentials from the Board of Certification. ~~An individual who is licensed as an athletic trainer may not provide, offer to provide, or represent~~

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that he or she is qualified to provide any care or services that he or she lacks the education, training, or experience to provide, or that he or she is otherwise prohibited by law from providing.

Section 29. Section 468.707, Florida Statutes, is amended to read:

468.707 Licensure requirements.—Any person desiring to be licensed as an athletic trainer shall apply to the department on a form approved by the department. An applicant shall also provide records or other evidence, as determined by the board, to prove he or she has met the requirements of this section. The department shall license each applicant who:

(1) Has completed the application form and remitted the required fees.

(2) ~~For a person who applies on or after July 1, 2016,~~ Has submitted to background screening pursuant to s. 456.0135. The board may require a background screening for an applicant whose license has expired or who is undergoing disciplinary action.

(3) (a) Has obtained, at a minimum, a bachelor's baccalaureate or higher degree from a college or university professional athletic training degree program accredited by the Commission on Accreditation of Athletic Training Education or its successor organization recognized and approved by the United States Department of Education or the Commission on Recognition of Postsecondary Accreditation, approved by the board, or recognized by the Board of Certification, and has passed the national examination to be certified by the Board of Certification; or—

(b) (4) Has obtained, at a minimum, a bachelor's degree, has

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completed the Board of Certification internship requirements, and holds ~~if graduated before 2004,~~ has a current certification from the Board of Certification.

(4) (5) Has current certification in both cardiopulmonary resuscitation and the use of an automated external defibrillator set forth in the continuing education requirements as determined by the board pursuant to s. 468.711.

(5) (6) Has completed any other requirements as determined by the department and approved by the board.

Section 30. Subsection (3) of section 468.711, Florida Statutes, is amended to read:

468.711 Renewal of license; continuing education.—

(3) If initially licensed after January 1, 1998, the licensee must be currently certified by the Board of Certification or its successor agency and maintain that certification in good standing without lapse.

Section 31. Section 468.713, Florida Statutes, is amended to read:

468.713 Responsibilities of athletic trainers.—

(1) An athletic trainer shall practice under the direction of a physician licensed under chapter 458, chapter 459, chapter 460, or otherwise authorized by Florida law to practice medicine. The physician shall communicate his or her direction through oral or written prescriptions or protocols as deemed appropriate by the physician for the provision of services and care by the athletic trainer. An athletic trainer shall provide service or care in the manner dictated by the physician.

(2) An athletic trainer shall work within his or her allowable scope of practice as specified in board rule under s.

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1219 468.705. An athletic trainer may not provide, offer to provide,
 1220 or represent that he or she is qualified to provide any care or
 1221 services that he or she lacks the education, training, or
 1222 experience to provide or that he or she is otherwise prohibited
 1223 by law from providing.

1224 Section 32. Subsection (2) of section 468.723, Florida
 1225 Statutes, is amended to read:

1226 468.723 Exemptions.—This part does not prohibit ~~prevent~~ or
 1227 restrict:

1228 (2) An athletic training student acting under the direct
 1229 supervision of a licensed athletic trainer. For purposes of this
 1230 subsection, "direct supervision" means the physical presence of
 1231 an athletic trainer so that the athletic trainer is immediately
 1232 available to the athletic training student and able to intervene
 1233 on behalf of the athletic training student. The supervision must
 1234 comply with board rule in accordance with the standards set
 1235 forth by the Commission on Accreditation of Athletic Training
 1236 Education or its successor.

1237 Section 33. Subsections (1), (3), and (4) of section
 1238 468.803, Florida Statutes, are amended to read:

1239 468.803 License, registration, and examination
 1240 requirements.—

1241 (1) The department shall issue a license to practice
 1242 orthotics, prosthetics, or pedorthics, or a registration for a
 1243 resident to practice orthotics or prosthetics, to qualified
 1244 applicants. Licenses to practice shall be granted independently
 1245 in orthotics, prosthetics, or pedorthics must be granted
 1246 independently, but a person may be licensed in more than one
 1247 such discipline, and a prosthetist-orthotist license may be

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1248 granted to persons meeting the requirements for licensure both
 1249 as a prosthetist and as an orthotist license. Registrations to
 1250 practice shall be granted independently in orthotics or
 1251 prosthetics must be granted independently, and a person may be
 1252 registered in both disciplines fields at the same time or
 1253 jointly in orthotics and prosthetics as a dual registration.

1254 (3) A person seeking to attain the ~~required~~ orthotics or
 1255 prosthetics experience required for licensure in this state must
 1256 be approved by the board and registered as a resident by the
 1257 department. Although a registration may be held in both
 1258 disciplines practice fields, for independent registrations the
 1259 board may ~~shall~~ not approve a second registration until at least
 1260 1 year after the issuance of the first registration.
 1261 Notwithstanding subsection (2), a person an applicant who has
 1262 been approved by the board and registered by the department in
 1263 one discipline practice field may apply for registration in the
 1264 second discipline practice field without an additional state or
 1265 national criminal history check during the period in which the
 1266 first registration is valid. Each independent registration or
 1267 dual registration is valid for 2 years after ~~from~~ the date of
 1268 issuance unless otherwise revoked by the department upon
 1269 recommendation of the board. The board shall set a registration
 1270 fee not to exceed \$500 to be paid by the applicant. A
 1271 registration may be renewed once by the department upon
 1272 recommendation of the board for a period no longer than 1 year,
 1273 as such renewal is defined by the board by rule. The
 1274 ~~registration~~ renewal fee may ~~shall~~ not exceed one-half the
 1275 current registration fee. To be considered by the board for
 1276 approval of registration as a resident, the applicant must have

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one of the following:

(a) A Bachelor of Science or higher-level postgraduate degree in orthotics and prosthetics from a regionally accredited college or university recognized by the Commission on Accreditation of Allied Health Education Programs, ~~or, at~~

(b) A minimum of, a bachelor's degree from a regionally accredited college or university and a certificate in orthotics or prosthetics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board.

(c) A minimum of a bachelor's degree from a regionally accredited college or university and a dual certificate in both orthotics and prosthetics from programs recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board.

~~(b) A Bachelor of Science or higher-level postgraduate degree in Orthotics and Prosthetics from a regionally accredited college or university recognized by the Commission on Accreditation of Allied Health Education Programs or, at a minimum, a bachelor's degree from a regionally accredited college or university and a certificate in prosthetics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board.~~

(4) The department may develop and administer a state examination for an orthotist or a prosthetist license, or the board may approve the existing examination of a national standards organization. The examination must be predicated on a minimum of a baccalaureate-level education and formalized

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specialized training in the appropriate field. Each examination must demonstrate a minimum level of competence in basic scientific knowledge, written problem solving, and practical clinical patient management. The board shall require an examination fee not to exceed the actual cost to the board in developing, administering, and approving the examination, which fee must be paid by the applicant. To be considered by the board for examination, the applicant must have:

(a) For an examination in orthotics:

1. A Bachelor of Science or higher-level postgraduate degree in orthotics and prosthetics from a regionally accredited college or university recognized by the Commission on Accreditation of Allied Health Education Programs or, at a minimum, a bachelor's degree from a regionally accredited college or university and a certificate in orthotics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board; and

2. An approved orthotics internship of 1 year of qualified experience, as determined by the board, or an orthotic residency or dual residency program recognized by the board.

(b) For an examination in prosthetics:

1. A Bachelor of Science or higher-level postgraduate degree in orthotics and prosthetics from a regionally accredited college or university recognized by the Commission on Accreditation of Allied Health Education Programs or, at a minimum, a bachelor's degree from a regionally accredited college or university and a certificate in prosthetics from a program recognized by the Commission on Accreditation of Allied

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1335 Health Education Programs, or its equivalent, as determined by
1336 the board; and

1337 2. An approved prosthetics internship of 1 year of
1338 qualified experience, as determined by the board, or a
1339 prosthetic residency or dual residency program recognized by the
1340 board.

1341 Section 34. Subsection (5) of section 480.033, Florida
1342 Statutes, is amended to read:

1343 480.033 Definitions.—As used in this act:

1344 (5) "Apprentice" means a person approved by the board to
1345 study colonic irrigation ~~massage~~ under the instruction of a
1346 licensed massage therapist practicing colonic irrigation.

1347 Section 35. Subsections (1) and (2) of section 480.041,
1348 Florida Statutes, are amended, and subsection (8) is added to
1349 that section, to read:

1350 480.041 Massage therapists; qualifications; licensure;
1351 endorsement.—

1352 (1) Any person is qualified for licensure as a massage
1353 therapist under this act who:

1354 (a) Is at least 18 years of age or has received a high
1355 school diploma or high school equivalency diploma;

1356 (b) Has completed a course of study at a board-approved
1357 massage school ~~or has completed an apprenticeship program~~ that
1358 meets standards adopted by the board; and

1359 (c) Has received a passing grade on a national ~~an~~
1360 examination designated ~~administered~~ by the board ~~department~~.

1361 (2) Every person desiring to be examined for licensure as a
1362 massage therapist must ~~shall~~ apply to the department in writing
1363 upon forms prepared and furnished by the department. Such

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1364 applicants are ~~shall be~~ subject to the ~~provisions of s.~~

1365 480.046(1). ~~Applicants may take an examination administered by~~
1366 ~~the department only upon meeting the requirements of this~~
1367 ~~section as determined by the board.~~

1368 (8) A person issued a license as a massage apprentice
1369 before July 1, 2020, may continue that apprenticeship and
1370 perform massage therapy as authorized under that license until
1371 it expires. Upon completion of the apprenticeship, which must
1372 occur before July 1, 2023, a massage apprentice may apply to the
1373 board for full licensure and be granted a license if all other
1374 applicable licensure requirements are met.

1375 Section 36. Section 480.042, Florida Statutes, is repealed.

1376 Section 37. Subsection (3) of section 490.003, Florida
1377 Statutes, is amended to read:

1378 490.003 Definitions.—As used in this chapter:

1379 (3)(a) ~~Prior to July 1, 1999, "doctoral-level psychological~~
1380 ~~education" and "doctoral degree in psychology" mean a Psy.D., an~~
1381 ~~Ed.D. in psychology, or a Ph.D. in psychology from:~~

1382 ~~1. An educational institution which, at the time the~~
1383 ~~applicant was enrolled and graduated, had institutional~~
1384 ~~accreditation from an agency recognized and approved by the~~
1385 ~~United States Department of Education or was recognized as a~~
1386 ~~member in good standing with the Association of Universities and~~
1387 ~~Colleges of Canada; and~~

1388 ~~2. A psychology program within that educational institution~~
1389 ~~which, at the time the applicant was enrolled and graduated, had~~
1390 ~~programmatic accreditation from an accrediting agency recognized~~
1391 ~~and approved by the United States Department of Education or was~~
1392 ~~comparable to such programs.~~

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1393 ~~(b)~~ Effective July 1, 1999, "doctoral-level psychological
1394 education" and "doctoral degree in psychology" mean a Psy.D., an
1395 Ed.D. in psychology, or a Ph.D. in psychology from a psychology
1396 program at—

1397 ~~1.~~ an educational institution that ~~which~~, at the time the
1398 applicant was enrolled and graduated;

1399 (a) ~~7~~ Had institutional accreditation from an agency
1400 recognized and approved by the United States Department of
1401 Education or was recognized as a member in good standing with
1402 the Association of Universities and Colleges of Canada; and

1403 (b)2. ~~A psychology program within that educational~~
1404 ~~institution which, at the time the applicant was enrolled and~~
1405 ~~graduated,~~ Had programmatic accreditation from the American
1406 Psychological Association ~~an agency recognized and approved by~~
1407 ~~the United States Department of Education.~~

1408 Section 38. Paragraph (b) of subsection (1) and paragraph
1409 (b) of subsection (2) of section 490.005, Florida Statutes, are
1410 amended to read:

1411 490.005 Licensure by examination.—

1412 (1) Any person desiring to be licensed as a psychologist
1413 shall apply to the department to take the licensure examination.
1414 The department shall license each applicant who the board
1415 certifies has:

1416 (b) Submitted proof satisfactory to the board that the
1417 applicant has received:

1418 1. ~~Received~~ Doctoral-level psychological education, ~~as~~
1419 ~~defined in s. 490.003(3); or~~

1420 2. ~~Received~~ The equivalent of a doctoral-level
1421 psychological education, as defined in s. 490.003(3), from a

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1422 program at a school or university located outside the United
1423 States of America ~~and Canada~~, which was officially recognized by
1424 the government of the country in which it is located as an
1425 institution or program to train students to practice
1426 professional psychology. The applicant has the burden of
1427 establishing that this requirement has the requirements of this
1428 provision have been met shall be upon the applicant;

1429 ~~3. Received and submitted to the board, prior to July 1,~~
1430 ~~1999, certification of an augmented doctoral-level psychological~~
1431 ~~education from the program director of a doctoral-level~~
1432 ~~psychology program accredited by a programmatic agency~~
1433 ~~recognized and approved by the United States Department of~~
1434 ~~Education; or~~

1435 ~~4. Received and submitted to the board, prior to August 31,~~
1436 ~~2001, certification of a doctoral-level program that at the time~~
1437 ~~the applicant was enrolled and graduated maintained a standard~~
1438 ~~of education and training comparable to the standard of training~~
1439 ~~of programs accredited by a programmatic agency recognized and~~
1440 ~~approved by the United States Department of Education. Such~~
1441 ~~certification of comparability shall be provided by the program~~
1442 ~~director of a doctoral-level psychology program accredited by a~~
1443 ~~programmatic agency recognized and approved by the United States~~
1444 ~~Department of Education.~~

1445 (2) Any person desiring to be licensed as a school
1446 psychologist shall apply to the department to take the licensure
1447 examination. The department shall license each applicant who the
1448 department certifies has:

1449 (b) Submitted satisfactory proof to the department that the
1450 applicant:

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1. Has received a doctorate, specialist, or equivalent degree from a program primarily psychological in nature and has completed 60 semester hours or 90 quarter hours of graduate study, in areas related to school psychology as defined by rule of the department, from a college or university which at the time the applicant was enrolled and graduated was accredited by an accrediting agency recognized and approved by the Council for Higher Education Accreditation or its successor organization ~~Commission on Recognition of Postsecondary Accreditation~~ or from an institution that ~~which~~ is publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada.

2. Has had a minimum of 3 years of experience in school psychology, 2 years of which must be supervised by an individual who is a licensed school psychologist or who has otherwise qualified as a school psychologist supervisor, by education and experience, as set forth by rule of the department. A doctoral internship may be applied toward the supervision requirement.

3. Has passed an examination provided by the department.

Section 39. Subsection (1) of section 490.006, Florida Statutes, is amended to read:

490.006 Licensure by endorsement.—

(1) The department shall license a person as a psychologist or school psychologist who, upon applying to the department and remitting the appropriate fee, demonstrates to the department or, in the case of psychologists, to the board that the applicant:

~~(a) Holds a valid license or certificate in another state to practice psychology or school psychology, as applicable,~~

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~~provided that, when the applicant secured such license or certificate, the requirements were substantially equivalent to or more stringent than those set forth in this chapter at that time; and, if no Florida law existed at that time, then the requirements in the other state must have been substantially equivalent to or more stringent than those set forth in this chapter at the present time;~~

(a) ~~(b)~~ Is a diplomate in good standing with the American Board of Professional Psychology, Inc.; or

(b) ~~(c)~~ Possesses a doctoral degree in psychology as ~~described in s. 490.003~~ and has at least 10 ~~20~~ years of experience as a licensed psychologist in any jurisdiction or territory of the United States within the 25 years preceding the date of application.

Section 40. Subsection (6) of section 491.0045, Florida Statutes, as amended by chapters 2016-80 and 2016-241, Laws of Florida, is amended to read:

491.0045 Intern registration; requirements.—

(6) A registration issued on or before March 31, 2017, expires March 31, 2022, and may not be renewed or reissued. Any registration issued after March 31, 2017, expires 60 months after the date it is issued. The board may make a one-time exception from the requirements of this subsection in emergency or hardship cases, as defined by board rule, if A subsequent intern registration may not be issued unless the candidate has passed the theory and practice examination described in s. 491.005(1)(d), (3)(d), and (4)(d).

Section 41. Subsections (3) and (4) of section 491.005, Florida Statutes, are amended to read:

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1509 491.005 Licensure by examination.—

1510 (3) MARRIAGE AND FAMILY THERAPY.—Upon verification of
1511 documentation and payment of a fee not to exceed \$200, as set by
1512 board rule, plus the actual cost ~~of to the department for~~ the
1513 purchase of the examination from the Association of Marital and
1514 Family Therapy Regulatory Board, or similar national
1515 organization, the department shall issue a license as a marriage
1516 and family therapist to an applicant who the board certifies:

1517 (a) Has submitted an application and paid the appropriate
1518 fee.

1519 (b) ~~1-~~ Has a minimum of a master's degree with major
1520 emphasis in marriage and family therapy, ~~or a closely related~~
1521 field from a program accredited by the Commission on
1522 Accreditation for Marriage and Family Therapy Education or from
1523 a Florida university program accredited by the Council for
1524 Accreditation of Counseling and Related Educational Programs,
1525 and graduate courses approved by the Board of Clinical Social
1526 Work, Marriage and Family Therapy, and Mental Health Counseling.
1527 ~~has completed all of the following requirements:~~

1528 ~~a. Thirty-six semester hours or 48 quarter hours of~~
1529 ~~graduate coursework, which must include a minimum of 3 semester~~
1530 ~~hours or 4 quarter hours of graduate-level course credits in~~
1531 ~~each of the following nine areas: dynamics of marriage and~~
1532 ~~family systems; marriage therapy and counseling theory and~~
1533 ~~techniques; family therapy and counseling theory and techniques;~~
1534 ~~individual human development theories throughout the life cycle;~~
1535 ~~personality theory or general counseling theory and techniques;~~
1536 ~~psychopathology; human sexuality theory and counseling~~
1537 ~~techniques; psychosocial theory; and substance abuse theory and~~

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1538 ~~counseling techniques. Courses in research, evaluation,~~
1539 ~~appraisal, assessment, or testing theories and procedures,~~
1540 ~~thesis or dissertation work, or practicums, internships, or~~
1541 ~~fieldwork may not be applied toward this requirement.~~

1542 ~~b. A minimum of one graduate level course of 3 semester~~
1543 ~~hours or 4 quarter hours in legal, ethical, and professional~~
1544 ~~standards issues in the practice of marriage and family therapy~~
1545 ~~or a course determined by the board to be equivalent.~~

1546 ~~c. A minimum of one graduate level course of 3 semester~~
1547 ~~hours or 4 quarter hours in diagnosis, appraisal, assessment,~~
1548 ~~and testing for individual or interpersonal disorder or~~
1549 ~~dysfunction; and a minimum of one 3 semester hour or 4 quarter-~~
1550 ~~hour graduate level course in behavioral research which focuses~~
1551 ~~on the interpretation and application of research data as it~~
1552 ~~applies to clinical practice. Credit for thesis or dissertation~~
1553 ~~work, practicums, internships, or fieldwork may not be applied~~
1554 ~~toward this requirement.~~

1555 ~~d. A minimum of one supervised clinical practicum,~~
1556 ~~internship, or field experience in a marriage and family~~
1557 ~~counseling setting, during which the student provided 180 direct~~
1558 ~~client contact hours of marriage and family therapy services~~
1559 ~~under the supervision of an individual who met the requirements~~
1560 ~~for supervision under paragraph (c). This requirement may be met~~
1561 ~~by a supervised practice experience which took place outside the~~
1562 ~~academic arena, but which is certified as equivalent to a~~
1563 ~~graduate-level practicum or internship program which required a~~
1564 ~~minimum of 180 direct client contact hours of marriage and~~
1565 ~~family therapy services currently offered within an academic~~
1566 ~~program of a college or university accredited by an accrediting~~

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agency approved by the United States Department of Education, or an institution which is publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada or a training institution accredited by the Commission on Accreditation for Marriage and Family Therapy Education recognized by the United States Department of Education. Certification shall be required from an official of such college, university, or training institution.

2. If the course title that ~~which~~ appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant shall ~~be required to~~ provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course.

The required master's degree must have been received in an institution of higher education that, ~~which~~ at the time the applicant graduated, ~~was~~ fully accredited by a regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation ~~or~~ publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada, ~~or~~ an institution of higher education located outside the United States and Canada, ~~which~~ at the time the applicant was enrolled and at the time the applicant graduated, maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation. Such foreign education and training must have been received in an institution or program of higher

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education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as professional marriage and family therapists or psychotherapists. The applicant has the burden of establishing that the requirements of this provision have been met ~~shall be upon the applicant~~, and the board shall require documentation, such as, ~~but not limited to~~, an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were equivalent to an accredited program in this country. An applicant with a master's degree from a program that ~~which~~ did not emphasize marriage and family therapy may complete the coursework requirement in a training institution fully accredited by the Commission on Accreditation for Marriage and Family Therapy Education recognized by the United States Department of Education.

(c) Has had at least 2 years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services, which must be at the post-master's level under the supervision of a licensed marriage and family therapist with at least 5 years of experience, or the equivalent, who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If a graduate has a master's degree with a major emphasis in marriage and family therapy or a closely related field which ~~that~~ did not include all of the coursework required by subparagraph (b)1. ~~under sub-subparagraphs (b)1.a.-c.~~, credit for the post-master's

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level clinical experience ~~may shall~~ not commence until the applicant has completed a minimum of 10 of the courses required by subparagraph (b)1. ~~under sub-subparagraphs (b)1.a.-c.,~~ as determined by the board, and at least 6 semester hours or 9 quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques. Within the 2 3 years of required experience, the applicant shall provide direct individual, group, or family therapy and counseling, ~~to include the following categories of cases including those involving:~~ unmarried dyads, married couples, separating and divorcing couples, and family groups that include ~~including~~ children. A doctoral internship may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.

(d) Has passed a theory and practice examination provided by the department ~~for this purpose.~~

(e) Has demonstrated, in a manner designated by board rule ~~of the board~~, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

~~(f)~~

For the purposes of dual licensure, the department shall license as a marriage and family therapist any person who meets the requirements of s. 491.0057. Fees for dual licensure ~~may shall~~ not exceed those stated in this subsection.

(4) MENTAL HEALTH COUNSELING.—Upon verification of

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documentation and payment of a fee not to exceed \$200, as set by board rule, plus the actual per applicant cost ~~of to the~~ department ~~for purchase of the examination from the National Board for Certified Counselors or its successor Professional Examination Service for the National Academy of Certified Clinical Mental Health Counselors or a similar national~~ organization, the department shall issue a license as a mental health counselor to an applicant who the board certifies:

(a) Has submitted an application and paid the appropriate fee.

(b)1. Has a minimum of an earned master's degree from a mental health counseling program accredited by the Council for the Accreditation of Counseling and Related Educational Programs which ~~that~~ consists of at least 60 semester hours or 80 quarter hours of clinical and didactic instruction, including a course in human sexuality and a course in substance abuse. If the master's degree is earned from a program related to the practice of mental health counseling which ~~that~~ is not accredited by the Council for the Accreditation of Counseling and Related Educational Programs, then the coursework and practicum, internship, or fieldwork must consist of at least 60 semester hours or 80 quarter hours and meet all of the following requirements:

a. Thirty-three semester hours or 44 quarter hours of graduate coursework, which must include a minimum of 3 semester hours or 4 quarter hours of graduate-level coursework in each of the following 11 content areas: counseling theories and practice; human growth and development; diagnosis and treatment of psychopathology; human sexuality; group theories and

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practice; individual evaluation and assessment; career and lifestyle assessment; research and program evaluation; social and cultural foundations; substance abuse; and legal, ethical, and professional standards issues in the practice of mental health counseling ~~in community settings, and substance abuse.~~ Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.

b. A minimum of 3 semester hours or 4 quarter hours of graduate-level coursework addressing diagnostic processes, including differential diagnosis and the use of the current diagnostic tools, such as the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. The graduate program must have emphasized the common core curricular experience in legal, ethical, and professional standards issues in the practice of mental health counseling, which includes goals, objectives, and practices of professional counseling organizations, codes of ethics, legal considerations, standards of preparation, certifications and licensing, and the role identity and professional obligations of mental health counselors. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.

c. The equivalent, as determined by the board, of at least 700 ~~1,000~~ hours of university-sponsored supervised clinical practicum, internship, or field experience that includes at least 280 hours of direct client services, as required in the accrediting standards of the Council for Accreditation of Counseling and Related Educational Programs for mental health

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counseling programs. This experience may not be used to satisfy the post-master's clinical experience requirement.

2. Has provided additional documentation if a ~~the~~ course title ~~that which~~ appears on the applicant's transcript does not clearly identify the content of the coursework. ~~The applicant shall be required to provide additional documentation must include, including,~~ but is not limited to, a syllabus or catalog description published for the course.

Education and training in mental health counseling must have been received in an institution of higher education that, which at the time the applicant graduated, ~~was~~ fully accredited by a regional accrediting body recognized by the Council for Higher Education Accreditation or its successor organization or Commission on Recognition of Postsecondary Accreditation, publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada, ~~or~~ an institution of higher education located outside the United States and Canada, which, at the time the applicant was enrolled and at the time the applicant graduated, maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the Council for Higher Education Accreditation or its successor organization ~~Commission on Recognition of Postsecondary Accreditation.~~ Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to

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practice as mental health counselors. The applicant has the
burden of establishing that the requirements of this provision
have been met ~~shall be upon the applicant~~, and the board shall
require documentation, such as, ~~but not limited to~~, an
evaluation by a foreign equivalency determination service, as
evidence that the applicant's graduate degree program and
education were equivalent to an accredited program in this
country. Beginning July 1, 2025, an applicant must have a
master's degree from a program that is accredited by the Council
for Accreditation of Counseling and Related Educational Programs
which consists of at least 60 semester hours or 80 quarter hours
to apply for licensure under this paragraph.

(c) Has had at least 2 years of clinical experience in
mental health counseling, which must be at the post-master's
level under the supervision of a licensed mental health
counselor or the equivalent who is a qualified supervisor as
determined by the board. An individual who intends to practice
in Florida to satisfy the clinical experience requirements must
register pursuant to s. 491.0045 before commencing practice. If
a graduate has a master's degree with a major related to the
practice of mental health counseling ~~which that~~ did not include
all the coursework required under sub-subparagraphs (b)1.a. and
b. (b)1.a.-b., credit for the post-master's level clinical
experience ~~may shall~~ not commence until the applicant has
completed a minimum of seven of the courses required under sub-
subparagraphs (b)1.a. and b. (b)1.a.-b., as determined by the
board, one of which must be a course in psychopathology or
abnormal psychology. A doctoral internship may be applied toward
the clinical experience requirement. A licensed mental health

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professional must be on the premises when clinical services are
provided by a registered intern in a private practice setting.

(d) Has passed a theory and practice examination provided
by the department for this purpose.

(e) Has demonstrated, in a manner designated by board rule
~~of the board~~, knowledge of the laws and rules governing the
practice of clinical social work, marriage and family therapy,
and mental health counseling.

Section 42. Paragraph (b) of subsection (1) of section
491.006, Florida Statutes, is amended to read:

491.006 Licensure or certification by endorsement.—

(1) The department shall license or grant a certificate to
a person in a profession regulated by this chapter who, upon
applying to the department and remitting the appropriate fee,
demonstrates to the board that he or she:

(b)1. Holds an active valid license to practice and has
actively practiced the licensed profession ~~for which licensure~~
~~is applied~~ in another state for 3 of the last 5 years
immediately preceding licensure;—

~~2. Meets the education requirements of this chapter for the~~
~~profession for which licensure is applied.~~

~~2.3-~~ Has passed a substantially equivalent licensing
examination in another state or has passed the licensure
examination in this state in the profession for which the
applicant seeks licensure; ~~and-~~

~~3.4-~~ Holds a license in good standing, is not under
investigation for an act that would constitute a violation of
this chapter, and has not been found to have committed any act
that would constitute a violation of this chapter.

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1799

1800 The fees paid by any applicant for certification as a master
1801 social worker under this section are nonrefundable.

1802 Section 43. Subsection (3) of section 491.007, Florida
1803 Statutes, is amended to read:

1804 491.007 Renewal of license, registration, or certificate.—

1805 ~~(3) The board or department shall prescribe by rule a~~
1806 ~~method for the biennial renewal of an intern registration at a~~
1807 ~~fee set by rule, not to exceed \$100.~~

1808 Section 44. Subsection (2) of section 491.009, Florida
1809 Statutes, is amended to read:

1810 491.009 Discipline.—

1811 (2) The board department, or, in the case of certified
1812 master social workers psychologists, the department board, may
1813 enter an order denying licensure or imposing any of the
1814 penalties authorized in s. 456.072(2) against any applicant for
1815 licensure or any licensee who violates ~~is found guilty of~~
1816 ~~violating any provision of subsection (1) of this section or who~~
1817 ~~is found guilty of violating any provision of s. 456.072(1).~~

1818 Section 45. Subsection (2) of section 491.0046, Florida
1819 Statutes, is amended to read:

1820 491.0046 Provisional license; requirements.—

1821 (2) The department shall issue a provisional clinical
1822 social worker license, provisional marriage and family therapist
1823 license, or provisional mental health counselor license to each
1824 applicant who the board certifies has:

1825 (a) Completed the application form and remitted a
1826 nonrefundable application fee not to exceed \$100, as set by
1827 board rule; and

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1828

1829 (b) Earned a graduate degree in social work, a graduate
1830 degree with a major emphasis in marriage and family therapy or a
1831 closely related field, or a graduate degree in a major related
1832 to the practice of mental health counseling; and

1833 (c) ~~Has~~ Met the following minimum coursework requirements:

1834 1. For clinical social work, a minimum of 15 semester hours
1835 or 22 quarter hours of the coursework required by s.

1836 491.005(1)(b)2.b.

1837 2. For marriage and family therapy, 10 of the courses
1838 required by s. 491.005(3)(b)1. ~~s. 491.005(3)(b)1.a.-c.~~, as
1839 determined by the board, and at least 6 semester hours or 9
1840 quarter hours of the course credits must have been completed in
1841 the area of marriage and family systems, theories, or
1842 techniques.

1843 3. For mental health counseling, a minimum of seven of the
1844 courses required under s. 491.005(4)(b)1.a.-c.

1845 Section 46. Subsection (11) of section 945.42, Florida
1846 Statutes, is amended to read:

1847 945.42 Definitions; ss. 945.40-945.49.—As used in ss.
1848 945.40-945.49, the following terms shall have the meanings
1849 ascribed to them, unless the context shall clearly indicate
1850 otherwise:

1851 (11) "Psychological professional" means a behavioral
1852 practitioner who has an approved doctoral degree in psychology
1853 as defined in s. 490.003(3) ~~s. 490.003(3)(b)~~ and is employed by
1854 the department or who is licensed as a psychologist pursuant to
1855 chapter 490.

1856 Section 47. For the purpose of incorporating the amendment
made by this act to section 459.0055, Florida Statutes, in a

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reference thereto, subsection (6) of section 459.021, Florida Statutes, is reenacted to read:

459.021 Registration of resident physicians, interns, and fellows; list of hospital employees; penalty.—

(6) Any person desiring registration pursuant to this section shall meet all the requirements of s. 459.0055, except paragraphs (1)(l) and (m).

Section 48. The amendments and reenactments made by this act to sections 466.0067, 466.00671, and 466.00672, Florida Statutes, are remedial in nature and apply retroactively to January 1, 2020.

Section 49. This act shall take effect July 1, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR GAYLE HARRELL
25th District

February 10, 2020

Senator Lizbeth Benacquisto
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Benacquisto,

I respectfully request that **SB 230 – Department of Health** be placed on the next available agenda for the Committee on Rules. SB 230 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,

A handwritten signature in cursive script that reads "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
- ☐ 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-2-20
Meeting Date

230
Bill Number (if applicable)
628052
Amendment Barcode (if applicable)

Topic Nursing

Name BOB HARRIS

Job Title _____

Address 2618 Centennial Place
Street
Tallahassee FL 32308
City State Zip

Phone 222-0720

Email bharris@lawfla.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Southern Technical College & IIHCP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20
Meeting Date

230
Bill Number (if applicable)

Topic Dept. of Health

Amendment Barcode (if applicable)

Name Steve Winn

Job Title Executive Director

Address 2544 Blainstone Pines Dr.

Phone 878-7364

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 FL Osteopathic 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

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3/2/2020

Meeting Date

230

Bill Number (if applicable)

Topic Dott

Amendment Barcode (if applicable)

Name Jodi James

Job Title Legislative Director

Address 1375 Cypress Ave

Street

Melbourne

City

State

32935

Zip

Phone 321 890 7302

Email jodi@flcan.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Cannabis Action Network

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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3-2-2020

Meeting Date

SB 230

Bill Number (if applicable)

Topic Medical Marijuana 21 and Under

Amendment Barcode (if applicable)

Name Shawn Adair Castellana

Job Title Warehouse Worker at Salvation army

Address 5500 Ashville Hwy

Street

Phone 850-896-3484

Monticello, Florida 32344

City

State

Zip

Email shauncastellana1878
@9-mail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Shawn Castellana

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

MARCH 2, 2020
Meeting Date

CS/CS/SB 230
Bill Number (if applicable)

Topic DEPARTMENT OF HEALTH

Amendment Barcode (if applicable)

Name Chief Ray Colburn

Job Title EXECUTIVE DIRECTOR

Address 5289 PALM DR
Street

Phone 407-468-6622

MELBOURNE BEACH FL 32951
City State Zip

Email ray@ffca.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA FIRE CHIEFS' ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/20

Meeting Date

230

Bill Number (if applicable)

Topic Department of Health

Amendment Barcode (if applicable)

Name Alexandra Abboud

Job Title Governmental Affairs Liaison

Address 118 E. Jefferson St.

Phone 850-224-1089

Street

Tallahassee

FL

32301

City

State

Zip

Email aabboud@floridadental.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Dental Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

03 02 20

Meeting Date

SB 230

Bill Number (if applicable)

Topic 10% THC cap - cannabis

Amendment Barcode (if applicable)

Name MORIAH BARNHART

Job Title CEO, Cannamads

Address 10009 GEESE TRAIL CIRCLE

Street

Phone 813 580 1378

RUSKIN FL 33573

City

State

Zip

Email moriah.barnhart@yahoo

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3/2/2020
Meeting Date

SB 230
Bill Number (if applicable)

* Harrell Adm
Amendment Barcode (if applicable)

Topic _____

Name Denise Cleveland

Job Title _____

Address 1028 Cresson Ridge Lane
Street
Brundant FL 33510
City State Zip

Phone 575-265-9993

Email Clevefam2@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/2020

Meeting Date

SB230

Bill Number (if applicable)

Topic SB230

Amendment Barcode (if applicable)

Name FRANK KOWLIANOS

Job Title PARAMEDIC

Address 2375 CLUBSIDE CT #1718

Street

PALM HARBOR

City

FL

State

34683

Zip

Phone (727) 307-5027

Email FKOWLIANOS@GMAIL.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/2020

Meeting Date

230

Bill Number (if applicable)

Topic DoH bill / THC cap

Amendment Barcode (if applicable)

Name Ron Watson

Job Title Lobbyist

Address 3738 Munden Way

Phone 850 567-1202

Tallahassee FL 32309
City State Zip

Email watson.strategies@comcast.net

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Alt Med Florida / MIV

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20
Meeting Date

230
Bill Number (if applicable)

Topic FDOH Bill

Amendment Barcode (if applicable)

Name Courney Ceppola

Job Title Chief of staff - FDOH

Address 2585 Merchants row blvd

Phone 850-245-4444

Street

Tallahassee

City

FL

State

32309

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FDOH

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

2 Mar 2020
Meeting Date

230
Bill Number (if applicable)

Topic THC Cap

Amendment Barcode (if applicable)

Name Parrott, Kelly

Job Title VP

Address 13910 Spector Road #212
Street

Phone (480) 559 2016

Lithia FL 33547
City State Zip

Email WFWPTampaVP@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing WFWP Tampa Chapter

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/2020

Meeting Date

230

Bill Number (if applicable)

Topic Harrell Amendment

Amendment Barcode (if applicable)

Name Stefanie Watson

Job Title Operations - Fit Chiropractic

Address 3448 Kaylee Ct
Street

Phone 727-967-5679

Tall FL 32317
City State Zip

Email StefWatson88@gmail

Speaking: ☐ For ☒ Against ☐ Information

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

Representing MMJ Patients

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20
Meeting Date

230
Bill Number (if applicable)

Topic DOH Bill

Amendment Barcode (if applicable)

Name Melody Arnold

Job Title Associate Dir. of Govt Affairs

Address 301 West Park Ave

Phone 850-224-3907

Street

Trt

City

FL

State

32307

Zip

Email marnold@hca.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Health Care 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 500

INTRODUCER: Rules Committee; Health Policy Committee; and Senator Harrell

SUBJECT: Prohibited Acts by Health Care Practitioners

DATE: March 4, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Fav/CS
2.	Howard	Kynoch	AP	Favorable
3.	Rossitto-Van Winkle	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 500 amends s. 456.072(1)(a), F.S., which provides grounds for discipline applicable to all licensed health care practitioners. The bill prohibits a licensed health care practitioner from using the terms “anesthesiologist” or “dermatologist” unless he or she is licensed as a physician under ch. 458 or 459, F.S., or a dentist under ch. 466, F.S. The bill adds, as grounds for discipline, the making of misleading, deceptive, or fraudulent representations related to a practitioner’s specialty designation.

The bill authorizes the Department of Health (DOH) to issue an emergency cease and desist order and take disciplinary action against offending practitioners and gives the DOH rulemaking authority.

The bill also amends s. 456.072(1)(t), F.S., and provides for disciplinary action for a licensed health care provider’s failure to identify his or her type of specialty designation, if any, under which a practitioner is practicing.

The bill has an insignificant fiscal impact on the DOH that can be absorbed within existing resources.

The bill takes effect upon becoming a law.

II. Present Situation:

The Department of Health

The Legislature created the Department of Health (DOH) to protect and promote the health of all residents and visitors in the state.¹ The DOH is charged with the regulation of health practitioners for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA) is responsible for the boards² and professions within the DOH.³ The health care practitioners licensed by the DOH include the following:

- Acupuncturist;⁴
- Allopathic physicians and physician assistants;⁵
- Osteopathic physicians and physician assistants;⁶
- Chiropractic physicians, physician assistants, and registered chiropractic assistants;⁷
- Podiatric physicians;⁸
- Naturopathic physicians;⁹
- Optometrists;¹⁰
- Advanced practice registered nurses, registered nurses, licensed practical nurses and certified nursing assistant;¹¹
- Pharmacists;¹²
- Dentists, dental hygienist and dental laboratories;¹³
- Midwives;¹⁴
- Speech and language pathologists;¹⁵
- Audiologists;¹⁶
- Occupational therapists;¹⁷
- Respiratory therapists;¹⁸
- Dietitians and nutritionists;¹⁹
- Athletic trainers;²⁰

¹ Section 20.43, F.S.

² 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 department or, in some cases, within the department MQA.

³ Section 20.43, F.S.

⁴ Chapter 457, F.S.

⁵ Chapter 458, F.S.

⁶ Chapter 459, F.S.

⁷ Chapter 460, F.S.

⁸ Chapter 461, F.S.

⁹ Chapter 462, F.S.

¹⁰ Chapter 463, F.S.

¹¹ Chapter 464, F.S.

¹² Chapter 465, F.S.

¹³ Chapter 466, F.S.

¹⁴ Chapter 467, F.S.

¹⁵ Part I, Chapter 468, F.S.

¹⁶ *Id.*

¹⁷ Part III, Chapter 468, F.S.

¹⁸ Part V, Chapter 468, F.S.

¹⁹ Part X, Chapter 468, F.S.

²⁰ Part XIII, Chapter 468, F.S.

- Orthotists, prosthetists, and pedorthists;²¹
- Electrologists;²²
- Massage therapists;²³
- Clinical laboratory personnel;²⁴
- Medical physicists;²⁵
- Opticians;²⁶
- Hearing aid specialists;²⁷
- Physical therapists;²⁸
- Psychologists and school psychologists;²⁹ and
- Clinical social workers, mental health counselors and marriage and family therapists.³⁰

For each profession under the jurisdiction of the DOH, the DOH appoints the board executive director, subject to board approval.³¹ The duties conferred on the boards do not include the enlargement, modification, or contravention of the scope of practice of a profession regulated by each board, unless expressly and specifically granted by statute, but the boards may take disciplinary action against a licensee or issue a declaratory statement.³² Each board member is appointed by the Governor and accountable to the Governor for the proper performance of his or her duties as a member of a board.³³

Board of Medicine (BOM)

The BOM was established to ensure that every physician practicing in this state meets minimum requirements for safe practice. The practice of medicine is a privilege granted by the state. The BOM, through efficient and dedicated organization, is directed to license, monitor, discipline, educate, and, when appropriate, rehabilitate physicians and other practitioners to assure their fitness and competence.³⁴

Board of Osteopathic Medicine (BOOM)

The BOOM was legislatively established to ensure that every osteopathic physician practicing in this state meets minimum requirements for safe practice. The BOOM is responsible for licensing, monitoring, disciplining, and educating osteopathic physicians to assure competency and safety to practice in Florida.³⁵

²¹ Part XIV, Chapter 468, F.S.

²² Chapter 478, F.S.

²³ Chapter 480, F.S.

²⁴ Part II, Chapter 483, F.S.

²⁵ Part III, Chapter 483, F.S.

²⁶ Part I, Chapter 484, F.S.

²⁷ Part II, Chapter 484, F.S.

²⁸ Chapter 486, F.S.

²⁹ Chapter 490, F.S.

³⁰ Chapter 491, F.S.

³¹ Section 456.004, F.S.

³² Section 456.003(6), F.S.

³³ Section 456.008, F.S.

³⁴ The Department of Health, *Board of Medicine*, available at <https://flboardofmedicine.gov/> (last visited Jan.7, 2020).

³⁵ The Department of Health, *Board of Osteopathic Medicine*, available at <https://floridasosteopathicmedicine.gov/> (last visited Jan. 7, 2020).

Board of Dentistry (BOD)

The BOD was established to ensure that every dentist and dental hygienist practicing in this state meets minimum requirements for safe practice. The practice of the profession is a privilege granted by the state. The BOD is responsible for licensure, monitoring and ensuring the safe practice of dentists and dental hygienists.³⁶

Health Care Practitioner Regulation

Section 456.072, F.S., sets out grounds for discipline that are applicable to all licensed health care practitioners, in addition to the grounds set out in each practice act, and includes:

- Making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession;
- Intentionally violating any board or DOH rule;
- Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, and failing to report the violation within 30 days, including a crime:
 - Relating to practice, or ability to practice, a profession;
 - Relating to Medicaid fraud; and
 - Relating to health care fraud.
- Using a Class III or Class IV laser device without having complied with registration rules for the devices;
- Failing to comply with the continuing education (CE) requirements for:
 - HIV/AIDS;
 - Domestic violence.
- Having a license revoked, suspended, or acted against, including denial, or by relinquishment, stipulation, consent order, or settlement, in any jurisdiction;
- Having been found civilly liable for knowingly filing a false report or complaint with the DOH against another licensee;
- Attempting to obtain, or renewing a license by bribery, fraudulent misrepresentation, or through the DOH error;
- Failing to report to the DOH any person who the licensee knows is in violation of ch. 456, F.S., or the chapter and rules regulating the practitioner;
- Aiding, assisting, procuring, employing, or advising a person to practice a profession without a license;
- Failing to perform a statutory or legal obligation;
- Knowingly making or filing a false report;
- Making deceptive, untrue, or fraudulent representations in the licensee's practice;
- Exercising undue influence on the patient for financial gain;
- Knowingly practicing beyond his or her scope of practice or is not competent to perform;
- Delegating professional responsibilities to person licensee knows is not qualified to perform;
- Violating a lawful order of the DOH or a board, or failing to comply a DOH subpoena;
- Improperly interfering with an investigation, inspection, or disciplinary proceeding;

³⁶ The Department of Health, *Board of Dentistry*, available at <https://floridasdentistry.gov/> (last visited Jan. 10, 2020).

- Failing to identify in writing, or wearing a name tag, or orally telling a patient the type of license the practitioner has, including in advertisements;
- Failing to provide patients information about their rights and how to file a complaint;
- Engaging or attempting to engage in sexual misconduct;
- Failing to comply with the requirements for profiling and credentialing;
- Failing to report within 30 days that the licensee has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction;
- Using information from police reports, newspapers, other publications, or through a radio or television, for commercial purposes or solicitation;
- Being unable to practice with reasonable skill and safety because of illness or use of alcohol, drugs, narcotics, chemicals, or as a result of a mental or physical condition;
- Testing positive for any illegal drug on any pre-employment or employer-ordered screening when the practitioner does not have a prescription;
- Performing or attempting to perform health care services on the wrong patient, wrong-site, or an unauthorized procedure or medically unnecessary procedure;
- Leaving a foreign body in a patient;
- Violating any provision of ch. 456, applicable practice act, or rules;
- Intentionally submitting a Personal Injury Protection (PIP) claim, that has been “upcoded”;
- Intentionally submitting a PIP claim for services not rendered;
- Engaging in a pattern of practice when prescribing medicinal drugs or controlled substances which demonstrates a lack of reasonable skill or safety to patients;
- Being terminated from an impaired practitioner program for failing to comply;
- Failure to comply with controlled substance prescribing requirements;
- Intentionally entering any information concerning firearm ownership into the patient’s medical record; and
- Willfully failing to authorize emergency care or services with such frequency as to indicate a general business practice.

Board of Nursing (BON)

The BON licenses, monitors, disciplines, educates, and, when appropriate, rehabilitates its licensees to assure their fitness and competence in providing health care services for the people of Florida. The sole legislative purpose in enacting the Nurse Practice Act is to ensure that every nurse practicing in Florida meets minimum requirements for safe practice. It is the intent of the Legislature that nurses who fall below minimum competency or who otherwise present a danger to the public shall be prohibited from practicing in Florida.³⁷

Section 464.015, F.S., clearly specifies the permissible nursing titles a person may use that holds a valid nursing license in this state, or a multistate license, as follows:

- Licensed Practical Nurse - L.P.N.;
- Registered Nurse - R.N.;
- Clinical Nurse Specialist - C.N.S.;
- Certified Registered Nurse Anesthetist - C.R.N.A. or nurse anesthetist;
- Certified Nurse Midwife - C.N.M. or nurse midwife; and

³⁷ The Department of Health, *Board of Nursing*, available at <https://floridasnursing.gov/> (last visited Jan. 7, 2020).

- Advanced Practice Registered Nurse - A.P.R.N.

A person may not practice or advertise as a registered nurse, licensed practical nurse, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, certified nurse practitioner, or advanced practice registered nurse, or use the abbreviation R.N., L.P.N., C.N.S., C.R.N.A., C.N.M., C.N.P., or A.P.R.N., or take any other action that would lead the public to believe that person was authorized by law to practice professional nursing, if the person is not licensed as such, and to do so is a first degree misdemeanor.³⁸

On August 8, 2019, at the general BON meeting, the BON considered requests for declaratory statements.³⁹ The second request for a declaratory statement was made by John P. McDonough, A.P.R.N., C.R.N.A., license number 3344982.⁴⁰

McDonough's Petition for Declaratory Statement acknowledged that the type of Florida nursing license he holds is as a *A.P.R.N.*, and that he is a certified registered nurse anesthetist (C.R.N.A.), but requested that he be permitted to use the phrase "nurse anesthesiologist" as a descriptor for him or his practice, and that the BON not subject him to discipline under ss. 456.072 and 464.018, F.S.,⁴¹ based on the following grounds:

- A New Hampshire Board of Nursing's Position Statement that the nomenclature, *Nurse Anesthesiologist* and *Certified Registered Nurse Anesthesiologist*, are not title changes or an expansion of scope of practice, but are optional, accurate descriptors;⁴² and
- Florida law grants no title protection to the words *anesthesiologist* or *anesthetist*.⁴³

The Florida Association of Nurse Anesthetists (FANA) and the Florida Medical Association, Inc. (FMA), Florida Society of Anesthesiologists, Inc. (FSA), and Florida Osteopathic Medical

³⁸ Section 464.015, F.S.

³⁹ Section 120.565, F.S. Provides that, "[a]ny substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision as it applies to the petitioner's particular set of circumstances. The agency must give notice of the filing of a petition in the Florida Administrative Register, provide copies of the petition to the board, and issue a declaratory statement or deny the petition within 90 days after the filing. The declaratory statement or denial of the petition is then noticed in the next Florida Administrative Register, and disposition of a petition is a final agency action."

⁴⁰ The Florida Board of Nursing, Meeting Minutes, Disciplinary Hearings & General Business, Section I. Other, E. *Declaratory Statements*, No. 2, Aug. 8, 2019, p. 9, available at <https://www10.doh.state.fl.us/pub/bon/board%20Meetings/August%207-9.%202019/Minutes/August%202019%20Full%20Board%20Minutes.pdf> pp. 32-33 (last visited Jan. 3, 2020).

⁴¹ *Petition for Declaratory Statement Before the Board of Nursing, In re: John P. McDonough, A.P.R.N., C.R.N.A., Ed.D.*, filed at the Department of Health, July 10, 2019, (on file with the Senate Committee on Health Policy).

⁴² New Hampshire Board of Nursing, *Petition Statement Regarding the use of Nurse Anesthesiologist as a communication tool and Optional [D]escriptor for Certified Registered Nurse Anesthetists (CRNAs)*, Nov. 20, 2018, available at <https://www.oplc.nh.gov/nursing/documents/nh-bon-nurse-anesthesiologist.pdf> (last visited Nov. 6, 2019).

⁴³ *Id.*

Association, Inc. (FOMA), filed timely and legally sufficient⁴⁴ motions to intervene⁴⁵ pursuant to Florida Administrative Code Rule 28-106.205.⁴⁶ The FANA's petition⁴⁷ was in support of petitioner's Declaratory Statement while the motion filed jointly by the FMA, FSA, and FOMA was in opposition.

The FMA, FSA, and FOMA argued they were entitled to participate in the proceedings, on behalf of their members, as the substantial interests of their members, some 32,300, would be adversely affected by the proceeding.^{48, 49} Specifically, the FMA, FSA and FOMA argued that the substantial interests of their respective members would be adversely affected by the issuance of a Declaratory Statement that petitioner could use the term "nurse anesthesiologist," without violating ss. 456.072 and 464.018, F.S., on the grounds that:

- A substantial number of their members use the term "anesthesiologist" with the intent and understanding that patients, and potential patients, would recognize the term to refer to them as physicians licensed under Chapters 458 or 459, F.S., not "nurse anesthetists";
- Sections 458.3475(1)(a) and 459.023(1)(a), F.S., both define the term "anesthesiologist" as a licensed allopathic or osteopathic physician and do not include in those definitions a "nurse anesthetist;"
- The Merriam-Webster Dictionary defines an "anesthesiologist" as a "physician specializing in anesthesiology," not as a nurse specializing in anesthesia; and
- The Legislature clearly intended a distinction between the titles to be used by physicians practicing anesthesiology and nurses delivering anesthesia, to avoid confusion, as s. 464.015(6), F.S., specifically states that:
 - Only persons who hold valid certificates to practice as certified registered nurse anesthetists in this state may use the title "Certified Registered Nurse Anesthetist" and the abbreviations "C.R.N.A." or "nurse anesthetist;" and
 - Petitioner is licensed as a "registered nurse anesthetist" under s. 464.012(1)(a), F.S., and the term "nurse anesthesiologist" is not found in statute.

⁴⁴ Fla. Adm. Code R. 28-105.0027(2) and 28.106.205(2) (2019), both of which state that to be legally sufficient, a motion to intervene in a proceeding on a petition for a declaratory statement must contain the following information: (a) The name, address, the e-mail address, and facsimile number, if any, of the intervenor; if the intervenor is not represented by an attorney or qualified representative; (b) The name, address, e-mail address, telephone number, and any facsimile number of the intervenor's attorney or qualified representative, if any; (c) Allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or *that the substantial interests of the intervenor are subject to determination or will be affected by the declaratory statement*; (d) The signature of the intervenor or intervenor's attorney or qualified representative; and (e) The date.

⁴⁵ The Florida Medical Association, Inc., Florida Society of Anesthesiologists, Inc., and Florida Osteopathic Medical Association, Inc., *Motion to Intervene In Florida Board of Nursing's Consideration of the Petition for Declaratory Statement in Opposition of Petitioner John P. McDonough, A.P.R.N., C.R.N.A., Ed.D.*, filed at the Department of Health, Aug. 1, 2019, (available in the Office of Senate Health Policy Committee).

⁴⁶ Fla. Adm. Code. R. 28-106.205 (2019), in pertinent part, provides, "Persons other than the original parties to a pending proceeding whose substantial interest will be affected by the proceeding and who desire to become parties may move the presiding officer for leave to intervene."

⁴⁷ *Florida Association of Nurse Anesthetists Motion to Intervene*, filed at the Department of Health, July 31, 2019, (on file with the Senate Committee on Health Policy).

⁴⁸ *Supra* note 47.

⁴⁹ See also *Florida Home Builders Association, et al., Petitioners, v. Department of Labor And Employment Security, Respondent*, 412 S.2d 351 (Fla. 1982), holding that a trade association does have standing under section 120.56(1) to challenge the validity of an agency ruling on behalf of its members when that association fairly represents members who have been substantially affected by the ruling.

At the hearing, the attorney for the BON advised the BON that, “[t]he first thing the Board need[ed] to do [was] determine whether or not the organizations that [had] filed petitions to intervene have standing in order to participate in the discussion of the Declaratory Statement”⁵⁰ and that:

“Basically in order to make a determination of whether an organization has standing, they have to show that the members of their organization would have an actual injury in fact, or suffer an immediate harm of some sort of immediacy were the Board to issue this particular Declaratory Statement, and then the Board also has to make a determination of whether the nature of the injury would be within the zone of interest that the statute is addressing.”⁵¹

However, the above special injury standard,⁵² provided by board counsel to the BON to apply to determine the organizations’ standing to intervene, based on their members’ substantial interests being affected by the declaratory statement, was held inapplicable to trade associations in *Florida Home Builders Ass’n. v. Department of Labor and Employment Security*, 412 So.2d 351 (Fla. 1982). The Florida Supreme Court, in *Florida Home Builders, Ass’n.*, held that a trade or professional association is able to challenge an agency action on behalf of its members, even though each member could individually challenge the agency action, if the organization could demonstrate that:

- A substantial number of the association members, though not necessarily a majority, would be “substantially affected” by the challenged action;
- The subject matter of the challenged action is within the association’s scope of interest and activity; and
- The relief requested is appropriate for the association’s members.⁵³

Thus, the FANA’s motion to intervene was granted, based on the application of an incorrect standard, without the BON making the findings required by *Florida Home Builders, Ass’n*. The motion to intervene filed by the FMA, FSA, and FOMA was denied, also based on the application of an incorrect standard, on the grounds that:

- Their members are regulated by the Board of Medicine, not the Board of Nursing;
- Nursing disciplinary guidelines were being discussed;
- Their members licenses and discipline would not be affected by an interpretation of nursing discipline;⁵⁴ and
- Their members are not regulated by the Nurse Practice Act.

A motion was made to approve McDonough’s Petition for Declaratory Statement, and it passed unanimously. Accordingly, McDonough may now use of the term “nurse anesthesiologist” as a descriptor, and such use is not grounds for discipline against his nursing license. However, while

⁵⁰ Record at p. 3, ll. 13-17. Declaratory Statement, Dr. John P. McDonough, Before the Board of Nurses, State of Florida, Department of Health, Sanibel Harbor Marriott. (on file with the Senate Committee on Health Policy).

⁵¹ *Id.* p. 3-4, ll. 22- 25, 1-6.

⁵² *United States Steel Corp. v. Save Sand Key, Inc.*, 303 So.2d 9 (Fla. 1974).

⁵³ *Florida Home Builders Ass’n. v. Department of Labor and Employment Security*, 412 So.2d 351 (Fla. 1982), pp. 353-354.

⁵⁴ Record at p. 7, ll. 1-13. Declaratory Statement, Dr. John P. McDonough, Before the Board of Nurses, State of Florida, Department of Health, Sanibel Harbor Marriott. (on file with the Senate Committee on Health Policy).

s. 120.565, F.S., provides that any person may seek a declaratory statement regarding the potential impact of a statute, rule or agency opinion on a petitioner's particular situation, approval or denial of the petition only applies to the petitioner. It is not a method of obtaining a policy statement from a board of general applicability.⁵⁵

News media have reported that the BON's Declaratory Statement in favor of McDonough has created significant concern for patient safety and the potential for confusion in the use of the moniker "anesthesiologist" among Florida's medical professionals.^{56, 57, 58}

III. Effect of Proposed Changes:

CS/CS/SB 500 amends s. 456.072, F.S., which specifies grounds for discipline, applicable to all licensed health care practitioners. The bill amends s. 456.072(1)(a) to prohibit a licensed health care practitioner from using the terms "anesthesiologist" or "dermatologist" unless he or she is licensed as a physician under ch. 458 or 459, F.S., or a dentist under ch. 466, F.S. The bill adds, as grounds for professional discipline the making of misleading, deceptive, or fraudulent representations related to a practitioner's specialty designation. The bill also amends s. 456.072, (1)(t), F.S., and adds, as grounds for professional discipline, the making of misleading, deceptive, or fraudulent representations related to a practitioner's specialty designation and the failure to identify to a patient the type of specialty designation under which a practitioner is practicing.

If the DOH finds that a licensed health care practitioner is utilizing has violated s. 456.072(1)(a), F.S., by using the terms "anesthesiologist" or "dermatologist" without the practitioner being licensed as a physician under chs. 458 or 459, F.S., or a dentist, licensed under ch. 466, F.S.; or has made misleading, deceptive, or fraudulent representations related to a practitioner's specialty designation, the DOH must issue to the practitioner an emergency order to cease and desist and send the order to the practitioner by certified mail and email, or to any other mailing address or email address by which the DOH believes the person may be reached.

If the practitioner does not immediately cease and desist his or her actions upon receipt of the emergency cease and desist order, the DOH must enter an order imposing one or more of the following penalties until the practitioner complies:

- A citation and a daily fine.
- A reprimand or a letter of concern.
- Suspension of license.

⁵⁵ Florida Department of Health, Board of Nursing, *What is a Declaratory Statement?*, available at <https://floridasnursing.gov/help-center/what-is-a-declaratory-statement/> (last visited Dec. 13, 2019).

⁵⁶ Christine Sexton, The News Service of Florida, "Nursing Board Signs Off On 'Anesthesiologist' Title," August 16, 2019, The Gainesville Sun, available at: <https://www.gainesville.com/news/20190816/nursing-board-signs-off-on-anesthesiologist-title> (last visited Dec. 13, 2019).

⁵⁷ Christine Sexton, The News Service of Florida, "Florida Lawmaker Takes Aim At Health Care Titles," October 10, 2019, Health News Florida, available at <https://health.wusf.usf.edu/post/florida-lawmaker-takes-aim-health-care-titles> (last visited Dec. 13, 2019).

⁵⁸ Christine Section, The News Service of Florida, "What's In A Name? Health Panel Seeks Clarity on Health Care Providers," November 14, 2019, available at <https://health.wusf.usf.edu/post/what-s-name-health-panel-seeks-clarity-health-care-providers> (last visited Dec. 13, 2019).

The bill authorizes the DOH to make rules to implement the bill.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Health may experience a workload increase associated with additional complaints and non-recurring costs associated with rule-making; however, these costs can be absorbed within existing resources.⁵⁹

VI. Technical Deficiencies:

None.

⁵⁹ Department of Health fiscal analysis (December 18, 2020) (on file with the Senate Appropriations Subcommittee on Health and Human Services).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 456.072 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 March 2, 2020:

The CS:

- Eliminates the creation of s. 456.0465, F.S.;
- Amends s. 456.072(1)(a) and (t), F.S., to make the use of the terms “anesthesiologist” or “dermatologist” prohibited, and grounds for professional discipline, unless the practitioner is licensed as a physician under chs. 458 or 459, F.S., or as a dentist under ch. 466, F.S.; and
- Adds as grounds for professional discipline, the making of misleading, deceptive, or fraudulent representations related to a practitioner’s specialty designation and the failure to identify to a patient the type of specialty designation under which a practitioner is practicing.

CS by Health Policy on January 14, 2020:

The CS creates s. 456.0465, F.S., and:

- Changes the focus of the bill from “a person” to “a licensed health care practitioner”;
- Removes the requirement that the Department of Health (DOH) prove that the offending party “knowingly” misused one of the listed monikers;
- Eliminates the specific definitions for “anesthesiologist”;
- Creates exceptions for the use of the monikers “doctor of chiropractic” and “chiropractic physician” and for those chiropractic titles associated with achieving diplomate or fellow status;
- Creates exceptions for the titles used by dentists who has achieved diplomate or board certification status;
- Enumerates specific penalties for the violation of the bill’s provisions; and
- Grants the DOH rule making authority.

- B. **Amendments:**

None.



150030

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/28/2020	.	
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The Committee on Rules (Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 456.0465, Florida Statutes, is created
to read:

456.0465 Health care practitioners; prohibited actions.—

(1) (a) Except for an allopathic physician licensed under
chapter 458, an osteopathic physician licensed under chapter
459, or an allopathic or osteopathic physician registered with
the appropriate board pursuant to s. 456.47(4), a health care



150030

practitioner licensed by the department may not use the name or title "allopathic physician," "M.D.," "medical doctor," "doctor of osteopathy," "D.O.," "osteopathic physician," "surgeon," "anesthesiologist," "cardiologist," "dermatologist," "emergency physician," "endocrinologist," "family physician," "gastroenterologist," "gynecologist," "hematologist," "hospitalist," "internist," "interventional pain medicine physician," "laryngologist," "nephrologist," "neurologist," "obstetrician," "oncologist," "ophthalmologist," "orthopedic surgeon," "orthopedist," "osteopath," "otologist," "otolaryngologist," "otorhinolaryngologist," "pathologist," "pediatrician," "physiatrist," "primary care physician," "proctologist," "psychiatrist," "radiologist," "rheumatologist," "rhinologist," or "urologist" or any other words, letters, abbreviations, or insignia indicating or implying that he or she is authorized to practice as such, regardless of whether the name or title is used alone or as a descriptor for a name or title the practitioner is authorized to use under their practice act.

(b) The omission of the name or title "physician" or any other name or title in this section does not authorize a health care practitioner to use such name or title as a descriptor of his or her practice. It is the intent of the legislature that the rule of expressio unius est exclusio alterius does not apply when interpreting this section.

(c) If the department finds that any licensed health care practitioner has violated paragraph (a), the department shall issue an emergency order to the practitioner to cease and desist the use of such name, title, words, letters, abbreviations, or



150030

insignia. The department shall send the emergency cease and desist order to the practitioner by certified mail and email to the practitioner's physical address and email address of record with the department and to any other mailing address or email address through which the department believes the person may be reached.

(d) If the practitioner does not cease and desist his or her actions in violation of paragraph (a) immediately upon receipt of the emergency cease and desist order, the department shall enter an order imposing one or more of the following penalties until the practitioner complies with the cease and desist order:

1. A citation and a daily fine.

2. A reprimand or a letter of concern.

3. Suspension of license.

(e) Notwithstanding paragraphs (a)-(d):

1. A doctor of chiropractic medicine licensed under chapter 460, or a chiropractic physician registered with the board of chiropractic medicine pursuant to s. 456.47(4), to practice as such, may use the name or title "doctor of chiropractic medicine" or "chiropractic physician."

2. A licensed chiropractic physician who has achieved diplomate or fellow status from the American Board of Chiropractic Specialties, American Chiropractic Board of Sports Physicians, American College of Chiropractic Orthopedists, American Chiropractic Neurology Board, International Chiropractors Association, or International Chiropractic Pediatric Association, or in a specific specialty or subspecialty, may use, as appropriate for his or her diplomate



150030

or fellow status, "chiropractic radiologist," "chiropractic internist," "chiropractic neurologist," "chiropractic orthopedist," or "chiropractic pediatrician," in addition to other names or titles associated with such diplomate or fellow status.

3. A licensed dentist who has achieved diplomate status or board certification from the American Board of Dental Public Health, the American Board of Endodontics, the American Board of Oral and Maxillofacial Pathology, the American Board of Oral and Maxillofacial Radiology, the American Board of Oral and Maxillofacial Surgery, the American Board of Orthodontics, the American Board of Pediatric Dentistry, the American Board of Periodontology, the American Board of Prosthodontics, the American Board of Oral Implantology/Implant Dentistry, the American Board of Oral Medicine, the American Board of Orofacial Pain, the American Dental Board of Anesthesiology, or the American Board of General Dentistry, in a specific specialty or subspecialty, may use, as appropriate for his or her diplomate status or board certification, the name or term "dental anesthesiologist," "doctor of oral medicine," "dental oral and maxillofacial radiologist," "dental orthodontic and dentofacial orthopedist," or "dental oral and maxillofacial pathologist," in addition to other names or titles associated with such diplomate status or board certification.

(2) The department may adopt rules to implement this section.

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 =====



150030

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to prohibited acts by health care
practitioners; creating s. 456.0465, F.S.; specifying
names and titles that licensed health care
practitioners are prohibited from using under certain
circumstances; providing construction and legislative
intent; requiring the Department of Health to issue an
emergency cease and desist order for specified
violations; providing exceptions; providing for
service of the order; providing penalties; authorizing
the department to adopt rules; providing an effective
date.



753712

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/26/2020	.	
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The Committee on Rules (Harrell) recommended the following:

Senate Amendment to Amendment (150030)

Delete lines 34 - 36
and insert:
his or her practice. It is the intent of the Legislature that
the general principal of statutory construction that the
expression of one thing is the exclusion of the other does not
apply when interpreting this section.



180070

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/28/2020	.	
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The Committee on Rules (Harrell) recommended the following:

Senate Substitute for Amendment (150030) (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 456.0465, Florida Statutes, is created
to read:

456.0465 Health care practitioners; prohibited actions.-

(1) (a) Except for an allopathic physician licensed under
chapter 458, an osteopathic physician licensed under chapter
459, a dentist licensed under chapter 466, or a dentist, an



180070

allopathic physician, or an osteopathic physician registered
with the appropriate board pursuant to s. 456.47(4), a health
care practitioner licensed by the department may not use the
name or title "allopathic physician," "M.D.," "medical doctor,"
"doctor of osteopathy," "D.O.," "osteopathic physician,"
"surgeon," "anesthesiologist," "cardiologist," "dermatologist,"
"emergency physician," "endocrinologist," "family physician,"
"gastroenterologist," "gynecologist," "hematologist,"
"hospitalist," "internist," "interventional pain medicine
physician," "laryngologist," "nephrologist," "neurologist,"
"obstetrician," "oncologist," "ophthalmologist," "orthopedic
surgeon," "orthopedist," "osteopath," "otolaryngologist,"
"otologist," "otorhinolaryngologist," "pathologist,"
"pediatrician," "physiatrist," "primary care physician,"
"proctologist," "psychiatrist," "radiologist," "rheumatologist,"
"rhinologist," or "urologist" or any other words, letters,
abbreviations, or insignia indicating or implying that he or she
is authorized to practice as such, regardless of whether the
name or title is used alone or as a descriptor for a name or
title that the practitioner is authorized to use under his or
her practice act.

(b) The omission of the name or title "physician" or any
other name or title in this section does not authorize a health
care practitioner to use such name or title as a descriptor of
his or her practice if he or she is not licensed to practice as
such. It is the intent of the Legislature that the general
principle of statutory construction, that the expression of one
thing is the exclusion of the other, does not apply when
interpreting this section.



180070

41 (c) If the department finds that any licensed health care
42 practitioner has violated paragraph (a), the department must
43 issue an emergency order requiring that the practitioner cease
44 and desist the use of such name, title, words, letters,
45 abbreviations, or insignia. The department shall send the
46 emergency cease and desist order to the practitioner by
47 certified mail and e-mail to the practitioner's physical address
48 and e-mail address of record, respectively, with the department
49 and to any other mailing address or e-mail address through which
50 the department believes the person may be reached.

51 (d) If the practitioner does not immediately cease and
52 desist his or her actions in violation of paragraph (a) upon
53 receipt of the emergency cease and desist order, the department
54 must enter an order imposing one or more of the following
55 penalties until the practitioner complies with the emergency
56 cease and desist order:

- 57 1. A citation and a daily fine.
58 2. A reprimand or a letter of concern.
59 3. Suspension of license.

60 (e) Notwithstanding paragraphs (a)-(d):

61 1. A doctor of chiropractic medicine licensed under chapter
62 460 or a chiropractic physician registered with the board of
63 chiropractic medicine pursuant to s. 456.47(4) to practice as
64 such may use the name or title "doctor of chiropractic medicine"
65 or "chiropractic physician."

66 2. A licensed chiropractic physician who has achieved
67 diplomate or fellow status in a specific specialty or
68 subspecialty from the American Board of Chiropractic
69 Specialties, the American Chiropractic Board of Sports



180070

Physicians, the American College of Chiropractic Orthopedists,
the American Chiropractic Neurology Board, the International
Chiropractors Association, or the International Chiropractic
Pediatric Association may use, as appropriate for his or her
diplomate or fellow status, the names and titles "chiropractic
internist," "chiropractic neurologist," "chiropractic
orthopedist," "chiropractic pediatrician," or "chiropractic
radiologist," in addition to other names or titles associated
with such diplomate or fellow status.

3. A licensed dentist who has achieved diplomate status or
board certification in a specific specialty or subspecialty from
the American Board of Dental Public Health, the American Board
of Endodontics, the American Board of Oral and Maxillofacial
Pathology, the American Board of Oral and Maxillofacial
Radiology, the American Board of Oral and Maxillofacial Surgery,
the American Board of Orthodontics, the American Board of
Pediatric Dentistry, the American Board of Periodontology, the
American Board of Prosthodontics, the American Board of Oral
Implantology/Implant Dentistry, the American Board of Oral
Medicine, the American Board of Orofacial Pain, the American
Dental Board of Anesthesiology, or the American Board of General
Dentistry may use, as appropriate for his or her diplomate
status or board certification, the name or term "dental
anesthesiologist," "doctor of oral medicine," "dental oral and
maxillofacial radiologist," "dental orthodontic and dentofacial
orthopedist," or "dental oral and maxillofacial pathologist," in
addition to other names or titles associated with such diplomate
status or board certification.

(2) The department may adopt rules to implement this



180070

section.

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 prohibited acts by health care
practitioners; creating s. 456.0465, F.S.; specifying
names and titles that licensed health care
practitioners are prohibited from using under certain
circumstances; providing exceptions; providing
construction and legislative intent; requiring the
Department of Health to issue an emergency cease and
desist order for specified violations; providing for
service of the order; providing penalties; providing
exceptions; authorizing the department to adopt rules;
providing an effective date.



668434

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2020	.	
	.	
	.	
	.	

The Committee on Rules (Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraphs (a) and (t) of subsection (1) and
subsection (2) of section 456.072, Florida Statutes, are amended
to read:

456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which
the disciplinary actions specified in subsection (2) may be
taken:



668434

(a) Making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession or specialty designation. Use of the term "anesthesiologist" or "dermatologist" is prohibited unless the practitioner is licensed as such under chapter 458 or chapter 459.

(t) Failing to identify through written notice, which may include the wearing of a name tag, or orally to a patient the type of license or specialty designation under which the practitioner is practicing. Any advertisement for health care services naming the practitioner must identify the type of license the practitioner holds. This paragraph does not apply to a practitioner while the practitioner is providing services in a facility licensed under chapter 394, chapter 395, chapter 400, or chapter 429. The department shall enforce this paragraph ~~Each board, or the department where there is no board, is authorized by rule to determine how its practitioners may comply with this disclosure requirement.~~

(2) (a) When the board, or the department when there is no board, finds any person guilty of the grounds set forth in subsection (1) or of any grounds set forth in the applicable practice act, including conduct constituting a substantial violation of subsection (1) or a violation of the applicable practice act which occurred prior to obtaining a license, it may enter an order imposing one or more of the following penalties:

1. ~~(a)~~ Refusal to certify, or to certify with restrictions, an application for a license.

2. ~~(b)~~ Suspension or permanent revocation of a license.

3. ~~(c)~~ Restriction of practice or license, including, but



668434

not limited to, restricting the licensee from practicing in certain settings, restricting the licensee to work only under designated conditions or in certain settings, restricting the licensee from performing or providing designated clinical and administrative services, restricting the licensee from practicing more than a designated number of hours, or any other restriction found to be necessary for the protection of the public health, safety, and welfare.

4.~~(d)~~ Imposition of an administrative fine not to exceed \$10,000 for each count or separate offense. If the violation is for fraud or making a false or fraudulent representation, the board, or the department if there is no board, must impose a fine of \$10,000 per count or offense.

5.~~(e)~~ Issuance of a reprimand or letter of concern.

6.~~(f)~~ Placement of the licensee on probation for a period of time and subject to such conditions as the board, or the department when there is no board, may specify. Those conditions may include, but are not limited to, requiring the licensee to undergo treatment, attend continuing education courses, submit to be reexamined, work under the supervision of another licensee, or satisfy any terms which are reasonably tailored to the violations found.

7.~~(g)~~ Corrective action.

8.~~(h)~~ Imposition of an administrative fine in accordance with s. 381.0261 for violations regarding patient rights.

9.~~(i)~~ Refund of fees billed and collected from the patient or a third party on behalf of the patient.

10.~~(j)~~ Requirement that the practitioner undergo remedial education.



668434

In determining what action is appropriate, the board, or department when there is no board, must first consider what sanctions are necessary to protect the public or to compensate the patient. Only after those sanctions have been imposed may the disciplining authority consider and include in the order requirements designed to rehabilitate the practitioner. All costs associated with compliance with orders issued under this subsection are the obligation of the practitioner.

(b)1. If the department finds that any licensed health care practitioner has violated paragraph (1)(a), the department must issue an emergency order to the practitioner to cease and desist the use of such name, title, words, letter, abbreviations, or insignia. The department shall send the emergency cease and desist order to the practitioner by certified mail and e-mail to the practitioner's physical address and e-mail address of record with the department and to any other mailing address or e-mail address through which the department believes the person may be reached.

2. If the practitioner does not cease and desist his or her actions in violation of paragraph (1)(a) immediately upon receipt of the emergency cease and desist order, the department must enter an order imposing any of the following penalties, or a combination thereof, until the practitioner complies with the cease and desist order:

- a. A citation and a daily fine.
- b. A reprimand or a letter of concern.
- c. Suspension of license.

Section 2. This act shall take effect upon becoming a law.



668434

99

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

101 And the title is amended as follows:

102 Delete everything before the enacting clause
103 and insert:

104 A bill to be entitled

105 An act relating to prohibited acts by health care
106 practitioners; amending s. 456.072, F.S.; prohibiting
107 specified acts by health care practitioners regarding
108 specialty designations; authorizing the Department of
109 Health to enforce compliance with the act; authorizing
110 the department to take specified disciplinary action
111 against health care practitioners in violation of the
112 act; specifying applicable penalties; providing an
113 effective date.



536662

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2020	.	
	.	
	.	
	.	

The Committee on Rules (Harrell) recommended the following:

Senate Amendment to Amendment (668434)

Delete lines 15 - 17
and insert:
"anesthesiologist" is prohibited unless the practitioner is
licensed as a physician under chapter 458 or chapter 459 or as a
dentist under chapter 466, and use of the term "dermatologist"
is prohibited unless the practitioner is licensed as a physician
under chapter 458 or chapter 459.



559144

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/24/2020	.	
	.	
	.	
	.	

The Committee on Rules (Harrell) recommended the following:

Senate Amendment (with title amendment)

Between lines 41 and 42
insert:

(b) The omission of the word, name, term, or title
"physician" or any other word, name, term, or title from this
section does not authorize a health care practitioner to use
such word, name, term, or title as a descriptor of his or her
practice if he or she is not licensed to practice as such. It is
the intent of the Legislature that the doctrine of *expressio*
unius est exclusio alterius not apply when interpreting this



559144

section.

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

And the title is amended as follows:

Delete line 6

and insert:

circumstances; providing construction and legislative
intent; requiring the Department of Health to

By the Committee on Health Policy; and Senator Harrell

588-02262-20

2020500c1

A bill to be entitled

An act relating to prohibited acts by health care practitioners; creating s. 456.0465, F.S.; specifying names and titles that licensed health care practitioners are prohibited from using under certain circumstances; requiring the Department of Health to issue an emergency cease and desist order for specified violations; providing exceptions; providing for service of the order; providing penalties; authorizing the department to adopt rules; providing an effective date.

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

Section 1. Section 456.0465, Florida Statutes, is created to read:

456.0465 Health care practitioners; prohibited actions.—

(1) (a) A health care practitioner licensed by the department may not use the name or title "physician," "surgeon," "dentist," "medical doctor," "doctor of osteopathy," "doctor of dental medicine," "doctor of dental surgery," "M.D.," "D.M.D.," "D.D.S.," "anesthesiologist," "cardiologist," "dermatologist," "endocrinologist," "endodontist," "gastroenterologist," "general practitioner," "gynecologist," "hematologist," "hospitalist," "internist," "interventional pain medicine physician," "laryngologist," "nephrologist," "neurologist," "obstetrician," "oncologist," "ophthalmologist," "oral and maxillofacial surgeon," "orthodontist," "orthopedic surgeon," "orthopedist," "osteopath," "otologist," "otolaryngologist,"

Page 1 of 4

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

588-02262-20

2020500c1

"otorhinolaryngologist," "pathologist," "pediatrician," "physiatrist," "pedodontist," "periodontist," "podiatrist," "primary care physician," "proctologist," "prosthodontist," "psychiatrist," "radiologist," "rheumatologist," "rhinologist," or "urologist," or any other words, letters, abbreviations, or insignia indicating or implying that he or she is licensed or authorized by chapter 458, chapter 459, chapter 461, or chapter 466 to practice as such, unless he or she is licensed and authorized by one of those chapters, or is registered with the appropriate board as an allopathic, osteopathic, or podiatric physician or dentist pursuant to s. 456.47(4), to practice as such.

(b) If the department finds that any licensed health care practitioner has violated paragraph (a), the department shall issue an emergency order to the practitioner to cease and desist the use of such name, title, words, letters, abbreviations, or insignia. The department shall send the emergency cease and desist order to the practitioner by certified mail and email to the practitioner's physical address and email address of record with the department and to any other mailing address or email address through which the department believes the person may be reached.

(c) If the practitioner does not cease and desist his or her actions in violation of paragraph (a) immediately upon receipt of the emergency cease and desist order, the department shall enter an order imposing one or more of the following penalties until the practitioner complies with the cease and desist order:

1. A citation and a daily fine.

Page 2 of 4

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

588-02262-20

2020500c1

2. A reprimand or a letter of concern.

3. Suspension of license.

(d) Notwithstanding paragraphs (a)-(c):

1. A doctor of chiropractic medicine licensed under chapter 460, or a chiropractic physician registered with the board of chiropractic medicine pursuant to s. 456.47(4), to practice as such, may use the name or title "doctor of chiropractic medicine" or "chiropractic physician."

2. A licensed chiropractic physician who has achieved diplomate or fellow status from the American Board of Chiropractic Specialties, American Chiropractic Board of Sports Physicians, American College of Chiropractic Orthopedists, American Chiropractic Neurology Board, International Chiropractors Association, or International Chiropractic Pediatric Association, or in a specific specialty or subspecialty, may use, as appropriate for his or her diplomate or fellow status, "chiropractic radiologist," "chiropractic internist," "chiropractic neurologist," "chiropractic orthopedist," or "chiropractic pediatrician," in addition to other names or titles associated with such diplomate or fellow status.

3. A licensed dentist who has achieved diplomate status or board certification from the American Board of Dental Public Health, the American Board of Endodontics, the American Board of Oral and Maxillofacial Pathology, the American Board of Oral and Maxillofacial Radiology, the American Board of Oral and Maxillofacial Surgery, the American Board of Orthodontics, the American Board of Pediatric Dentistry, the American Board of Periodontology, the American Board of Prosthodontics, the

588-02262-20

2020500c1

American Board of Oral Implantology/Implant Dentistry, the American Board of Oral Medicine, the American Board of Orofacial Pain, the American Dental Board of Anesthesiology, or the American Board of General Dentistry, in a specific specialty or subspecialty, may use, as appropriate for his or her diplomate status or board certification, the name or term "dental anesthesiologist," "doctor of oral medicine," "dental oral and maxillofacial radiologist," "dental orthodontic and dentofacial orthopedist," or "dental oral and maxillofacial pathologist," in addition to other names or titles associated with such diplomate status or board certification.

(2) The department may adopt rules to implement this section.

Section 2. 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)

8/2/2020
Meeting Date

SB 500
Bill Number (if applicable)

Topic Prohibited Acts by Health Care Practitioners 5361612
Amendment Barcode (if applicable)

Name Judith Howes

Job Title N/A

Address 1933 SW 83rd Ct
Street

Phone 734 657 9824

Gainesville Florida 32607
City State Zip

Email howesacademy@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Academy of Anesthesiologist Assistants

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/2020

Meeting Date

500

Bill Number (if applicable)

536662

Amendment Barcode (if applicable)

Topic Prohibited Acts by Health Care Practitioners

Name Dr. Brence Sell

Job Title Anesthesiologist

Address 2173 Centerville Pl # A

Phone (850) 556-2897

Street

Tallahassee

FL

32308

Email drsell@comcast.net

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Society of Anesthesiologists

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20
Meeting Date

500
Bill Number (if applicable)

Topic Prohibited Acts by Health Care Practitioners 536662
Amendment Barcode (if applicable)

Name Alexandra Abboud

Job Title Governmental Affairs Liaison

Address 118 E. Jefferson St.

Phone 850-224-1089

Tallahassee FL 32301
City State Zip

Email aabboud@floridadental.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Dental 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)

3/2

Meeting Date

500

Bill Number (if applicable)

668434

Amendment Barcode (if applicable)

Topic _____

Name Natalie Kato

Job Title _____

Address 315 S. Calhoun St. Suite 830

Street

Tallahassee

City

FL

State

32301

Zip

Phone _____

Email NKato@llw-law.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Association of Nurse Anesthetists

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/2020
Meeting Date

500
Bill Number (if applicable)

Topic Prohibited Acts by Health Care Practitioners Amendment Barcode (if applicable) HB 8434

Name Judith Howes

Job Title N/A

Address 1933 SW 83rd Ct

Phone 734 657 9824

Street

Gainesville Florida 32607

City

State

Zip

Email howesacademy@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Academy of Anesthesiologist Assistants

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/2020

Meeting Date

500

Bill Number (if applicable)

668434

Amendment Barcode (if applicable)

Topic Prohibited Acts by Health Care Practitioners

Name Dr. Brence Sell

Job Title Anesthesiologist

Address 2173 Centerville Pl # A

Street

Tallahassee

City

FL

State

32308

Zip

Phone (850) 556-2897

Email drsell@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Society of Anesthesiologists

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2

Meeting Date

500

Bill Number (if applicable)

~~6008~~

Amendment Barcode (if applicable)

Topic _____

Name Natalie Kato

Job Title _____

Address 315 S. Calhoun St. Suite 830
Street

Phone _____

Tallahassee
City

FL
State

32301
Zip

Email NKato@NW-law.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Nurse Anesthetists

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20
Meeting Date

500
Bill Number (if applicable)

Topic Prohibited Acts by Health care Practitioners Amendment Barcode (if applicable)

Name Alexandra Abboud

Job Title Governmental Affairs Liaison

Address 118 E. Jefferson St.

Phone 850-224-1089

Tallahassee FL 32301
City State Zip

Email aabboud@floridadental.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Dental 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)

3/2/2020

Meeting Date

500

Bill Number (if applicable)

Topic Prohibited Acts by Health Care Practitioners

Amendment Barcode (if applicable)

Name Dr. Brence Sell

Job Title Anesthesiologist

Address 2173 Centerville Pl # A

Phone (850) 556-2897

Street

Tallahassee

FL

32308

Email drsell@comcast.net

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Society of Anesthesiologists

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

3/2/2020

THE FLORIDA SENATE

APPEARANCE RECORD

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

~~3/2/2020~~

Meeting Date

SB 500

Bill Number (if applicable)

Topic Prohibited Acts by Health Care Practitioners Amendment Barcode (if applicable)

Name Judith Howes

Job Title MLA

Address 1933 SW 83rd Ct
Street

Phone 734 657 9824

Gainesville Florida 32607
City State Zip

Email howesacademy@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Academy of Anesthesiologist Assistants

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/20

Meeting Date

SB 500

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Jeff Scott

Job Title

Address 1430 Piedmont Dr. E.

Phone 850 229-6496

Street

Tallahassee

FL

32308

City

State

Zip

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: CS/SB 738

INTRODUCER: Rules Committee and Senator Harrell

SUBJECT: Jury Service

DATE: March 3, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2. <u>Brick</u>	<u>Sikes</u>	<u>ED</u>	Favorable
3. <u>Ravelo</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 738 allows students who are 18 to 21 years of age to be excused from a specific jury summons upon request if they are enrolled as a full-time student at a high school, state university, private post-secondary educational institution, Florida College System Institution, or career center.

The bill does not affect jury service for those students older than 21 years of age.

The bill takes effect July 1, 2020.

II. Present Situation:

Background on Jury Selection

Potential jurors are selected randomly from a list of names provided quarterly to the clerk of the circuit court by the Florida Department of Highway Safety and Motor Vehicles (DHSMV).¹ Jurors must be 18 years of age or older, citizens of the United States, and legal residents of Florida and their respective counties, and have a driver license or identification card record on file with the DHSMV.²

¹ Section 40.011, F.S.

² Section 40.01, F.S.

There are two ways in which a juror venire or pool may be selected. In the first, a clerk of court may use the names provided by the DHSMV to generate juror candidate lists as necessary to ensure a valid and consistent juror selection process.³ In the second, the chief judge of a circuit court or the clerk of the court may request that the Florida Supreme Court approve the use of an automated electronic system as the exclusive manner in which the names of prospective jurors are randomly selected.⁴ A person who is selected for jury service who does not attend court when summoned may be fined up to \$100, and his or her absence may be considered a contempt of the court.⁵

The Legislature has adopted a “one day” or “one trial” rule for jury service, where a prospective juror must either participate in one trial or, at minimum, one day of initial reporting, for jury service.⁶ The average trial lasts about 3 days.⁷

Disqualification or Excusal from Jury Service

Certain individuals may be disqualified from jury service based on Florida law. Others must be excused from service upon request, and still others may be excused at the discretion of a judge.⁸

Persons disqualified from jury selection include:⁹

- A person who is under prosecution for a crime or has committed a felony, unless that person’s civil rights have been restored;
- The Governor, Lieutenant Governor, Cabinet officer, clerk of court, or judge;
- Any person interested in any issue to be tried;
- Any person who, because of mental illness, intellectual disability, senility, or other physical or mental incapacity, is permanently incapable of caring for himself or herself;
- Any person who is responsible for the care of a person who, because of mental illness, intellectual disability, senility, or other physical or mental incapacity, is incapable of caring for himself or herself; and
- Any person who does not possess sufficient knowledge of reading, writing, or arithmetic to understand a civil case, if the civil case requires such knowledge.¹⁰

Individuals who must be excused upon request include:¹¹

- Any full-time federal, state, local law enforcement officer, or investigative personnel, unless such persons choose to serve;
- A person who was summoned and who reported as a prospective juror in any court in that person’s county of residence within 1 year before the first day for which the person is being considered for jury service;

³ Section 40.011, F.S.

⁴ Section 40.225, F.S.

⁵ Section 40.23, F.S.

⁶ Section 40.41, F.S.

⁷ The Florida Bar, *Consumer Pamphlet: Handbook for Jurors*, <https://www.floridabar.org/public/consumer/pamphlet016/> (last visited Jan. 15, 2020).

⁸ Fla. R. Crim. P. 3.300

⁹ Section 40.013, F.S.

¹⁰ Fla. R. Civ. P. 1.431(c)(3).

¹¹ Section 40.013, F.S.

- Any expectant mother and any parent who is not employed full time and who has custody of a child under 6 years of age; and
- A person 70 years of age or older.

Persons who may be excused include:¹²

- A practicing attorney, a practicing physician, or a person who is physically infirm from jury service; and
- A person showing of hardship, extreme inconvenience, or public necessity.

Demographics of Students

The average age of a student enrolled in a state university in the 2017-2018 academic year was 22.¹³ In the fall of 2018, 91,530 students, or 21 percent of the total enrollment in Florida public college system institutions were 18 to 21 years of age and enrolled full-time.¹⁴ 11,721 students who were 18 to 21 years of age were enrolled in a Florida career center.¹⁵

Students Selected for Jury Service

Selection for jury service is based upon the person's county of residence as it is listed on his or her driver's license.¹⁶ Many students attend college or a university outside of their county of residence and may request to postpone their jury summons due to their academic requirements. Florida law allows a person to request excusal on the basis of being a student; although, it is at the discretion of the judge. A person may postpone his or her jury summons for up to six months after the original summoning date.¹⁷

Some states, such as, Georgia¹⁸ North Carolina,¹⁹ Michigan,²⁰ and South Carolina²¹ currently excuse students from jury selection during the period of time that the student is enrolled and taking classes or exams. Georgia, however, only excuses students who are enrolled out of the state. Texas allows students of public or private post-secondary institutions to be excused, without any age or full-time status requirement.²²

¹² *Id.*

¹³ State University System of Florida, *Online Education: Annual Report* (2018), available at <https://www.flbog.edu/wp-content/uploads/FINAL-2018-Annual-Report.pdf>, at 14.

¹⁴ Florida Department of Education, Florida College System, *Fall 2018 Student Enrollments by Age* (Jan. 2020) (On file with staff of the Education Committee).

¹⁵ Florida Department of Education, *WDIS Vocational Enrollment for Ages 18-21, 2018-19* (2019) (On file with staff of the Education Committee).

¹⁶ Section 40.01, F.S.

¹⁷ Section 40.23, F.S.

¹⁸ Ga. Code § 15-12-1.1 (2014)

¹⁹ N.C. Gen. Stat. § 9-6 (b)(1)

²⁰ MSA § 600.1335

²¹ SC Code Ann. §14-7-845

²² Tex. Gov. Code § 62.106

III. Effect of Proposed Changes:

The bill allows students who are 18 to 21 years of age to be excused from a specific jury summons upon request if they are enrolled as a full-time student at a high school, state university, private post-secondary educational institution, Florida College System Institution, or career center.

The bill does not affect jury service for those students older than 21 years of age.

The bill takes effect July 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.

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 40.013 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 March 2, 2020:

The committee substitute changes the language of the bill to mirror CS/HB 393.

Individuals may only be excused for a specific jury summons based on their enrollment status as opposed to an indefinite postponement.

B. Amendments:

None.



679768

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2020	.	
	.	
	.	
	.	

The Committee on Rules (Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (11) is added to section 40.013,
Florida Statutes, to read:

40.013 Persons disqualified or excused from jury service.—

(11) Upon request, a full-time student between 18 and 21
years of age, inclusive, who is attending high school or any
state university, private postsecondary educational institution,
Florida College System institution, or career center shall be



679768

excused from that specific summons for jury service.

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

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to jury service; amending s. 40.013,
F.S.; requiring that full-time students who meet
specified criteria be excused from jury service upon
request; providing an effective date.

By Senator Harrell

25-01065A-20

2020738__

A bill to be entitled

An act relating to jury service; amending s. 40.013, F.S.; requiring certain students actively enrolled in specified schools to be excused from jury service upon request; providing an effective date.

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

Section 1. Subsection (11) is added to section 40.013, Florida Statutes, to read:

40.013 Persons disqualified or excused from jury service.—

(11) A person between 18 and 21 years of age, inclusive, who is actively enrolled as a full-time student in high school or at any state university, private postsecondary educational institution, Florida College System institution, or career center shall be excused from jury service upon request.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR GAYLE HARRELL
25th District

January 28, 2020

Senator Lizbeth Benacquisto
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Benacquisto,

I respectfully request that **SB 738 – Jury Service** be placed on the next available agenda for the Committee on Rules. SB 738 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,

A handwritten signature in cursive script that reads "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
- ☐ 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

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)

March 2, 2020

Meeting Date

SB 738

Bill Number (if applicable)

Topic Jury Service

Amendment Barcode (if applicable)

Name Kristina Wiggins

Job Title Executive Director

Address 103 North Gadsden Street

Phone 850-488-6850

Street

Tallahassee

FL

32301

Email kwiggins@flpda.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 302

INTRODUCER: Children, Families, and Elder Affairs and Senator Rader

SUBJECT: Adoption Records

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Preston	Hendon	CF	Fav/CS
2. Davis	Cibula	JU	Favorable
3. Preston	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 302 amends the Florida Adoption Act to bring clarity to a provision that is confusing and subject to differing interpretations. Currently, the Department of Health, Bureau of Vital Statistics, interprets s. 63.162(4), F.S., to require an adoptee 18 years of age and older to obtain his or her adoptive parents' written consent, as well as the written consent of the birth parent, before the bureau may release the names contained in the original birth certificate. In other words, each parent to the adoption must sign in writing before his or her name may be released to the adoptee, even though the adoptee is an adult.

The bill amends s. 63.162(4), F.S., to provide that the Bureau of Vital Statistics may disclose the name and identity of the birth parent, if the birth parent provides written consent for the release of his or her name and the adoptee is 18 years of age or older. Accordingly, the adoptive parent's signature is no longer required when the adoptee is an adult. If the adoptee is younger than 18 years of age, the adoptive parent's consent is still required.

The bill has no fiscal impact on government and provides an effective date of July 1, 2020.

II. Present Situation:

Birth Certificates

Florida law requires a birth record to be filed within 5 days after each live birth.¹ For example, when a birth occurs in a hospital, the hospital is responsible for entering the required information electronically and submitting that record to the Bureau of Vital Statistics in Jacksonville, where it is stored. The record contains the child's name, the parents' names and address, the attending physician's name, the name and address of the facility where the birth occurred, and additional demographic information.²

Adoptions and Birth Certificates

When an adoption is finalized in court, the clerk of court's office has 30 days to forward a certified copy of the court order to the Bureau of Vital Statistics. The order must supply sufficient information to the Bureau for it to identify the original birth certificate, and the Bureau then creates a new birth certificate.³

The new certificate must contain the same file number as the original birth certificate. On the new birth certificate, the names and identifying information of the adoptee and adoptive parents replace the names and identifying information of the birth parents and no reference is made to the adoption. All medical information on the certificate remains the same, including the date of registration and filing.⁴ When the new birth certificate is prepared, the Bureau substitutes the new birth certificate for the original certificate on file. After that point, the Bureau may only issue a certified copy of the new certificate, unless required otherwise by a court order. The original birth certificate and related documents are sealed, and cannot be reopened unless a court order or some other law directs them to be unsealed.⁵

Confidentiality of Birth and Adoption Records

All papers and records pertaining to an adoption, including the original birth certificate, are confidential and exempt from public inspection.⁶ Before an adoption becomes final, the adoptive parents must be provided with non-identifying information, including the family medical history and social history of the adoptee and the adoptee's parents, when available. Upon reaching the age of 18, an adoptee may also request the non-identifying information.⁷

Obtaining the Original Birth Certificate

Section 63.162(4), F.S., which provides the process for obtaining information on an original birth certificate, is not a model of clarity. The statute is confusing and subject to different

¹ Section 382.013, F.S.

² Telephone interview with Ken Jones, Bureau of Vital Statistics, Jacksonville, Fla. (Feb. 13, 2020).

³ Section 382.015(1)(a), F.S.

⁴ *Id.*

⁵ Section 382.015(4), F.S.

⁶ Section 63.162(2), F.S.

⁷ Section 63.162(6), F.S.

interpretations. The statute provides that a person may not disclose from the records the name and identity of a birth parent, an adoptive parent, or an adoptee unless:

- The birth parent authorizes in writing the release of his or her name;
- An adoptee, if age 18 or older, authorizes in writing the release of his or her name;
- An adoptive parent of an adoptee under age 18 provides written consent to disclose the adoptee's name;
- An adoptive parent authorizes in writing the release of his or her name; or
- A court issues an order, for good cause shown.

The Bureau of Vital Statistics interprets this language as prohibiting the release of information on the original birth certificate unless a birth parent, an adoptee, and an adoptive parent *all* authorize the release. Essentially, a person in each category must agree to release his or her name before the information may be released to a person in one of the three categories.

Several people have suggested that it is unnecessarily restrictive for an adult adoptee to be required to obtain the permission of the adoptive parent in order to gain access to the adoptee's original name, place of birth, and information of a birth parent. The sentiment is that as an adult, a person should not be required to obtain a parent's permission for any endeavor.

Florida's Adoption Reunion Registry

In 1982, the Legislature established the Florida Adoption Reunion Registry for people who are affected by adoption and provides them the opportunity to reunite. If two or more people affected by a single adoption in the state list themselves on the registry, then the Registry puts them in touch with each other. The registry is passive in nature and does not actively search registrations to unite people. Currently, 10,000 people have signed up on the registry and 6 to 8 reunions occur each month. The Department of Children and Families operates the registry, and there is no registration fee.⁸

III. Effect of Proposed Changes:

The bill amends s. 63.162(4), F.S., to provide that the Bureau of Vital Statistics may disclose the name and identity of the birth parent, if the birth parent provides written consent for the release of his or her name, and the adoptee is 18 years of age or older. Accordingly, the adoptive parent's signature is no longer required unless the adoptee is a minor. Under this provision, an adoptee who is 18 or older may obtain his or her original name and the place of birth with the other portions of the birth certificate redacted, such as the names of a birth parent. The bill retains the current law with respect to adoptees who are younger than 18 years of age; the adoptive parent's consent is still required for the adoptee to obtain the name and identity of the birth parent.

The Bureau of Vital Statistics may disclose from its records the name and identity of an adoptee, if the adoptee is 18 years of age or older and provides a written authorization for the release of his or her name. If the adoptee is younger than 18 years, the written consent to disclose must be

⁸ Section 63.165, F.S. and <http://adoptflorida.com/Reunion-Registry.htm>.

obtained from an adoptive parent. The Bureau may disclose the name and identity of the adoptive parent if the adoptive parent provides written consent for the release of his or her name.

Finally, the Bureau may disclose from the records the name and identity of a birth parent, an adoptive parent, or an adoptee upon an order of the court for good cause shown.

The bill takes effect July 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends s. 63.162 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 February 4, 2020:

- Adds the requirement that if the adoptee is under the age of 18, the adoptive parent must also provide written consent to disclose the birth parent's name.

- B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs; and
Senator Rader

586-03117-20

2020302c1

A bill to be entitled

An act relating to adoption records; amending s.
63.162, F.S.; providing that the name and identity of
a birth parent, an adoptive parent, and an adoptee may
be disclosed from adoption records without a court
order under certain circumstances; providing an
effective date.

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

Section 1. Subsection (4) of section 63.162, Florida
Statutes, is amended to read:

63.162 Hearings and records in adoption proceedings;
confidential nature.—

(4) (a) A person may ~~not~~ disclose the following from the
records without a court order the name and identity of a birth
parent, an adoptive parent, or an adoptee unless:

1. (a) The name and identity of the birth parent, if the
birth parent authorizes in writing the release of his or her
name and the adoptee is 18 years of age or older; if the adoptee
is younger than 18 years of age, the adoptive parent must also
provide written consent to disclose the birth parent's name;

2. (b) The name and identity of the adoptee, if the adoptee
is 18 or more years of age or older and, authorizes in writing
the release of his or her name; or, if the adoptee is younger
less than 18 years of age, written consent to disclose the
adoptee's name is obtained from an adoptive parent; or

3. (c) The name and identity of the adoptive parent, if the
adoptive parent authorizes in writing the release of his or her

Page 1 of 2

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

586-03117-20

2020302c1

name. ~~7-02~~

(b) (d) A person may disclose from the records the name and
identity of a birth parent, an adoptive parent, or an adoptee
upon order of the court for good cause shown. In determining
whether good cause exists, the court shall give primary
consideration to the best interests of the adoptee, but must
also give due consideration to the interests of the adoptive and
birth parents. Factors to be considered in determining whether
good cause exists include, but are not limited to:

1. The reason the information is sought;

2. The existence of means available to obtain the desired
information without disclosing the identity of the birth
parents, such as by having the court, a person appointed by the
court, the department, or the licensed child-placing agency
contact the birth parents and request specific information;

3. The desires, to the extent known, of the adoptee, the
adoptive parents, and the birth parents;

4. The age, maturity, judgment, and expressed needs of the
adoptee; and

5. The recommendation of the department, licensed child-
placing agency, or professional that which prepared the
preliminary study and home investigation, or the department if
no such study was prepared, concerning the advisability of
disclosure.

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

Page 2 of 2

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

February 19, 2020

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 302, relating to Adoption Records, 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,

A handwritten signature in cursive script that reads "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
APPEARANCE RECORD

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

2 March 2020
Meeting Date

302
Bill Number (if applicable)

Topic Adoption Records

Amendment Barcode (if applicable)

Name Melina Rayna Svanhild Farley Barratt

Job Title Legislative Director

Address 8689 SE 69 Ter

Phone 352-226-7477

Street

Trenton
City

FL
State

32693
Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-2-20

Meeting Date

302

Bill Number (if applicable)

Topic

Adoption Records

Amendment Barcode (if applicable)

Name

Barbara DeVane

Job Title

MS

Address

625 E. Bernard St

Phone

257-4280

Street

Email

barbadevane10@yahoo.com

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

FLADW

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 510

INTRODUCER: Senator Wright

SUBJECT: Bail Pending Appellate Review

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stokes	Jones	CJ	Favorable
2. Ravelo	Cibula	JU	Favorable
3. Stokes	Phelps	RC	Favorable

I. Summary:

SB 510 prohibits a person from being released on bail when appealing a felony conviction for an offense requiring registration as a sexual offender or sexual predator where the offender was 18 years of age or older and the victim was a minor.

The bill is effective October 1, 2020.

II. Present Situation:

Bail includes any form of pretrial release, but frequently requires a monetary or cash component.¹ Bail on appeal may be set post-conviction if a defendant appeals the conviction. Bail is set by the court to ensure the appearance of the defendant at subsequent proceedings and to protect the community against unreasonable danger from the defendant.²

Bail on Appeal

Bail on appeal is a separate undertaking than the original bail issued pre-trial. If a defendant is convicted and the case is appealed, the court may issue bail on appeal, because bail issued at first appearance may not be continued for appeal. A new bail is considered to reflect the increased risk and longer time considerations.³ A defendant may be granted bail on appeal at the discretion of the trial court.⁴ However, defendants who are convicted of capital felony offenses are not

¹ Section 903.011, F.S.

² Section 903.046(1), F.S.

³ Section 903.132(3), F.S.

⁴ *Greene v. State*, 238 So. 2d 296, 298 (Fla. 1970).

eligible for bail on appeal.⁵ If a defendant is denied bail on appeal, he or she has a right to appeal the denial.⁶

Section 903.132, F.S., provides that a defendant may be granted bail on appeal from a conviction of a felony only if the defendant establishes that the appeal is in good faith, is fairly debatable, and not frivolous. However, a defendant may not receive bail on appeal if probable cause has been found for another pending felony, or if the defendant has a previous felony conviction, and:

- The commission of the previous conviction occurred before the crime that is the subject of the appeal; and
- The defendant's civil rights have not been restored.⁷

Section 903.133, F.S., prohibits bail on appeal for defendants convicted of specified crimes. Any defendant adjudicated guilty of a first degree felony of:

- Second degree murder or felony murder (s. 782.04(2) or (3), F.S.).
- Kidnapping (s. 787.01, F.S.).
- Sexual battery (s. 794.011(4), F.S.).
- Arson (s. 806.01, F.S.).
- Sale, manufacture, deliver or possess with intent to sell a controlled substance (s. 893.13, F.S.).
- Drug trafficking (s. 893.135, F.S.).

If a defendant commits and is convicted of a separate felony offense while free on bail on appeal, that bail must be revoked.⁸

Florida's Sexual Predator and Sexual Offender Registration Laws

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender.⁹ The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. The laws span several different chapters and numerous statutes,¹⁰ and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the Department of Highway Safety and Motor Vehicles (DHSMV), and the Department of Children and Families (DCF).

A person is designated as a sexual predator by a court if the person:

⁵ *Rowe v. State*, 417 So. 2d 981, 983 (Fla. 1982) (holding that Fla. R. Crim. Pro. 3.961 prohibits the granting of bail on appeal for a defendant convicted of a capital offense and sentenced to life in prison).

⁶ Section 903.132(2), F.S.

⁷ Section 903.132(1), F.S.

⁸ Section 903.131, F.S.

⁹ Sections 775.21 and 943.0435, F.S.

¹⁰ Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;¹¹
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.¹²

A person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997, from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.¹³

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.);¹⁴
- 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.);

¹¹ Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).

¹² Section 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

¹³ Sections 943.0435(1)(h) and 985.4815(1)(h), F.S. Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the DOC's supervision, also define the term "sexual offender."

¹⁴ However, the Florida Supreme Court has held there must be a sexual element to the kidnapping or false imprisonment when the victim is a minor. *State v. Robinson*, 873 So. 2d 1205 (Fla. 2004).

- 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.).

The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders, including residence information.¹⁵ Further, local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

The Florida Courts Rules of Procedure

Florida statutes, such as the Florida Evidence Code as enacted by the Legislature, contain both procedural and substantive law for the courts to apply. However, statutes that are procedural in nature, even those passed by the Legislature, must be approved by Supreme Court. Occasionally, the Court rejects the legislative changes.

In 2000, for example, the Court refused to adopt a recently enacted hearsay exception, noting that applying the statute would go against long standing rules of evidence and violate a defendant's right of confrontation.¹⁶ A concurring opinion by Justice Lewis also found that the statute was an unacceptable rule of procedure, and therefore infringed on the Court's ability to adopt rules under Article V, § 2(a), of the Florida Constitution. In 2014, the Court refused to adopt a statute that was not part of the evidence code requiring certain qualifications for medical negligence expert witnesses on the grounds that the statute was procedural.¹⁷

Currently, post-conviction bail under the rules of procedure mirror that of the statutes.¹⁸ If bail is denied, the Judge must issue written findings with reasons for the denial. If the defendant is released pending an appeal, the conditions of the release must include that the defendant duly prosecute the case, and surrender themselves to the court upon the appeal being affirmed or modified.¹⁹ If the judgment is reversed and remanded for a new trial, the defendant must appear before the court and not flee the jurisdiction.

¹⁵ The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. *About Us*, Florida Department of Law Enforcement, available at <http://offender.fdle.state.fl.us/offender/About.jsp> (last visited on Nov. 5, 2019). The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at an institute of higher education. See <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on Nov. 5, 2019).

¹⁶ *In re Amendments to the Fla. Evidence Code*, 782 So. 2d 339, 341 (Fla. 2000). The statute in question stripped the former testimony of witnesses' hearsay exception of the requirement that the witness be unavailable.

¹⁷ *In re: Amendments to the Fla. Evidence Code*, 144 So. 3d 536, 537 (Fla. 2014).

¹⁸ Specifically, Fla. R. Crim. P. 3.691 says: "no person may be admitted to bail on appeal from a conviction of a felony unless the defendant establishes that the appeal is taken in good faith, on grounds fairly debatable, and not frivolous. However, in no case shall bail be granted if such person has previously been convicted of a felony, the commission of which occurred prior to the commission of the subsequent felony, and the person's civil rights have not been restored or if other felony charges are pending against the person and probable cause has been found that the person has committed the felony or felonies at the time the request for bail is made."

¹⁹ When deciding post-conviction bail based on a good faith fairly debatable appeal, the courts must also consider: (1) the habits of the individual as to respect for the law, (2) his local attachments to the community, by way of family ties, business,

Sex Offense Convictions and Dispositions

The FDLE, as part of the Uniform Crime Report administered by the Federal Bureau of Investigations, publishes an annual list of crimes known to and suspected by law enforcement agencies. Although not inclusive of all crimes related to sexual offenders or predators, the 2018 report shows that there were 2,562²⁰ arrests based on forcible²¹ sex offenses and 2,238 arrests based on non-forcible²² sex offenses that were documented by law enforcement agencies.

The Office of the State Courts Administrator tracks the number of convictions, pleas, and dismissals throughout the state trial courts. For the 2017-2018 fiscal year, 2,562 cases were filed based on sexual offenses in circuit²³ criminal courts.²⁴ That same fiscal year, there were 1,796 dispositions²⁵ based on sexual offenses, with 1,166 resolving through pleas, 196 being convicted post trial, and the remainder either resolving through dismissal, acquittal, transfer, or some another alternative to prosecution. In that same fiscal year, the Florida Department of Corrections reported that 1,549 individuals were admitted to a state prison based on a sexual offense, having an average sentence of 12 years.²⁶ Each of these agencies use a different methodology for their reported statistics, and thus, it is expected that the statistics are comparable as opposed to identical.²⁷

or investments, (3) the severity of the punishment imposed for the offense, and any other circumstances relevant to the question of whether the person would be tempted to remove himself from the jurisdiction of the court. In a case where the term of imprisonment imposed is short, the trial court might also consider whether the denial of bail would render nugatory the right to appeal from the judgment of conviction. *Youghans v. State*, 90 So. 2d 308, 310 (Fla. 1956).

²⁰ Despite the total arrest number for forcible sex offenses being 2,562, there were a total of 11,907 forcible sex offenses reported to law enforcement agencies.

²¹ Forcible Sex Offenses for the purpose of the FDLE Uniform Crime Report include any sexual act directed against another person, forcibly and/or against that person's will or not forcibly or against the person's will where the victim is incapable of giving consent. Generally, this may include: rape, attempted rape, sodomy, fondling, child molestation, lewd or lascivious molestation, and lewd or lascivious conduct.

²² Non-Forcible Sex Offenses for the purpose of the FDLE Uniform Crime Report include unlawful sexual intercourse, sexual contact, or the unlawful behavior or conduct intended to result in sexual gratification without force or threat of force and where the victim is incapable of giving consent. Generally, this may include: incest, indecent exposure, obscenity, obscene communications and telephone calls, and obscene material or photography.

²³ Circuit criminal courts primarily receive cases that stem from a felony arrest or charge. Misdemeanors that are unrelated to a felony case are generally heard in the County Court division.

²⁴ Office of the States Courts Administrator, Circuit Criminal Overview FY 2017-18, <https://www.flcourts.org/content/download/430404/4673767/Chapter-3-Circuit-Criminal-FY-2017-18.pdf>.

²⁵ Dispositions generally mean the conclusion and final court order of a case. Importantly, dispositions could take several months or years to occur depending on the complexity of the case and the judge's docket. Thus, disposition numbers likely include cases based on incidents that occurred in previous years.

²⁶ Florida Dept. of Corrections, 2017-18 Annual Report, http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf.

²⁷ The FDLE, State Courts Administrator, and Florida Department of Corrections each use a different methodology for their statistics. For one, the State Courts Administrator includes sexual misconduct of by corrections officers under s. 944.35, F.S., sexual misconduct by psychotherapists, sexual battery by multiple perpetrators under s. 794.023, F.S., bigamy and incest under chapter 826, F.S. The Department of Corrections does not provide data based on statutory citations, and instead counts capital sexual battery, life sexual battery, first degree sexual battery, second degree sexual battery, sexual assault, and lewd and lascivious behavior towards the number of sexual offense based admissions. Likewise, FDLE counts each arrest as a single incident and only the primary incident is reported toward the Uniform Crime Report. If a capital murder case also involved a sexual assault, for example, the FDLE would count the capital murder towards statistics on murder and not on sexual assault.

III. Effect of Proposed Changes:

The bill amends s. 903.133, F.S., to add to the list of criminal convictions that make a person ineligible for release on bail during an appeal of the conviction. As amended, the statute prohibits a person from being granted bail on appeal for any offense requiring sexual offender registration under s. 943.0435(1)(h), F.S., or sexual predator registration under s. 775.21(4), F.S., when the offender is over 18 years of age and the victim is a minor.

This bill is effective October 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:

None.

C. Government Sector Impact:

The Department of Corrections may see a positive indeterminate prison bed impact due to defendants' ineligibility to receive bail on appeal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 903.133 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.



493576

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/03/2020	.	
	.	
	.	
	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete line 27
and insert:

Section 2. Effective July 1, 2020, subsection (1) of
section 903.286, Florida Statutes, is amended to read:

903.286 Return of cash bond; requirement to withhold unpaid
fines, fees, court costs; cash bond forms.—

(1) Notwithstanding s. 903.31(2), the clerk of the court
shall withhold from the return of a cash bond posted on behalf
of a criminal defendant by a person other than a bail bond agent



493576

licensed pursuant to chapter 648 or an entity that is currently
a tax-exempt organization under s. 501(c) of the Internal
Revenue Code sufficient funds to pay any unpaid costs of
prosecution, costs of representation as provided by ss. 27.52
and 938.29, court fees, court costs, and criminal penalties. If
sufficient funds are not available to pay all unpaid costs of
prosecution, costs of representation as provided by ss. 27.52
and 938.29, court fees, court costs, and criminal penalties, the
clerk of the court shall immediately obtain payment from the
defendant or enroll the defendant in a payment plan pursuant to
s. 28.246.

Section 3. Except as otherwise expressly provided in this
act and except for this section, which shall take effect July 1,
2020, this act shall take effect October 1, 2020.

===== 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 bail; amending s. 903.133, F.S.;
prohibiting a court from granting bail to specified
offenders pending review following a conviction for an
offense requiring sexual offender or sexual predator
registration if the victim was a minor; amending s.
903.286, F.S.; providing that certain costs and fees
may not be withheld from the return of a cash bond
when such bond is posted by specified tax-exempt
organizations; providing effective dates.

By Senator Wright

14-00828-20

2020510__

A bill to be entitled

An act relating to bail pending appellate review;
amending s. 903.133, F.S.; prohibiting a court from
granting bail to specified offenders pending review
following a conviction for an offense requiring sexual
offender or sexual predator registration if the victim
was a minor; providing an effective date.

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

Section 1. Section 903.133, Florida Statutes, is amended to
read:

903.133 Bail on appeal; prohibited for certain felony
convictions.—Notwithstanding the provisions of s. 903.132, no
person shall be admitted to bail pending review either by
posttrial motion or appeal if he or she was adjudged guilty of:

(1) A felony of the first degree for a violation of s.
782.04(2) or (3), s. 787.01, s. 794.011(4), s. 806.01, s.
893.13, or s. 893.135; ~~or adjudged guilty of~~

(2) A violation of s. 794.011(2) or (3); or

(3) Any other offense requiring sexual offender
registration under s. 943.0435(1)(h) or sexual predator
registration under s. 775.21(4) when, at the time of the
offense, the offender was 18 years of age or older and the
victim was a minor, shall be admitted to bail pending review
either by posttrial motion or appeal.

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



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

December 10, 2019

The Honorable Lizbeth Benacquisto
400, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 510 – Bail Pending Appellate Review

Dear Chair Benacquisto:

Senate Bill 510, relating to Bail Pending Appellate Review has been referred to the Committee on Rules. I am requesting your consideration on placing SB 510 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "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
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 688

INTRODUCER: Criminal Justice Committee; Environment and Natural Resources Committee; and Senator Wright

SUBJECT: Illegal Taking, Possession, and Sale of Bears

DATE: February 28, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dyson	Rogers	EN	Fav/CS
2.	Cellon	Jones	CJ	Fav/CS
3.	Dyson	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 688 creates a section of law that increases the penalty for taking or possessing a freshly killed bear from a Level Two violation (a second-degree misdemeanor for the first offense) to a Level Three violation (a first-degree misdemeanor for the first offense). The bill makes a subsequent offense of such taking or possession permanently ineligible for any other permit or license issued by the Fish and Wildlife Conservation Commission.

The bill also makes the sale or attempted sale of a bear taken in violation of the section a Level Four violation (a third-degree felony).

Rule 68A-4.009 of the Florida Administrative Code provides rules specifically addressing Florida Black Bear Conservation. The rule allows the Fish and Wildlife Conservation Commission to issue permits for certain activities that might be considered “taking or possessing” a black bear. The bill incorporates this exception to the general rules related to black bears by exempting a person who is acting under the authority rule 68A-4.009 F.A.C. from the prohibitions and penalties in the bill.

The Florida Fish and Wildlife Conservation Commission suggests that there may be a nominal loss of revenue due to the loss in permit fees from violators who are no longer eligible to be issued a license by the Commission. The bill has a positive insignificant prison bed impact (an

increase of 10 or fewer prison beds) on the Department of Corrections. See Section IV Fiscal Impact Statement.

The bill is effective July 1, 2020.

II. Present Situation:

Florida Black Bear

The Florida black bear (*Ursus americanus floridanus*) is a subspecies of the American black bear (*Ursus americanus*)¹ that has historically ranged throughout Florida, southern Georgia, and southern Alabama.² Once roaming across Florida, the Florida black bear is now mainly located in fragmented areas across the state covering about 49 percent of its historic range.³ Due to loss of habitat and unregulated hunting, the population was reduced to an estimated 300-500 bears during the 1970s.⁴ The massive population decline led the Florida Fish and Wildlife Conservation Commission (FWC) to classify the Florida black bear as a threatened species in 1974.⁵

After more than 35 years of strict statewide protection and management, the FWC conducted an evaluation and determined that the Florida black bear was no longer at risk for extinction. In 2012 the Florida black bear was removed from the state threatened species list.⁶

Population

The Florida black bear population is comprised of seven distinct sub-populations. They are Apalachicola; Eglin; Osceola; Ocala/St. Johns; Chassahowitzka; Highland/Glades; and Big Cypress.⁷ During 2014-2015, the FWC conducted a statewide population assessment for Florida black bears and found that bear populations had increased substantially in certain sub-populations and increased by approximately 53 percent statewide.⁸ Even though the Florida black bear population is growing, the bears still only reside in the seven disconnected sub-groups across the state.⁹

¹ Florida Fish and Wildlife Conservation Commission, Draft *Florida Black Bear Management Plan*, pg. 1 (November 22, 2019), available at <https://myfwc.com/media/21923/2019-draft-bear-management-plan.pdf> (last visited February 6, 2020).

² *Id.*

³ Florida Fish and Wildlife Conservation Commission, *The Florida Black Bear, Appearance*, available at <https://myfwc.com/wildlifehabitats/wildlife/bear/facts/appearance/> (last visited February 6, 2020).

⁴ Florida Fish and Wildlife Conservation Commission, *Black Bear Research*, available at <http://myfwc.com/research/wildlife/terrestrial-mammals/bear/research/> (last visited February 6, 2020).

⁵ *Id.*

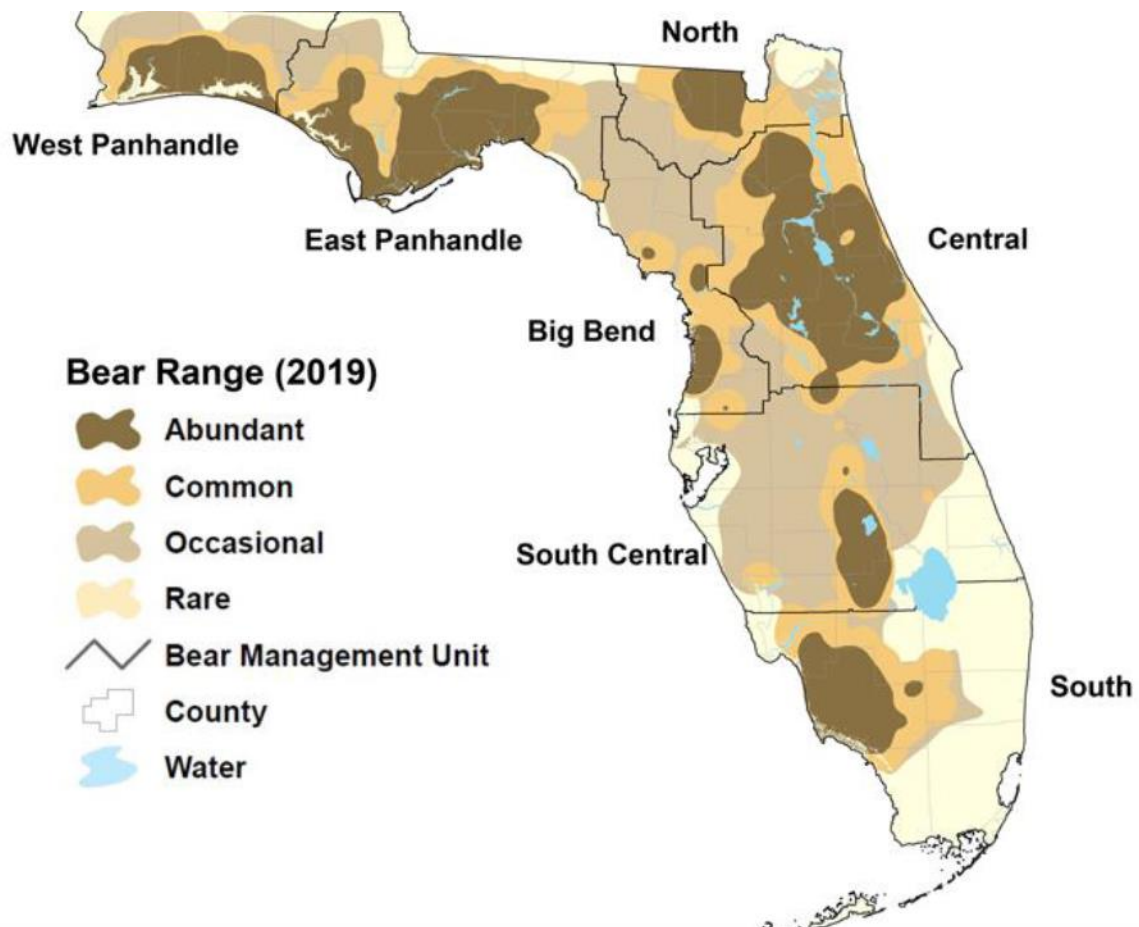
⁶ Florida Fish and Wildlife Conservation Commission, *Bear Management Plan*, pgs. 26-27 (June 27, 2012), available at <https://myfwc.com/media/14741/bear-management-plan.pdf> (last visited February 6, 2020).

⁷ Florida Fish and Wildlife Conservation Commission, Draft *Florida Black Bear Management Plan*, pg. xix (November 22, 2019), available at <https://myfwc.com/media/21923/2019-draft-bear-management-plan.pdf> (last visited February 6, 2020).

⁸ Florida Fish and Wildlife Conservation Commission, *Florida Black Bear: Numbers*, available at <https://myfwc.com/wildlifehabitats/wildlife/bear/numbers/> (last visited February 6, 2020).

⁹ Florida Fish and Wildlife Conservation Commission, *Bear Management Plan*, pg. vi (June 27, 2012), available at <https://myfwc.com/media/14741/bear-management-plan.pdf> (last visited February 6, 2020).

Each subpopulation is separated into a bear management unit (BMU). A BMU is a geographic location bounded by county and/or state borders with one of the seven Florida black bear subpopulations within it.¹⁰ The goal of a BMU is to provide a defined area within which the FWC can have a community-focused effort to effectively manage and conserve Florida black bears.¹¹ FWC estimates that the current population of the Florida black bear is over 4,000.¹² A map of the BMUs and Florida black bear habitats is shown below.¹³



Habitat

The Florida black bear is adaptable and inhabits a variety of forested habitats but thrives in areas that provide seasonally available foods, secluded areas for denning, and some degree of protection from humans.¹⁴ The optimal bear habitat in Florida is a thoroughly interspersed mixture of flatwoods, swamps, scrub oak ridges, bayheads, and hammock habitats.¹⁵

¹⁰ Florida Fish and Wildlife Conservation Commission, *BMU*, available at <https://myfwc.com/wildlifehabitats/wildlife/bear/bmu/> (last visited February 6, 2020).

¹¹ *Id.*

¹² Florida Fish and Wildlife Conservation Commission, *Draft Florida Black Bear Management Plan*, (November 22 2019), available at <https://myfwc.com/media/21923/2019-draft-bear-management-plan.pdf> (last visited February 6, 2020).

¹³ Florida Fish and Wildlife Conservation Commission, *Distribution Map*, <https://myfwc.com/wildlifehabitats/wildlife/bear/living/distribution-map/> (last visited February 6, 2020).

¹⁴ Florida Fish and Wildlife Conservation Commission, *Bear Management Plan*, pg. 8, (June 27, 2012), available at <https://myfwc.com/media/14741/bear-mapag.nagement-plan.pdf> (last visited February 6, 2020).

¹⁵ *Id.*

Hunting as a Management Tool

In 2015, the FWC authorized the first bear hunt, opening the East Panhandle, North, Central, and South BMUs to a limited hunt.¹⁶ In 2016, the FWC staff considered four options regarding the hunting of Florida black bears.¹⁷ These options included: using the same framework for the 2016 hunt as was used in 2015; authorizing a more conservative bear hunt utilizing input received from the public and stakeholders; postponing bear hunting in Florida; or prohibiting bear hunting in Florida for future years.¹⁸ The FWC ultimately decided to postpone the bear hunt for 2016 with the option to reopen discussion at a later date.¹⁹ Currently, there is no season where bear hunting is authorized in the state.

Penalties for Taking or Sale of Wildlife

The FWC has a four-tier system for penalties and violations which includes civil penalties for noncriminal infractions, criminal penalties, and suspension and forfeiture of licenses and permits. Level One violations are considered the least serious while Level Four violations the most serious.²⁰

Level Two Violations

Examples of a Level Two violation include:

- Violating rules or orders of the commission relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish;
- Violating rules or orders of the commission relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries;
- Violating rules or orders of the commission relating to tagging requirements for wildlife and fur-bearing animals;
- Violating rules or orders of the commission relating to the use of dogs for the taking of wildlife;
- Violating rules or orders of the commission which are not otherwise classified; and
- Violating rules or orders of the commission prohibiting the unlawful use of traps, unless otherwise provided by law.²¹

¹⁶ Florida Fish and Wildlife Conservation Commission, *2015 Florida Black Bear Summary Report*, pg. 1, available at <https://myfwc.com/media/13669/2015-florida-black-bear-hunt-report.pdf> (last visited February 6, 2020).

¹⁷ Florida Fish and Wildlife Conservation Commission, *FWC to Consider Staff Recommendation for Florida Bear Hunt, Four Options on How to Move Forward* (June 10, 2016), available at https://myfwc.com/media/16630/fwc-to-consider-staff-recommendation-for-florida-bear-hunt-four-options-on-how-to-move-forward_061016.pdf (last visited February 6, 2020).

¹⁸ *Id.*

¹⁹ Florida Fish and Wildlife Conservation Commission, *FWC votes to postpone bear hunting in 2016* (June 22, 2016), available at https://myfwc.com/media/16632/fwc-votes-to-postpone-bear-hunting-in-2016_062216.pdf (last visited February 6, 2020).

²⁰ Section 379.401, F.S.

²¹ Section 379.401(2)(a), F.S.

The penalties for Level Two violations are as follows:

Level Two Violation	Degree of Offense	Fine or Incarceration	License Restrictions
First offense	2 nd Degree Misdemeanor ²²	Max: \$500 or Max: 60 days	None
Second offense within three years of previous Level Two violation (or higher)	1 st Degree Misdemeanor ²³	Min: \$250; Max: \$1,000 Max: one year	None
Third offense within five years of two previous Level Two violations (or higher)	1 st Degree Misdemeanor ²⁴	Min: \$500; Max: \$1,000 Max: one year	Suspension of license for one year
Fourth offense within 10 years of three previous Level Two violations (or higher)	1 st Degree Misdemeanor ²⁵	Min: \$750; Max \$1,000 or Max: one year	Suspension of license for three years

The taking of a bear during closed season is considered a Level Two violation.²⁶

Level Three Violations

Examples of a Level Three violation include:

- The illegal sale or possession of alligators;
- The taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked; and
- The illegal taking and possession of deer and wild turkey.²⁷

The penalties for a Level Three violation are as follows:

Level Three Violation	Degree of Offense	Fine or Incarceration	License Restrictions
First offense	1 st Degree Misdemeanor ²⁸	Max: \$1,000 Max: one year	None
Second offense within 10 years of a previous Level Three violation (or higher)	1 st Degree Misdemeanor ²⁹	Min: \$750; Max: \$1,000 Max: one year	Suspension of license or permit for up to three years
Fishing, hunting, or trapping on a suspended or revoked license, s. 379.354(17), F.S.	1 st Degree Misdemeanor	Mandatory \$1,000 ³⁰ Max: one year	May not acquire license or permit for five years

²² Section 379.401(2)(b)1., F.S.

²³ Section 379.401(2)(b)2., F.S.

²⁴ Section 379.401(2)(b)3., F.S.

²⁵ Section 379.401(2)(b)4., F.S.

²⁶ Section 379.401(2)(a)1., F.S.; 68A-4.009 F.A.C.

²⁷ Section 379.401(3), F.S.

²⁸ Section 379.401(3)(b)1., F.S.

²⁹ Section 379.401(3)(b)2., F.S.

³⁰ Section 379.401(3)(b)3., F.S.

Level Four Violations

Examples of a Level Four violation include:

- The making, forging, counterfeiting, or reproduction of a recreational license or the possession of same without authorization from the commission;
- The sale of illegally-taken deer or wild turkey;
- The unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs;
- The intentional killing or wounding of any species designated as endangered, threatened, or of special concern; and
- The killing of any Florida or wild panther.³¹

The penalties for Level Four Violations are as follows:

Level Four Violation	Degree of Offense	Fine or Incarceration	License Restrictions
First offense ³²	3 rd Degree Felony	Max: \$5,000 Max: Five Years	None

FWC Rule Promoting Bear Conservation, Human-Bear Coexistence

Rule 68A-4.009 of the Florida Administrative Code provides rules specifically addressing Florida Black Bear Conservation. The rule allows the FWC to issue permits for certain activities that might be considered “taking or possessing” a black bear.

The rule provides that the FWC will issue permits authorizing intentional take of bears when it determines such authorization furthers scientific or conservation purposes which will benefit the survival potential of the species or to reduce property damage caused by bears. Activities that are eligible for a permit include:

- Collection of scientific data needed for conservation or management of the species;
- Taking bears that are causing property damage when no non-lethal options can provide practical resolution to the damage, and the FWC is unable to capture the bear.³³

The FWC authorizes members of the public to take a bear in an attempt to scare a bear away from people using methods considered non-lethal, in situations and by methods as authorized by the FWC staff.³⁴ The FWC will provide technical assistance to land owners and comments to permitting agencies in order to minimize and avoid potential negative human-bear interactions or impacts of land modifications on the conservation and management of black bears. The FWC will base its comments and recommendations on the goals and objectives of the approved Florida Black Bear Management Plan.³⁵

³¹ Section 379.401(4)(a), F.S.

³² Section 379.401(4)(b), F.S.

³³ Rule 68A-4.009 (2) F.A.C.

³⁴ Rule 68A-4.009 (3) F.A.C., see Florida Fish and Wildlife Conservation Commission, Draft Florida Black Bear Management Plan, (November 22, 2019), available at <https://myfwc.com/wildlifehabitats/wildlife/bear/living/scare/> (last visited February 11, 2020).

³⁵ Rule 68A-4.009 (4) F.A.C., see Florida Fish and Wildlife Conservation Commission, Draft Florida Black Bear Management Plan, (November 22 2019), available at <https://myfwc.com/media/21923/2019-draft-bear-management-plan.pdf> (last visited February 11, 2020).

III. Effect of Proposed Changes:

The bill adds the prohibited taking and possession of bears to the list of Level Three violations, which are first degree misdemeanor offenses punishable by up to a year in the county jail and a \$1,000 fine.³⁶ It also adds the prohibited sale of an illegally-taken bear to the list of Level Four violations which are third degree felony offenses punishable by up to 5 years incarceration and a \$5,000 fine.³⁷

The bill creates s. 379.4041, F.S., which increases the penalty for taking or possessing a freshly killed bear during the closed season. Under the bill, a person who commits such offenses commits a Level Three violation and forfeits any FWC license or permit for three years from the violation date. A person who commits a subsequent offense of taking a bear or possessing a freshly killed bear is permanently ineligible for issuance of any FWC license or permit.

The bill also states that any person who possesses for sale or sells a bear taken during the closed season commits a Level Four violation.

Rule 68A-4.009 of the Florida Administrative Code provides rules specifically addressing Florida Black Bear Conservation. The rule allows the FWC to issue permits for certain activities that might be considered “taking” a black bear. The bill incorporates this exception to the general rules related to “taking” black bears by exempting a person who is acting under the authority of rule 68A-4.009 F.A.C. from the prohibitions and penalties in the bill.

The bill provides an effective date of July 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.

³⁶ Sections 775.082 and 775.083, F.S.

³⁷ *Id.*

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be a nominal loss in permit fees from violators who are no longer eligible to be issued a license.³⁸

The Criminal Justice Impact Conference considered this bill on February 10, 2020, and determined that the bill will have a positive insignificant prison bed impact (an increase of 10 or fewer prison beds) on the Department of Corrections.³⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 379.4041 of the Florida Statutes.

This bill substantially amends section 379.401 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 Criminal Justice on February 11, 2020:**

Exempts a person who is acting under the authority of rule 68A-4.009 F.A.C. from the prohibitions and penalties in the bill. (Rule 68A-4.009 F.A.C. allows the FWC to issue permits for activities that might be considered to be “taking” a black bear.)

³⁸ Florida Fish and Wildlife Conservation Commission, 2020 Agency Bill Analysis, October 15, 2019, (on file with the Senate Criminal Justice Committee).

³⁹ Office of Economic and Demographic Research, Criminal Justice Impact Conference Adopted Estimate, CS/SB 688 – Illegal Taking, Possession, and Sale of Bears February 10, 2020 (on file with the Senate Criminal Justice Committee).

CS by Environment and Natural Resources on February 3, 2020:

Changes the bill to add the prohibited taking and possession of bears to the list of Level Three violations and the prohibited sale of an illegally-taken bear to the list of Level Four violations.

B. Amendments:

None.

By the Committees on Criminal Justice; and Environment and Natural Resources; and Senator Wright

591-03462-20

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A bill to be entitled

An act relating to the illegal taking, possession, and sale of bears; amending s. 379.401, F.S.; providing that a person commits specified violations for the illegal taking, possession, and sale of bears; creating s. 379.4041, F.S.; prohibiting the illegal taking, possession, and sale of bears; providing an exception; providing penalties; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) and paragraph (a) of subsection (4) of section 379.401, Florida Statutes, are amended to read:

379.401 Penalties and violations; civil penalties for noncriminal infractions; criminal penalties; suspension and forfeiture of licenses and permits.—

(3) LEVEL THREE VIOLATIONS.—

(a) A person commits a Level Three violation if he or she violates any of the following provisions:

1. Rules or orders of the commission prohibiting the sale of saltwater fish.

2. Rules or orders of the commission prohibiting the illegal importation or possession of exotic marine plants or animals.

3. Section 379.28, prohibiting the importation of freshwater fish.

4. Section 379.3014, prohibiting the illegal sale or

Page 1 of 4

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

591-03462-20

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possession of alligators.

5. Section 379.354(17), prohibiting the taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked.

6. Section 379.357(4), prohibiting the sale, transfer, or purchase of tarpon.

7. Section 379.404(1), (3), and (6), prohibiting the illegal taking and possession of deer and wild turkey.

8. Section 379.4041(1), prohibiting the illegal taking and possession of bears.

9.8. Section 379.406, prohibiting the possession and transportation of commercial quantities of freshwater game fish.

10.9. Section 379.407(2), establishing major violations.

11.10. Section 379.407(4), prohibiting the possession of certain finfish in excess of recreational daily bag limits.

(4) LEVEL FOUR VIOLATIONS.—

(a) A person commits a Level Four violation if he or she violates any of the following provisions:

1. Section 379.354(16), prohibiting the making, forging, counterfeiting, or reproduction of a recreational license or the possession of same without authorization from the commission.

2. Section 379.365(2)(c), prohibiting criminal activities relating to the taking of stone crabs.

3. Section 379.366(4)(c), prohibiting criminal activities relating to the taking and harvesting of blue crabs.

4. Section 379.367(4), prohibiting the willful molestation of spiny lobster gear.

5. Section 379.3671(2)(c)5., prohibiting the unlawful reproduction, possession, sale, trade, or barter of spiny

Page 2 of 4

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lobster trap tags or certificates.

6. Section 379.404(5), prohibiting the sale of illegally-taken deer or wild turkey.

7. Section 379.4041(2), prohibiting the sale of illegally-taken bears.

~~8.7-~~ Section 379.405, prohibiting the molestation or theft of freshwater fishing gear.

~~9.8-~~ Section 379.409, prohibiting the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs.

~~10.9-~~ Section 379.411, prohibiting the intentional killing or wounding of any species designated as endangered, threatened, or of special concern.

~~11.10-~~ Section 379.4115, prohibiting the killing of any Florida or wild panther.

Section 2. Section 379.4041, Florida Statutes, is created to read:

379.4041 Illegal taking, possession, and sale of bears.-

(1) Unless a person is acting under the authority of rule 68A-4.009, Florida Administrative Code, a person who takes a bear or possesses a freshly killed bear during the closed season prescribed by law or rules of the commission commits a Level Three violation under s. 379.401 and forfeits any license or permit issued to him or her under this chapter for 3 years after the date of the violation. A person who commits a subsequent offense of such taking or possession is permanently ineligible for issuance of any license or permit under this chapter.

(2) A person who possesses for sale or sells a bear taken in violation of this section or rules of the commission commits

591-03462-20

2020688c2

a Level Four violation under s. 379.401.

Section 3. This act shall take effect July 1, 2020.



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

February 14, 2020

The Honorable Lizbeth Benacquisto
400, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 688 – Illegal Taking and Possession of Bears

Dear Chair Benacquisto:

Senate Bill 688, relating to Illegal Taking and Possession of Bears has been referred to the Committee on Rules. I am requesting your consideration on placing SB 688 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "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)

3/2/20

Meeting Date

688

Bill Number (if applicable)

Topic Bears

Amendment Barcode (if applicable)

Name Kate Macfall

Job Title state director

Address 1629 McIntosh Cir.

Phone 850 508-1001

Street

Tallahassee FL 32308

City

State

Zip

Email kmacfall@hsus.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Humane Society of the United States

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

03/02/20

Meeting Date

SB688

Bill Number (if applicable)

Topic Illegal taking of bel cars

Amendment Barcode (if applicable)

Name Yaneisy Padino

Job Title student

Address 104 Westwood Dr.
Street

Phone 813 520 0669

Tallahassee FL 32304
City State Zip

Email yaneisypadino@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing n/a

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/20

Meeting Date

688

Bill Number (if applicable)

Topic Illegal Taking of Bears

Amendment Barcode (if applicable)

Name Lindsay Cross

Job Title Government Relations Director

Address 1700 N Monroe St
Street

Phone _____

Tally
City

FL
State

32303
Zip

Email lindsay@fcvoters.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida conservation voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3/2/20

Meeting Date

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

688

Bill Number (if applicable)

Topic Illegal Taking, possession and sale of bears

Amendment Barcode (if applicable)

Name Travis Moore

Job Title _____

Address P.O. Box 2020
Street

Phone 727.421.6902

St. Petersburg FL 33731
City State Zip

Email travis@moore-relations.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Defenders of Wildlife

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/2013
Meeting Date

688
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 10402 CREST ST
Street
TLH FL 32301
City State Zip

Phone 941-323-2404

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

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 660

INTRODUCER: Commerce and Tourism Committee and Senator Berman

SUBJECT: Uniform Commercial Real Estate Receivership Act

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Elsesser	Cibula	JU	Favorable
2. McMillan	McKay	CM	Fav/CS
3. Elsesser	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 660 adopts the Uniform Commercial Real Estate Receivership Act and authorizes a court to appoint a receiver, who acting as the court's agent, takes possession of, manages, and, in some cases, transfers or sells property that is in danger of waste, loss, or diminution in value.

The bill covers interests in real property, as well as incidental personal property, related to the use or operation of real property. However, the bill does not apply to real property improved by one or two dwelling units which includes the homestead of an individual owner or an affiliate of an individual owner.

The bill in large part codifies the common law of receivership, in some cases clarifying or providing more specific procedures for the rules governing receiverships.

The bill takes effect July 1, 2020.

II. Present Situation:

Equitable receiverships are a creation of common law, which the Supreme Court has stated should be reserved for cases involving fraud, self-dealing, or waste.¹ The decision in equity to appoint a receiver lies in the sound discretion of the trial court.² Generally, a temporary receiver

¹ *Granada Lakes Villa Condominium Ass'n, Inc. v. Metro-Dade Investments Co.*, 125 So. 3d 756, 759 (Fla. 2013).

² *Ins. Mgmt, Inc. v. McLeod*, 194 So. 2d 16, 17 (Fla. 3d DCA 1966).

is appointed only to preserve the property and to protect the rights of all parties involved.³ Courts should not interfere unless absolutely necessary to do complete justice.⁴

Separately, a statute can authorize the appointment of a receiver, and statutory receiverships may serve a different role or purpose than an equitable receivership.⁵ Florida Statutes authorize the appointment of a receiver in several situations that do not involve any of the common law grounds of fraud, self-dealing, or waste for the appointment of an equitable receiver.⁶ Many other statutes allow for a state agency or officer to seek the appointment of a receiver for certain property.⁷ Further, a circuit court may appoint a receiver if, in a proceeding by a shareholder, “it is established that the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered.”⁸ “The appointment of receiver for a going corporation is a last resort remedy, and should not be employed when another adequate remedy is available.”⁹ Instead of restricting a court’s power to appoint a receiver, these statutory provisions authorize a court to appoint a receiver under certain enumerated circumstances that do not involve any of the common law grounds for the appointment of an equitable receiver.¹⁰

A receiver is typically appointed in foreclosure proceedings to preserve the status quo, preserve the property, and collect and apply rents and profits to the payment of the mortgage.”¹¹ Appointing a receiver is a rare and extraordinary remedy.¹² To authorize the appointment of a receiver, a petitioner must show clear legal right to the property in controversy, or that he has some lien upon or property right in it, or that it constitutes a special fund of which he is entitled to satisfaction of his demand.¹³ While the parties’ agreement to the appointment of a receiver is considered in determining whether to grant an ex parte receivership, it alone is not dispositive.¹⁴

The notice provisions of Florida Rule of Civil Procedure 1.610 apply to an application for

³ *Id.*

⁴ *Recarey v. Rader*, 320 So. 2d 28, 30 (Fla. 3d DCA 1975).

⁵ *Granada Lakes*, 125 So. 2d at 759.

⁶ *Id.*; see, e.g., s.393.0678, F.S. (authorizing the appointment of a receiver for a “residential habilitation center or a group home facility owned and operated by a corporation or partnership” under certain circumstances); s. 607.1432, F.S. (authorizing the appointment of a receiver for the purpose of winding up and liquidating a corporation); s. 605.0704 (winding up and liquidating a limited liability company); s. 658.79, F.S. (authorizing the appointment of a receiver for an insolvent bank for the purpose of taking charge of the assets and affairs of the bank); s. 631.0515, F.S. (authorizing the appointment of a receiver for the purpose of winding up a deadlocked but not insolvent corporation that owns all the stock of a Florida insurer); ss. 719.1124, 720.3053, F.S. (cooperative or homeowners’ association if association fails to fill vacancies on board of administration).

⁷ See, e.g., s. 400.966, F.S. (authorizing the appointment of a receiver for intermediate care facilities for the developmentally disabled); s. 409.994 (authorizing the appointment of a receiver for community-based care agencies); s. 394.903 (crisis stabilization unit or residential treatment facility); s. 429.22, F.S. (authorizing the appointment of a receiver for assisted living facilities); s. 497.160, F.S. (authorizing the appointment of a receiver for funeral, cemetery, and consumer services).

⁸ *Wenzel v. Burman*, 76 So. 3d 1005, 1006 (Fla. 3d DCA 2011) (quoting s. 607.1430(2)(a), F.S. (2011)).

⁹ *Rader*, 320 So. 2d at 30.

¹⁰ *Id.*

¹¹ *DeSilva v. First Cmty. Bank of Am.*, 42 So. 3d 285, 290 (Fla. 2d DCA 2010).

¹² *Plaza v. Plaza*, 78 So. 3d 4, 6 (Fla. 3d DCA 2011).

¹³ *Apalachicola N.R. Co. v. Sommers*, 85 So. 361, 361 (1920).

¹⁴ *DeSilva*, 42 So. 2d at 288.

receivership.¹⁵ Ordinarily, a hearing is required before appointment of a receiver.¹⁶ Pursuant to rule 1.610, a receiver can be appointed without notice or a hearing if: (1) it appears from the specific facts shown by affidavit or verified pleading that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; (2) the movant's attorney certifies in writing any efforts that have been made to give notice and the reasons why notice should not be required; and (3) the trial court's order defines the injury, states why the injury may be irreparable, and gives the reasons why the order was granted without notice if notice was not given.¹⁷ The party requesting the appointment of a receiver without notice must set forth, in sworn form and with sufficient particularity, specific facts and circumstances reflecting that delay in appointing the receiver will result in irreparable injury to the property, or that giving notice itself will precipitate such injury to the property.¹⁸ Thus, a receivership might be appropriate without notice and a hearing if the property is at immediate risk of being diverted, dissipated, destroyed, allowed to deteriorate, or wasted.¹⁹

A bond with "good and sufficient surety" should be required on the appointment of a receiver unless exceptional circumstances precluding the need or ability to provide a bond are present in the case.²⁰ The party seeking appointment of a receiver should pay a receivership bond adequate to indemnify an adverse party any damages it might suffer through the receivership of its property.²¹ Additionally, the receiver should post bond to cover the damages that will be incurred if the receiver fails in his duties.²²

The trial court's grant or denial of the appointment of a receiver and the court's termination or refusal to terminate a receivership is an appealable nonfinal order.²³

The courts are generally vested with considerable discretion in determining who will pay the cost and expenses of receiverships.²⁴

The appointment of a receiver in a case filed in federal court based on diversity jurisdiction is governed by federal law.²⁵

III. Effect of Proposed Changes:

The bill authorizes a court to appoint as its agent a receiver, who takes possession of, manages, and, in some cases, transfers or sells property that is in danger of waste, loss, or diminution in value.

¹⁵ See Fla. R. Civ. P. 1.620(a).

¹⁶ *Edenfield v. Crisp*, 186 So.2d 545, 548 (Fla. 2d DCA 1966).

¹⁷ *DeSilva*, 42 So. 3d at 288 (citing Fla. R. Civ. P. 1.610(a)(1)-(2)).

¹⁸ *Id.* (citing Fla. R. Civ. P. 1.610(a)(1)(A)).

¹⁹ *Id.*

²⁰ *Turtle Lake Associates, Ltd. V. Third Financial Servs., Inc.*, 518 So. 2d 959, 961-62 (Fla. 1st DCA 1988).

²¹ See *Id.*

²² *Id.*

²³ Fla. R. App. P. 9.130(3)(D).

²⁴ *Barredo v. Skyfrieght*, 430 So. 2d 513, 514 (Fla. 3d DCA 1983).

²⁵ *Nat'l Partnership Inv. Corp. v. Nat'l Housing Development Corp.*, 153 F.3d 1289, 1291 (11th Cir. 1998).

The bill does not apply to real property improved by one or two dwelling units, to residential real property occupied by the owner or the owner's immediate family, to personal property used primarily for personal, family, or household purposes. The bill does not apply to homestead property. The bill applies to property that is commercial in nature, and thus can apply to residential property from which the owner collects rents from tenants. The principles of law and equity supplement the bill unless they are displaced by a particular provision of the bill.

General Purposes and Procedure for Appointment of Receiver

The bill allows a court to appoint a receiver before a judgment on the property has been entered to protect the interests of a party that demonstrates an apparent right, title, or interest in real property that is the subject of the action, if the property (or its revenue-producing potential) (1) is being subjected to or is in danger of waste, loss, substantial diminution in value, dissipation, or impairment, or (2) is or is about to be the subject of a voidable transaction (most commonly due to fraud).²⁶ If a judgement has been entered, the bill authorizes a court to appoint a receiver to enforce the judgment or to protect the real property during the pendency of an appeal of the judgment.

The provision for post-judgment appointment expands the common law, as courts have noted that the appointment of a receiver after entry of a judgment generally serves "no good purpose," and should happen only "where it appears that to protect the interests of all parties the decree of sale under foreclosure is to be postponed until the termination of other litigation ... and where the terms of the mortgage being foreclosed specifically provide for the appointment of a receiver by the court, the complainant is entitled to the appointment of such receiver pending the execution of the final decree."²⁷ The bill is consistent with the common law's allowance of the appointment of a receiver post-judgment to protect the interest of parties, but additionally allows the court to appoint a receiver post-judgment to carry the judgment into effect.

Appointment of Receivers in Connection with Foreclosures

More specifically, the bill allows a court to appoint a receiver in connection with a mortgage foreclosure or enforcement if:

- Appointment is necessary to avoid waste, loss, diminution in value, transfer, dissipation, or impairment of the subject property,
- The mortgagor agreed to the appointment of a receiver upon default,
- The owner agreed to the appointment of a receiver after default,
- The subject property and other collateral held by the mortgagee are not valuable enough to pay the secured obligation,
- In the case of a rental property, the owner fails to turn over collected rents or mortgage proceeds, or
- The holder of a subordinate lien obtains a receiver for the property.

²⁶ "A fraudulent transfer of property is voidable at the instance of a creditor." *Smith v. Effective Teleservices, Inc.*, 133 So. 3d 1048, 1052 (Fla. 4th DCA 2014); see also s. 726.109(1), F.S.

²⁷ *U.S. Bank Nat. Ass'n v. Cramer*, 113 So. 3d 1020, 1023 (Fla. 2d DCA 2013).

Court Authority to Stay Proceedings over Receivership Property

The bill authorizes a court, after notice and opportunity for a hearing, to stay all proceedings to obtain possession or control over the receivership property or to enforce a lien against the property; the court may enjoin actions against the subject property. The court may condition the stay on the payment of a bond by the party requesting the stay. The court's order to stay proceedings, however, does not stay a mortgage enforcement or foreclosure, a criminal proceeding, or an action by a governmental unit enacting its regulatory power or tax authority. The bill also provides that if the court grants an injunction, it must specify the reasons for entry and the act or acts being restrained by the injunction.

Obligation to Turn Property over to Receiver

Once a receiver is appointed, the bill requires a person owing debt on receivership property to pay the debt or turn over the subject property to the receiver on the receiver's demand. If the debtor has notice that a receiver has been appointed, the person does not satisfy the debt by paying the owner. If a creditor has possession of the subject property, the creditor, rather than the receiver, may retain possession of the subject property until the court orders adequate protection of the creditor's lien. A court may enter sanctions for civil contempt against a party that fails to turn over property to the receiver.

Qualifications for Receivers

The bill describes the necessary qualifications for a receiver by listing criteria that disqualifies a person from serving as a receiver. As a result, the qualifications under the bill are more stringent than those described in the common law of equitable receiverships. Under the bill, a person may not be a receiver if he or she is an "affiliate" of a party to the receivership action. An affiliate is defined as a companion, family member, a person who lives in the same residence as the party, or regarding a corporation or other non-individual entity, someone who controls the entity or is a fiduciary of the entity. Additionally, a person may not be a receiver if the person has a financial interest adverse to a party or has a financial interest in the outcome of the action, or has an equity interest in a party.

Powers and Duties of Receivers

The bill authorizes a receiver to manage receivership property. If the receivership property is a business, the receiver is authorized to operate the business. A receiver may assert rights of the property owner. With court approval, the receiver may incur debt to benefit the receivership property and make improvements to the property. The receiver may, with court approval, engage with and pay professionals (such as attorneys, appraisers, auctioneers, or brokers) to assist in the administration of the receivership.

Transfer of Receivership Property

Before a judgment on the property is entered, the receiver may, with court approval, sell, lease, exchange, or transfer receivership property "other than in the ordinary course of business," if the

property owner expressly consents, in writing, to the receiver's proposed transfer or fails to object to the proposed transfer after receiving notice. After a judgment is entered, in the action in which the receiver is appointed, the receiver, with court approval, may transfer property to carry the judgment into effect or to preserve the property during the pendency of an appeal of the judgment.

The court may order that these pre- and post-judgment transfers of property are free and clear of liens on the property at the time of the transfer. If the court enters such an order, the liens that were previously on the property then attach to the proceeds of the transfer of the property. This transfer may occur in an open-market sale other than a public auction, and a creditor holding lien on the property may purchase the property, with the purchase price offset by the amount secured by the lien.

This provision allowing property transfers constitutes an expansion of the common law rule, which states that although there may be instances in which the parties to a foreclosure could agree that a sale by receiver would be appropriate, a sale by a receiver is ordinarily improper and, even if authorized, should be carefully watched by the court.²⁸

Receiver Authority Regarding Executory Contracts

The bill allows a receiver, with court approval, to accept or reject executory contracts of the owner. This essentially codifies the common law rule that a receiver is generally not obligated to carry out the executory contracts of the owner of the estate being administered unless he elects to be bound thereby.²⁹ Executory contracts are contracts where each party has remaining unperformed obligations, including apartment leases and business real estate or equipment leases.

If the receiver does not request court approval to adopt or reject the owner's executory contract within a reasonable time after being appointed, the receiver is deemed to have rejected the contract. A receiver's performance of an executory contract before court approval does not constitute an adoption of the executory contract. If a receiver rejects an executory contract, any right to possesses property pursuant to that contract is terminated.

If the receiver rejects an executory contract for sale of the receivership property that is real property in possession of the purchaser, a receiver's termination of the executory contract constitutes a termination of the contract and the purchaser has a lien on the property for the recovery of any part of the purchase price the purchaser paid. Alternatively, the purchaser may retain its right to possession of the property and continue to perform all obligations under the executory contract, offsetting any damages caused by the owner's nonperformance.

If the executory contract in question is an unexpired lease on real property for which the owner is landlord, the receiver may not reject this contract if:

- The property is a tenant's primary residence,
- The receiver was appointed at the request of someone other than the mortgagee (i.e. the

²⁸ *MB Plaza, LLC v. Wells Fargo Bank, Nat. Ass'n*, 72 So. 3d 205, 207 n.1 (Fla. 2d DCA 2011).

²⁹ *Real Estate Marketers, Inc. v. Wheeler*, 298 So. 2d 481, 483 (Fla. 1st DCA 1974).

- lender), or
- The receiver was appointed at the request of the mortgagee/lender, and
 - The lease is superior to the lien of the mortgage,
 - The tenant has an enforceable agreement with the mortgagee or holder of a senior lien
 - requiring that the tenant's occupancy will not be disturbed as long as the tenant performs its obligations under the lease,
 - The mortgagee consented to the lease, or
 - The terms of the lease were reasonable and the tenant had no actual or constructive knowledge that the lease violated the mortgage.

Effect of Enforcement by Mortgagee

If a mortgagee requests appointment of a receiver to enforce a secured obligation, the appointment does not make the mortgagee a possessor of the receivership property, does not make the mortgagee an agent of the owner, does not make the secured obligation unenforceable, or limit any right available to the mortgagee with respect to the secured obligation.

Receiver Liability and Reporting Requirements

The bill provides that a receiver may be sued personally for an act or omission in administering receivership property if there is approval from the court that appointed the receiver. The court may require the receiver to file reports describing the receiver's activities, which may include receipts and disbursements, payments made to professionals, and fees and expenses of the receiver. After the receiver's services are complete, the receiver must file a final report describing the receiver's activities, listing the receivership property and any property received during the receivership, payments to professionals, listing distributions made or proposed to be made to creditors, and requesting the approval of fees. After the court approves the receiver's final report and the receiver distributes all receivership property, the receiver is discharged.

Notice of Appointment of Receiver and Claims against and Distribution of Property

Upon appointment, the receiver must give notice to creditors of the owner of receivership property either by mail or by publication as directed by the appointing court. The notice must specify the dates by which creditors holding claims against the owner of the receivership property must submit claims to the receiver; these dates must be at least 90 days after notice of appointment of receivership. Failure to submit claims to the receiver can bar a creditor's entitlement to a distribution from the receivership. The bill describes facial requirements for a claim submitted by the creditor. The receiver may object to a creditor's claim, and the court may allow or disallow the claim based on Florida law governing creditor claims.

The bill allows a court to appoint a receiver without notice to the adverse party if (1) it appears that immediate injury, waste, or diminution in value to the subject real estate will occur and (2) the attorney for the party moving for the appointment of a receiver certifies in writing that all efforts have been made to notify all adverse parties, or the reasons why such notice should not be required. The bill also requires the court's order appointing a receiver to define the injury and

state why it may be irreparable. Additionally, the court must explain why the order was granted without providing notice to adverse parties. This provision mirrors the notice exception in Florida Rule of Civil Procedure 1.610(a)(1).³⁰

Removal of Receiver and Termination of Receivership

The appointing court may remove a receiver for cause and must replace a receiver that is removed, dies, or resigns. The appointing court may discharge a receiver if the court finds that the appointment of the receiver was improvident, the circumstances no longer warrant a receiver, or the appointment of the receiver was sought in bad faith. If the appointment was sought in bad faith, the court may assess against the person who sought the appointment, the fees of the receivership, and the actual damages caused by the appointment.

Bonding Requirement

The bill requires that the party moving for appointment of a receiver give bond in an amount the court deems proper before an order or injunction is entered. The bond must be conditioned for the payment of costs and damages sustained by the adverse party if the order is improperly entered. This provision effectively codifies a common law rule.³¹

Distribution of Receivership Property

The distribution of receivership property to a creditor with a perfected lien must be made in accordance with the creditor's priority based on Florida law. The distribution to a creditor with an unsecured claim must be made as directed by the court. Therefore, the common law rule for preference after appointment of a receiver remains that once property is placed under the control of the court through appointment of a receiver, no creditor may obtain preference by any lien rendered subsequent even if the suit under which the judgment lien is acquired was commenced prior to the date of the order appointing the receiver.³² A receiver appointed by the court has the status of a "lien creditor" as defined in s. 679.1021, F.S., (the Uniform Commercial Code), and the receiver's interest therefore takes priority over certain other security interests in the receivership property.³³

Miscellaneous Provisions

A party adversely affected by an injunction or order appointing receiver may move to dissolve or modify the order at any time, and the court shall hear the motion within 5 days after the movant applies for a hearing on the motion or at a time deemed reasonable by the court.

The bill does not apply to actions in which a state agency or officer is expressly authorized by statute to seek or obtain the appointment of a receiver. The bill therefore does not affect the receivership proceedings outlined in, e.g. s. 400.966, F.S. (intermediate care facilities for the developmentally disabled); s. 409.994, F.S. (Community-based care agencies); s. 394.903 (crisis

³⁰ *DeSilva*, 42 So. 3d at 288.

³¹ See *Turtle Lake Associates, Ltd. v. Third Financial Servs., Inc.*, 518 So. 2d 959, 961-62 (Fla. 1st DCA 1988).

³² *Sunland Mortg. Corp. v. Lewis*, 515 So. 2d 1337, 1339 (Fla. 5th DCA 1987).

³³ See ss. 679.334(4), 679.703, 679.704, and 679.705, F.S.

stabilization unit or residential treatment facility); s. 429.22, F.S. (assisted living facilities).

The bill confers to the court appointing the receiver the exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property. This effectively codifies the common law rule.³⁴

The bill allows the court to require the party seeking appointment of a receiver to give security to cover any damages, reasonable attorneys' fees, and costs incurred if the court later determines that the appointment of a receiver was not justified. The court will remit the security to the party who paid it if the court determines that the appointment of receiver was justified. This generally codifies the common law rule, while defining a more specific procedure.³⁵

The bill allows the appointing court to award the receiver reasonable and necessary fees, paid from the receivership property. Alternatively, the court may order the fees be paid by a person that requested the appointment of the receiver or a person whose conduct justified the appointment of a receiver.

The bill allows a court to appoint a receiver that was appointed in another state as an ancillary receiver to property located in Florida. This provision is consistent with the common law rule that applies principles of comity, and Florida courts generally recognize a foreign receiver's standing to bring an action in this state.³⁶ Under certain circumstances, a foreign receiver may be listed as an ancillary receiver for property located in Florida.³⁷

The bill takes effect July 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.

³⁴ See, e.g., *Knickerbocker Trust Co. v. Green Bay Phosphate Co.*, 62 Fla. 519, 524 (Fla. 1911) ("A receiver is the agent of the court").

³⁵ See *Turtle Lake*, 518 So. 2d at 961-62 (Fla. 1st DCA 1988).

³⁶ *Farley v. Farley*, 790 So. 2d 574, 575 (Fla. 4th DCA 2001).

³⁷ See *Id.* at 574.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may minimize the risk of the waste or dissipation of property that is the subject of foreclosure proceedings, which will provide protection to creditors.

C. Government Sector Impact:

The bill adds procedures for the appointment of a receiver and may increase judicial labor.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 714.01, 714.02, 714.03, 714.04, 714.05, 714.06, 714.07, 714.08, 714.09, 714.10, 714.11, 714.12, 714.13, 714.14, 714.15, 714.16, 714.17, 714.18, 714.19, 714.20, 714.21, 714.22, 714.23, 714.24, 714.25, 714.26, 714.27, 714.28.

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 Commerce and Tourism Committee on February 5, 2020:

The committee substitute:

- Adds “incidental” to modify personal property to clarify that only incidental personal property located on the commercial property that was related to or used in operating commercial property is governed by the Act;
- Gives the court discretion to hear a motion to dissolve or modify an order appointing a receiver at a time the court determines is reasonable and appropriate;
- Gives the court discretion to hear a motion for relief from a stay or an injunction at a time the court determines is reasonable and appropriate;

- Allows a person who is adversely affected by a stay or an injunction to apply to the court for relief;
- Clarifies that ch. 714 does not apply to real property improved by one or two dwelling units which includes the homestead of an individual owner or an affiliate of an individual owner;
- Inserts “in writing” to avoid issues as to whether the owner of the subject property actually provided consent to the receiver’s proposed use or transfer of the subject property before a judgment was entered;
- Clarifies that if service cannot be effectuated pursuant to ch. 48, F.S. on a financial institution lienholder, as provided in s. 655.0201, F.S., the receiver may effect service of notice on the nonparty lienholder pursuant to ch. 49, F.S. or as otherwise ordered by the court; and
- Clarifies that s. 714.16(3), F.S. is referring to “the action in which the receiver is appointed.”

B. Amendments:

None.

By the Committee on Commerce and Tourism; and Senator Berman

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1 A bill to be entitled
 2 An act relating to the Uniform Commercial Real Estate
 3 Receivership Act; creating chapter 714, F.S., relating
 4 to the Uniform Commercial Real Estate Receivership
 5 Act; providing a short title; defining terms;
 6 prohibiting a court from issuing certain orders unless
 7 certain requirements are met; providing requirements
 8 for certain court orders; providing construction and
 9 applicability; specifying that a court has exclusive
 10 jurisdiction to direct receivers and determine
 11 controversies under certain circumstances; providing
 12 requirements and authorizations relating to the
 13 appointment of a receiver; authorizing certain parties
 14 to move to dissolve or modify certain orders;
 15 requiring that such motions be heard within a
 16 specified timeframe; specifying when a person is or is
 17 not disqualified from appointment as a receiver;
 18 authorizing certain persons to nominate someone to
 19 serve as a receiver; specifying that the court is not
 20 bound by such nomination; requiring a receiver to post
 21 a bond with the court which meets certain
 22 requirements; providing an exception; prohibiting a
 23 claim against a receiver's bond or alternative
 24 security from being made after a certain time;
 25 providing that an appointed receiver has certain
 26 statuses of a lien creditor; providing that certain
 27 property is subject to specified security agreements;
 28 providing requirements relating to the collection and
 29 turnover of receivership property; providing for

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30 powers and duties of a receiver; authorizing the court
 31 to expand, modify, or limit such powers and duties;
 32 providing for duties of an owner; authorizing a court
 33 to take certain actions if a person knowingly fails to
 34 perform a duty; authorizing a court to take certain
 35 actions relating to stays and injunctions; authorizing
 36 certain persons to apply for relief from a stay or
 37 injunction; requiring that certain motions be heard
 38 within a specified timeframe; specifying when an order
 39 does not operate as a stay or injunction; authorizing
 40 receivers to engage and compensate certain
 41 professionals under certain circumstances; requiring
 42 certain persons to file an itemized statement with the
 43 court; requiring a receiver to pay an amount approved
 44 by the court; defining the term "good faith";
 45 authorizing a receiver to use or transfer receivership
 46 property other than in the ordinary course of business
 47 under certain circumstances; providing for the service
 48 of notice to lienholders who are not parties to the
 49 action; defining the term "timeshare interest";
 50 authorizing a receiver to adopt or reject an executory
 51 contract of the owner relating to receivership
 52 property under certain circumstances; requiring that a
 53 claim of damages for rejection of a contract be
 54 submitted within a specified timeframe; authorizing a
 55 purchaser to take certain actions if a receiver
 56 rejects an executory contract under certain
 57 circumstances; prohibiting a receiver from rejecting
 58 unexpired leases of certain property under certain

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circumstances; providing for defenses and immunities of a receiver; providing requirements for interim reports filed by a receiver; providing requirements relating to notices of appointment; authorizing the court to enter certain orders if the court concludes that receivership property is likely to be insufficient to satisfy certain claims; providing requirements for certain distributions of receivership property; authorizing a court to award fees and expenses; authorizing a court to order certain persons to pay fees and expenses; providing for the removal and replacement of a receiver and the termination of a court's administration of the receivership property under certain circumstances; requiring a receiver to file a final report containing certain information upon completion of the receiver's duties; specifying that a receiver is discharged if certain requirements are met; authorizing a court to appoint ancillary receivers under certain circumstances; providing for rights, powers, and duties of an ancillary receiver; specifying that certain requests, appointments, and applications by a mortgagee do not have certain effects; providing construction and applicability; providing an effective date.

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

Section 1. Chapter 714, Florida Statutes, consisting of sections 714.01-714.28, is created to read:

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CHAPTER 714

UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT

714.01 Short title.—This chapter may be cited as the Uniform Commercial Real Estate Receivership Act.

714.02 Definitions.—For the purposes of this chapter, the term:

(1) "Affiliate" means:

(a) With respect to an individual:

1. A companion of the individual;

2. A lineal ancestor or descendent, whether by blood or adoption, of:

a. The individual; or

b. A companion of the individual;

3. A companion of an ancestor or descendent as described in subparagraph 2.;

4. A sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew of the individual, whether related by the whole or the half blood or adoption, or a companion of any of them; or

5. Any other person occupying the residence of the individual; and

(b) With respect to a person other than an individual:

1. Another person who directly or indirectly controls, is controlled by, or is under common control with the person;

2. An officer, director, manager, member, partner, employee, or trustee or other fiduciary of the person; or

3. A companion of an individual or an individual occupying the residence of an individual.

(2) "Companion" means:

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- 117 (a) The spouse of an individual;
 118 (b) The registered domestic partner of an individual; or
 119 (c) Another individual in a civil union with an individual.
 120 (3) "Court" means the court of general equity jurisdiction
 121 in this state.
 122 (4) "Executory contract" means a contract, including a
 123 lease, under which each party has an unperformed obligation and
 124 the failure of a party to complete performance would constitute
 125 a material breach.
 126 (5) "Governmental unit" means an office, department,
 127 division, bureau, board, commission, or other agency of this
 128 state or a subdivision of this state.
 129 (6) "Lien" means an interest in property which secures
 130 payment or performance of an obligation.
 131 (7) "Mortgage" means a record, however denominated, that
 132 creates or provides for a consensual lien on real property or
 133 rents, even if the record also creates or provides for a lien on
 134 personal property.
 135 (8) "Mortgagee" means a person entitled to enforce an
 136 obligation secured by a mortgage.
 137 (9) "Mortgagor" means a person who grants a mortgage or a
 138 successor in ownership of the real property described in the
 139 mortgage.
 140 (10) "Owner" means the person for whose property a receiver
 141 is appointed.
 142 (11) "Person" means an individual, estate, business or
 143 nonprofit entity, public corporation, government or governmental
 144 subdivision, agency, or instrumentality or other legal entity.
 145 (12) "Proceeds" means any of the following property:

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- 146 (a) Whatever is acquired on the sale, lease, license,
 147 exchange, or other disposition of receivership property.
 148 (b) Whatever is collected on, or distributed on account of,
 149 receivership property.
 150 (c) Rights arising out of receivership property.
 151 (d) To the extent of the value of receivership property,
 152 claims arising out of the loss, nonconformity, or interference
 153 with the use of, defects or infringement of rights in, or damage
 154 to the property.
 155 (e) To the extent of the value of receivership property and
 156 to the extent payable to the owner or mortgagee, insurance
 157 payable by reason of the loss or nonconformity of, defects or
 158 infringement of rights in, or damage to the property.
 159 (13) "Property" means all of a person's right, title, and
 160 interest, both legal and equitable, in real and personal
 161 property, tangible and intangible, wherever located and however
 162 acquired. The term includes proceeds, products, offspring,
 163 rents, or profits of or from the property.
 164 (14) "Receiver" means a person appointed by the court as
 165 the court's agent, and subject to the court's direction, to take
 166 possession of, manage, and, if authorized by this chapter or
 167 court order, transfer, sell, lease, license, exchange, collect,
 168 or otherwise dispose of receivership property.
 169 (15) "Receivership" means a proceeding in which a receiver
 170 is appointed.
 171 (16) "Receivership property" means the property of an owner
 172 which is described in the order appointing a receiver or a
 173 subsequent order. The term includes any proceeds, products,
 174 offspring, rents, or profits of or from the property.

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(17) "Record," if used as a noun, means information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form.

(18) "Rents" means:

(a) Sums payable for the right to possess or occupy, or for the actual possession or occupation of, real property of another person;

(b) Sums payable to a mortgagor under a policy of rental-interruption insurance covering real property;

(c) Claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person;

(d) Sums payable to terminate an agreement to possess or occupy real property of another person;

(e) Sums payable to a mortgagor for payment or reimbursement of expenses incurred in owning, operating, and maintaining real property or constructing or installing improvements on real property; or

(f) Other sums payable under an agreement relating to the real property of another person which constitute rents under the laws of this state other than this act.

(19) "Secured obligation" means an obligation the payment or performance of which is secured by a security agreement.

(20) "Security agreement" means an agreement that creates or provides for a lien.

(21) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

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(b) To attach to or logically associate with the record an electronic sound, symbol, or process.

(22) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

714.03 Notice and opportunity for hearing.—

(1) Except as otherwise provided in subsection (2), the court may issue an order under this chapter only after notice and opportunity for a hearing appropriate under the circumstances.

(2) The court may issue an order under this chapter without written or oral notice to the adverse party only if:

(a) It appears from the specific facts shown by affidavit or verified pleading or motion that immediate and irreparable injury, loss, or damage will result to the movant or that waste, dissipation, impairment, or substantial diminution in value will result to the subject real estate before any adverse party can be heard in opposition; and

(b) The movant's attorney certifies in writing all efforts that have been made to give notice to all known adverse parties, or the reasons why such notice should not be required.

(3) Only an affidavit, a declaration or a verified pleading, or a motion may be used to support the application for the appointment of a receiver, unless the adverse party appears at the hearing or has received reasonable prior notice of the hearing. Every order appointing a receiver without notice must be endorsed with the date and hour of entry, must be filed forthwith in the clerk's office, must define the injury, must

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state findings by the court as to why the injury may be irreparable, and must give the reasons why the order was granted without notice if notice was not given. The order appointing a receiver shall remain in effect until the further order of the court.

(4) This chapter does not displace any existing rule of procedural or judicial administration of this state governing service or notice, including, without limitation, Rule 1.070, Florida Rules of Civil Procedure, and Rule 2.525, Florida Rules of Judicial Administration, which shall remain in full force and effect.

714.04 Scope; exclusions.—

(1) This chapter applies to a receivership initiated in a court of this state for an interest in real property and any incidental personal property related to or used in operating the real property.

(2) This chapter does not apply to:

(a) Actions in which a state agency or officer is expressly authorized by statute to seek or obtain the appointment of a receiver;

(b) Actions authorized by or commenced under federal law;

(c) Real property improved by one or two dwelling units which includes the homestead of an individual owner or an affiliate of an individual owner;

(d) Property of an individual exempt from forced sale, execution, or seizure under the laws of this state; or

(e) Personal property of an individual which is used primarily for personal, family, or household purposes.

(3) This chapter does not limit the authority of a court to

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appoint a receiver under the laws of this state other than this chapter.

(4) This chapter does not limit an individual's homestead rights under the laws of this state or federal law.

(5) Unless displaced by a particular provision of this chapter, the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause, supplement this chapter.

714.05 Power of the court.—The court that appoints a receiver under this chapter has exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property.

714.06 Appointment of receiver.—

(1) The court may appoint a receiver:

(a) Before judgment, to protect a party that demonstrates an apparent right, title, or interest in real property that is the subject of the action, if the property or its revenue-producing potential:

1. Is being subjected to or is in danger of waste, loss, substantial diminution in value, dissipation, or impairment; or

2. Has been or is about to be the subject of a voidable transaction;

(b) After judgment:

1. To carry the judgment into effect; or

2. To preserve nonexempt real property pending appeal or when an execution has been returned unsatisfied and the owner refuses to apply the property in satisfaction of the judgment;

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291 (c) In an action in which a receiver for real property may
 292 be appointed on equitable grounds, subject to the requirements
 293 of paragraphs (a) and (b); or
 294 (d) During the time allowed for redemption, to preserve
 295 real property sold in an execution or foreclosure sale and
 296 secure its rents to the person entitled to the rents.
 297 (2) In connection with the foreclosure or other enforcement
 298 of a mortgage, the court shall consider the following facts and
 299 circumstances, together with any other relevant facts, in
 300 deciding whether to appoint a receiver for the mortgaged
 301 property:
 302 (a) Appointment is necessary to protect the property from
 303 waste, loss, substantial diminution in value, transfer,
 304 dissipation, or impairment;
 305 (b) The mortgagor agreed in a signed record to the
 306 appointment of a receiver on default;
 307 (c) The owner agreed, after default and in a signed record,
 308 to appointment of a receiver;
 309 (d) The property and any other collateral held by the
 310 mortgagee are not sufficient to satisfy the secured obligation;
 311 (e) The owner fails to turn over to the mortgagee proceeds
 312 or rents the mortgagee was entitled to collect; or
 313 (f) The holder of a subordinate lien obtains appointment of
 314 a receiver for the property.
 315 (3) The court may condition the appointment of a receiver
 316 without prior notice or hearing under s. 714.03 on the giving of
 317 security by the person seeking the appointment for the payment
 318 of damages, reasonable attorney fees, and costs incurred or
 319 suffered by any person if the court later concludes that the

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320 appointment was not justified. If the court later concludes that
 321 the appointment was justified and the order of appointment of
 322 the receiver becomes final and no longer subject to appeal, the
 323 court shall release the bond or other security. When any order
 324 appointing a receiver or providing for injunctive relief is
 325 issued on the pleading of a municipality or the state, or any
 326 officer, agency, or political subdivision thereof, the court may
 327 require or dispense with a bond, with or without surety, and
 328 conditioned in the same manner, having due regard for public
 329 interest.
 330 (4) A party adversely affected by an order appointing a
 331 receiver may move to dissolve or modify the order at any time.
 332 If a party moves to dissolve or modify the order, the motion
 333 must be heard within 5 days after the movant applies for a
 334 hearing on the motion or at such time as the court determines is
 335 reasonable and appropriate under the circumstances after the
 336 movant applies for a hearing on the motion. After notice and a
 337 hearing, the court may grant relief for cause shown.
 338 714.07 Disqualification from appointment as receiver;
 339 disclosure of interest.—
 340 (1) The court may not appoint a person as receiver unless
 341 the person submits to the court a statement under penalty of
 342 perjury that the person is not disqualified.
 343 (2) Except as otherwise provided in subsection (3), a
 344 person is disqualified from appointment as receiver if the
 345 person:
 346 (a) Is an affiliate of a party;
 347 (b) Has an interest materially adverse to an interest of a
 348 party;

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

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(c) Has a material financial interest in the outcome of the action, other than compensation the court may allow the receiver;

(d) Has a debtor-creditor relationship with a party; or

(e) Holds an equity interest in a party, other than a noncontrolling interest in a publicly traded company.

(3) A person is not disqualified from appointment as receiver solely because the person:

(a) Was appointed receiver or is owed compensation in an unrelated matter involving a party or was engaged by a party in a matter unrelated to the receivership;

(b) Is an individual obligated to a party on a debt that is not in default and was incurred primarily for personal, family, or household purposes; or

(c) Maintains with a party a deposit account, as defined in s. 679.1021.

(4) A person seeking appointment of a receiver may nominate a person to serve as receiver, but the court is not bound by the nomination.

714.08 Receiver's bond; alternative security.—

(1) Except as otherwise provided in subsection (2), a receiver shall post with the court a bond that:

(a) Is conditioned on the faithful discharge of the receiver's duties;

(b) Has one or more sureties approved by the court;

(c) Is in an amount the court specifies; and

(d) Is effective as of the date of the receiver's appointment.

(2) The court may approve the receiver posting an

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alternative security with the court, such as a letter of credit or deposit of funds. The receiver may not use receivership property as alternative security. Interest that accrues on deposited funds must be paid to the receiver upon the receiver's discharge.

(3) The court may authorize a receiver to act before the receiver posts the bond or alternative security required by this section if the action is necessary to prevent or mitigate immediate injury, loss, or damage to the party who sought the appointment of the receiver, or immediate waste, dissipation, impairment, or substantial diminution in value to the receivership property.

(4) A claim against a receiver's bond or alternative security must be made not later than 1 year after the date the receiver is discharged.

714.09 Status of receiver as lien creditor.—Upon appointment of a receiver, the receiver has the status of a lien creditor under:

(1) Chapter 679 as to receivership property or fixtures; and

(2) Chapter 695 as to receivership property that is real property.

714.10 Security agreement covering after-acquired property.—Except as otherwise provided by law other than this chapter, property that a receiver or an owner acquires after appointment of the receiver is subject to a security agreement entered into before the appointment to the same extent as if the court had not appointed the receiver.

714.11 Collection and turnover of receivership property.—

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(1) Unless the court orders otherwise, on demand by a receiver:

(a) A person that owes a debt that is receivership property and is matured or payable on demand or on order shall pay the debt to or on the order of the receiver, except to the extent the debt is subject to setoff or recoupment; and

(b) Subject to subsection (3), a person that has possession, custody, or control of receivership property shall turn the property over to the receiver.

(2) A person that has notice of the appointment of a receiver and owes a debt that is receivership property may not satisfy the debt by payment to the owner.

(3) If a creditor has possession, custody, or control of receivership property and the validity, perfection, or priority of the creditor's lien on the property depends on the creditor's possession, custody, or control, the creditor may retain possession, custody, or control until the court orders adequate protection of the creditor's lien.

(4) Unless a bona fide dispute exists about a receiver's right to possession, custody, or control of receivership property, the court may sanction as civil contempt a person's failure to turn the property over when required by this section.

714.12 Powers and duties of receiver.—

(1) Except as limited by court order or the laws of this state other than this chapter, a receiver may:

(a) Collect, control, manage, conserve, and protect receivership property;

(b) Operate a business constituting receivership property, including preservation, use, sale, lease, license, exchange,

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collection, or disposition of the property in the ordinary course of business;

(c) In the ordinary course of business, incur unsecured debt and pay expenses incidental to the receiver's preservation, use, sale, lease, license, exchange, collection, or disposition of receivership property;

(d) Assert a right, claim, cause of action, or defense of the owner which relates to receivership property;

(e) Seek and obtain instruction from the court concerning receivership property, exercise of the receiver's powers, and performance of the receiver's duties;

(f) Upon subpoena, compel a person to submit to examination under oath, or to produce and permit inspection and copying of designated records or tangible things, with respect to receivership property or any other matter that may affect administration of the receivership;

(g) Engage a professional pursuant to s. 714.15;

(h) Apply to a court of another state for appointment as ancillary receiver with respect to receivership property located in that state; and

(i) Exercise any power conferred by court order, this chapter, or the laws of this state other than this chapter.

(2) With court approval, a receiver may:

(a) Incur debt for the use or benefit of receivership property other than in the ordinary course of business;

(b) Make improvements to receivership property;

(c) Use or transfer receivership property other than in the ordinary course of business pursuant to s. 714.16;

(d) Adopt or reject an executory contract of the owner

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465 pursuant to s. 714.17;

466 (e) Pay compensation to the receiver pursuant to s. 714.21,
 467 and to each professional engaged by the receiver under s.
 468 714.15;

469 (f) Recommend allowance or disallowance of a claim of a
 470 creditor pursuant to s. 714.20; and

471 (g) Make a distribution of receivership property pursuant
 472 to s. 714.20.

473 (3) A receiver shall:

474 (a) Prepare and retain appropriate business records,
 475 including a record of each receipt, disbursement, and
 476 disposition of receivership property;

477 (b) Account for receivership property, including the
 478 proceeds of a sale, lease, license, exchange, collection, or
 479 other disposition of the property;

480 (c) File with the recording office of the county in which
 481 the real property is located a copy of the order appointing the
 482 receiver and, if a legal description of the real property is not
 483 included in the order, the legal description;

484 (d) Disclose to the court any fact arising during the
 485 receivership which would disqualify the receiver under s.
 486 714.07; and

487 (e) Perform any duty imposed by court order, this chapter,
 488 or the laws of this state other than this chapter.

489 (4) The powers and duties of a receiver may be expanded,
 490 modified, or limited by court order.

491 714.13 Duties of owner.—

492 (1) An owner shall:

493 (a) Assist and cooperate with the receiver in the

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494 administration of the receivership and the discharge of the
 495 receiver's duties;

496 (b) Preserve and turn over to the receiver all receivership
 497 property in the owner's possession, custody, or control;

498 (c) Identify all records and other information relating to
 499 the receivership property, including a password, authorization,
 500 or other information needed to obtain or maintain access to or
 501 control of the receivership property, and make available to the
 502 receiver the records and information in the owner's possession,
 503 custody, or control;

504 (d) Upon subpoena, submit to examination under oath by the
 505 receiver concerning the acts, conduct, property, liabilities,
 506 and financial condition of the owner or any matter relating to
 507 the receivership property or the receivership; and

508 (e) Perform any duty imposed by court order, this chapter,
 509 or the laws of this state other than this chapter.

510 (2) If an owner is a person other than an individual, this
 511 section applies to each officer, director, manager, member,
 512 partner, trustee, or other person exercising or having the power
 513 to exercise control over the affairs of the owner.

514 (3) If a person knowingly fails to perform a duty imposed
 515 by this section, the court may:

516 (a) Award the receiver actual damages caused by the
 517 person's failure, reasonable attorney fees, and costs; and

518 (b) Sanction the failure as civil contempt.

519 714.14 Stay; injunction.—

520 (1) Except as otherwise provided in subsection (5), after
 521 notice and opportunity for a hearing, the court may enter an
 522 order providing for a stay, applicable to all persons, of any

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act, action, or proceeding:

(a) To obtain possession of, exercise control over, or enforce a judgment against all or a portion of the receivership property as defined in the order creating the stay; and

(b) To enforce a lien against all or a portion of the receivership property to the extent the lien secures a claim against the owner which arose before entry of the order.

The court shall include in its order a specific description of the receivership property subject to the stay, and shall include the following language in the title of the order: "Order Staying Certain Actions to Enforce Claims against Receivership Property."

(2) Except as otherwise provided in subsection (5), the court may enjoin an act, action, or proceeding against or relating to receivership property if the injunction is necessary to protect against misappropriation of, or waste relating directly to, the receivership property.

(3) If the court grants injunctive relief, the injunction must specify the reasons for entry and must describe in reasonable detail the act or acts restrained without reference to a pleading or other document. The injunction is binding on the parties to the action; on the parties' officers, agents, servants, employees, and attorneys; and on any person who receives actual notice of the injunction and is in active concert or participation with the parties.

(4) A person whose act, action, or proceeding is stayed or enjoined under this section, or who is otherwise adversely affected by such stay or injunction, may apply to the court for

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relief from the stay or injunction. If a person moves for such relief, the motion must be heard within 5 days after the movant applies for a hearing on the motion or at such time as the court determines is reasonable and appropriate under the circumstances after the movant applies for a hearing on the motion. After notice and a hearing, the court may grant relief for cause shown.

(5) An order under subsection (1) or subsection (2) does not operate as a stay or injunction of:

(a) Any act, action, or proceeding to foreclose or otherwise enforce a mortgage by the person seeking appointment of the receiver;

(b) Any act, action, or proceeding to perfect, or maintain or continue the perfection of, an interest in receivership property;

(c) Commencement or continuation of a criminal proceeding;

(d) Commencement or continuation of an action or proceeding, or enforcement of a judgment other than a money judgment, in an action or proceeding by a governmental unit to enforce its police or regulatory power; or

(e) Establishment by a governmental unit of a tax liability against the receivership property or the owner of such receivership property, or an appeal of any such liability.

(6) The court may void an act that violates a stay or injunction under this section.

(7) The scope of the receivership property subject to the stay under subsection (1) may be modified upon request of the receiver or other person, after notice and an opportunity for a hearing.

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581 (8) In connection with the entry of an order under
 582 subsection (1) or subsection (2), the court shall determine
 583 whether an additional bond or alternative security will be
 584 required as a condition to entry of the stay or injunction and,
 585 if required, direct the party requesting the stay or injunction
 586 to post a bond or alternative security as a condition for the
 587 stay or injunction to become effective.

588 714.15 Engagement and compensation of professional.—
 589 (1) With court approval, a receiver may engage an attorney,
 590 an accountant, an appraiser, an auctioneer, a broker, or another
 591 professional to assist the receiver in performing a duty or
 592 exercising a power of the receiver. The receiver shall disclose
 593 to the court:

594 (a) The identity and qualifications of the professional;
 595 (b) The scope and nature of the proposed engagement;
 596 (c) Any potential conflict of interest; and
 597 (d) The proposed compensation.

598 (2) A person is not disqualified from engagement under this
 599 section solely because of the person's engagement by,
 600 representation of, or other relationship with the receiver, a
 601 creditor, or a party. This chapter does not prevent the receiver
 602 from serving in the receivership as an attorney, an accountant,
 603 an auctioneer, or a broker when authorized by law.

604 (3) A receiver or professional engaged under subsection (1)
 605 shall file with the court an itemized statement of the time
 606 spent, work performed, and billing rate of each person that
 607 performed the work and an itemized list of expenses. The
 608 receiver shall pay the amount approved by the court.

609 714.16 Use or transfer of receivership property not in

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610 ordinary course of business.—

611 (1) For the purposes of this section, the term "good faith"
 612 means honesty in fact and the observance of reasonable
 613 commercial standards of fair dealing.

614 (2) Before judgment is entered with respect to the
 615 receivership property in the action in which the receiver is
 616 appointed, with court approval after notice to all parties with
 617 an interest in the property, including all lienholders, and a
 618 hearing, a receiver may use or transfer by sale, lease, license,
 619 exchange, or other disposition receivership property other than
 620 in the ordinary course of business only if the owner of the
 621 property:

622 (a) After the commencement of the action in which the
 623 receiver is appointed, expressly consents in writing to the
 624 receiver's proposed use or transfer of the receivership
 625 property, and the receiver notes the property owner's express
 626 consent in the motion to approve the proposed use or transfer;
 627 or

628 (b) Before or at the hearing on the receiver's motion to
 629 approve the use or transfer of the receivership property, fails
 630 to object thereto after the receiver in good faith has provided
 631 reasonable advance written notice to the property owner of the
 632 proposed use or transfer, and the receiver demonstrates in the
 633 motion that the proposed use or transfer is necessary to prevent
 634 waste, loss, substantial diminution in value, dissipation, or
 635 impairment of the property or its revenue-producing potential or
 636 to prevent a voidable transaction involving the property.

637 Service of notice to lienholders who are not parties to the
 638 receivership property.

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639 action must be made as provided in chapter 48 for service of
 640 original process or, in the case of a financial institution
 641 lienholder, as provided in s. 655.0201. If service cannot be
 642 effectuated in such manner, upon authorization by court order,
 643 the receiver may effect service of notice on the nonparty
 644 lienholder pursuant to chapter 49 or as otherwise ordered by the
 645 court.

646 (3) After judgment is entered against the property owner
 647 and with court approval in the action in which the receiver is
 648 appointed, a receiver may use or transfer receivership property
 649 other than in the ordinary course of business to carry the
 650 judgment into effect or to preserve nonexempt real property
 651 pending appeal or when an execution has been returned
 652 unsatisfied and the owner refuses to apply the property in
 653 satisfaction of the judgment.

654 (4) The court may order that a transfer of receivership
 655 property under this section is free and clear of any liens on
 656 the property at the time of the transfer. In such case, any
 657 liens on the property, which were valid at the time of the
 658 transfer but extinguished by the transfer, attach to the
 659 proceeds of the transfer with the same validity, perfection, and
 660 priority the liens had on the property immediately before the
 661 transfer, even if the proceeds are not sufficient to satisfy all
 662 obligations secured by the liens.

663 (5) A transfer under subsection (3) may occur by means
 664 other than a public auction sale. A creditor holding a valid
 665 lien on the property to be transferred may purchase the property
 666 and offset against the purchase price part or all of the allowed
 667 amount secured by the lien if the creditor tenders funds

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668 sufficient to satisfy in full the reasonable expenses of
 669 transfer and the obligation secured by any senior lien
 670 extinguished by the transfer.

671 (6) A reversal or modification of an order approving a
 672 transfer under subsection (3) does not affect the validity of
 673 the transfer to a person that acquired the property in good
 674 faith or revive against the person any lien extinguished by the
 675 transfer, whether the person knew before the transfer of the
 676 request for reversal or modification, unless the court stayed
 677 the order before the transfer.

678 714.17 Executory contract.-

679 (1) For the purposes of this section, the term "timeshare
 680 interest" has the same meaning as in s. 721.05(36).

681 (2) Except as otherwise provided in subsection (8), with
 682 court approval, a receiver may adopt or reject an executory
 683 contract of the owner relating to receivership property. The
 684 court may condition the receiver's adoption and continued
 685 performance of the contract on terms appropriate under the
 686 circumstances. If the receiver does not request court approval
 687 to adopt or reject the contract within a reasonable time after
 688 the receiver's appointment, the receiver is deemed to have
 689 rejected the contract.

690 (3) A receiver's performance of an executory contract
 691 before court approval under subsection (2) of its adoption or
 692 rejection is not an adoption of the contract and does not
 693 preclude the receiver from seeking approval to reject the
 694 contract.

695 (4) A provision in an executory contract which requires or
 696 permits a forfeiture, modification, or termination of the

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contract because of the appointment of a receiver or the financial condition of the owner does not affect a receiver's power under subsection (2) to adopt the contract.

(5) A receiver's right to possess or use receivership property pursuant to an executory contract terminates on rejection of the contract under subsection (2). Rejection is a breach of the contract effective immediately before appointment of the receiver. A claim for damages for rejection of the contract must be submitted by the later of:

(a) The time set for submitting a claim in the receivership; or

(b) Thirty days after the court approves the rejection.

(6) If at the time a receiver is appointed, the owner has the right to assign an executory contract relating to receivership property under the laws of this state other than this chapter, the receiver may assign the contract with court approval.

(7) If a receiver rejects an executory contract for the sale of receivership property that is real property in possession of the purchaser or a real-property timeshare interest pursuant to subsection (2), the purchaser may:

(a) Treat the rejection as a termination of the contract, and in that case the purchaser has a lien on the property for the recovery of any part of the purchase price the purchaser paid; or

(b) Retain the purchaser's right to possession under the contract. If the purchaser retains his or her right to possession pursuant to this paragraph, the purchaser must continue to perform all obligations arising under the contract

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and may offset any damages caused by nonperformance of an obligation of the owner after the date of the rejection, but the purchaser does not have a right or claim against other receivership property or the receiver on account of the damages.

(8) A receiver may not reject an unexpired lease of real property under which the owner is the landlord if:

(a) The tenant occupies the leased premises as the tenant's primary residence;

(b) The receiver was appointed at the request of a person other than a mortgagee; or

(c) The receiver was appointed at the request of a mortgagee and:

1. The lease is superior to the lien of the mortgage;

2. The tenant has an enforceable agreement with the mortgagee or the holder of a senior lien under which the tenant's occupancy will not be disturbed as long as the tenant performs its obligations under the lease;

3. The mortgagee has consented to the lease, either in a signed record or by its failure to timely object that the lease violated the mortgage; or

4. The terms of the lease were commercially reasonable at the time the lease was agreed to and the tenant did not know or have reason to know that the lease violated the mortgage.

714.18 Defenses and immunities of receiver.-

(1) A receiver is entitled to all defenses and immunities provided by the laws of this state other than this chapter for an act or omission within the scope of the receiver's appointment.

(2) A receiver may be sued personally for an act or

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omission in administering receivership property only with
approval of the court that appointed the receiver.

714.19 Interim report of receiver.—A receiver may file or,
if ordered by the court, shall file an interim report that
includes:

(1) The activities of the receiver since appointment or a
previous report;

(2) Receipts and disbursements, including a payment made or
proposed to be made to a professional engaged by the receiver;

(3) Receipts and dispositions of receivership property;

(4) Fees and expenses of the receiver and, if not filed
separately, a request for approval of payment of the fees and
expenses; and

(5) Any other information required by the court.

714.20 Notice of appointment; claim against receivership;
distribution to creditors.—

(1) Except as otherwise provided in subsection (6), a
receiver shall give notice of appointment of the receiver to
creditors of the owner by:

(a) Deposit for delivery through first-class mail or other
commercially reasonable delivery method to the last known
address of each creditor; and

(b) Publication as directed by the court.

(2) Except as otherwise provided in subsection (6), the
notice required under subsection (1) must specify the date by
which each creditor holding a claim against the owner which
arose before appointment of the receiver must submit the claim
to the receiver. The date specified must be at least 90 days
after the later of notice under paragraph (1)(a) or last

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publication under paragraph (1)(b). The court may extend the
period for submitting the claim. Unless the court orders
otherwise, a claim that is not timely submitted is not entitled
to a distribution from the receivership.

(3) A claim submitted by a creditor under this section
must:

(a) State the name and address of the creditor;

(b) State the amount and basis of the claim;

(c) Identify any property securing the claim;

(d) Be signed by the creditor under penalty of perjury; and

(e) Include a copy of any record on which the claim is
based.

(4) An assignment by a creditor of a claim against the
owner is effective against the receiver only if the assignee
gives timely notice of the assignment to the receiver in a
signed record.

(5) At any time before entry of an order approving a
receiver's final report, the receiver may file with the court an
objection to a claim of a creditor, stating the basis for the
objection. The court shall allow or disallow the claim according
to the laws of this state other than this chapter.

(6) If the court concludes that receivership property is
likely to be insufficient to satisfy claims of each creditor
holding a perfected lien on the property, the court may order
that:

(a) The receiver need not give notice under subsection (1)
of the appointment to all creditors of the owner, but only such
creditors as the court directs; and

(b) Unsecured creditors need not submit claims under this

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813 section.

814 (7) Subject to s. 714.21:

815 (a) A distribution of receivership property to a creditor
816 holding a perfected lien on the property must be made in
817 accordance with the creditor's priority under the laws of this
818 state other than this chapter; and

819 (b) A distribution of receivership property to a creditor
820 with an allowed unsecured claim must be made as the court
821 directs according to the laws of this state other than this
822 chapter.

823 714.21 Fees and expenses.—

824 (1) The court may award a receiver from receivership
825 property the reasonable and necessary fees and expenses of
826 performing the duties of the receiver and exercising the powers
827 of the receiver.

828 (2) The court may order one or more of the following to pay
829 the reasonable and necessary fees and expenses of the
830 receivership, including reasonable attorney fees and costs:

831 (a) A person that requested the appointment of the
832 receiver, if the receivership does not produce sufficient funds
833 to pay the fees and expenses; or

834 (b) A person whose conduct justified or would have
835 justified the appointment of the receiver under s. 714.06(1)(a).

836 714.22 Removal of receiver; replacement; termination of
837 receivership.—

838 (1) The court may remove a receiver for cause.

839 (2) The court shall replace a receiver that dies, resigns,
840 or is removed.

841 (3) If the court finds that a receiver that resigns or is

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842 removed, or the representative of a receiver that is deceased,
843 has accounted fully for and turned over to the successor
844 receiver all receivership property and has filed a report of all
845 receipts and disbursements during the service of the replaced
846 receiver, the replaced receiver is discharged.

847 (4) The court may discharge a receiver and terminate the
848 court's administration of the receivership property if the court
849 finds that appointment of the receiver was improvident or that
850 the circumstances no longer warrant continuation of the
851 receivership. If the court finds that the appointment was sought
852 wrongfully or in bad faith, the court may assess against the
853 person that sought the appointment:

854 (a) The fees and expenses of the receivership, including
855 reasonable attorney fees and costs; and

856 (b) Actual damages caused by the appointment, including
857 reasonable attorney fees and costs.

858 714.23 Final report of receiver; discharge.—

859 (1) Upon completion of a receiver's duties, the receiver
860 shall file a final report including:

861 (a) A description of the activities of the receiver in the
862 conduct of the receivership;

863 (b) A list of receivership property at the commencement of
864 the receivership and any receivership property received during
865 the receivership;

866 (c) A list of disbursements, including payments to
867 professionals engaged by the receiver;

868 (d) A list of dispositions of receivership property;

869 (e) A list of distributions made or proposed to be made
870 from the receivership for creditor claims;

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871 (f) If not filed separately, a request for approval of the
 872 payment of fees and expenses of the receiver; and
 873 (g) Any other information required by the court.
 874 (2) If the court approves a final report filed under
 875 subsection (1) and the receiver distributes all receivership
 876 property, the receiver is discharged.
 877 714.24 Receivership in another state; ancillary
 878 proceeding.—
 879 (1) The court may appoint a receiver appointed in another
 880 state, or that person's nominee, as an ancillary receiver with
 881 respect to property located in this state or subject to the
 882 jurisdiction of the court for which a receiver could be
 883 appointed under this chapter, if:
 884 (a) The person or nominee would be eligible to serve as
 885 receiver under s. 714.07; and
 886 (b) The appointment furthers the person's possession,
 887 custody, control, or disposition of property subject to the
 888 receivership in the other state.
 889 (2) The court may issue an order that gives effect to an
 890 order entered in another state appointing or directing a
 891 receiver.
 892 (3) Unless the court orders otherwise, an ancillary
 893 receiver appointed under subsection (1) has the rights, powers,
 894 and duties of a receiver appointed under this chapter.
 895 714.25 Effect of enforcement by mortgagee.—A request by a
 896 mortgagee for the appointment of a receiver, the appointment of
 897 a receiver, or the application by a mortgagee of receivership
 898 property or proceeds to the secured obligation does not:
 899 (1) Make the mortgagee a mortgagee in possession of the

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900 real property;
 901 (2) Make the mortgagee an agent of the owner;
 902 (3) Constitute an election of remedies which precludes a
 903 later action to enforce the secured obligation;
 904 (4) Make the secured obligation unenforceable;
 905 (5) Limit any right available to the mortgagee with respect
 906 to the secured obligation; or
 907 (6) Constitute an action under chapter 702.
 908 714.26 Uniformity of application and construction.—In
 909 applying and construing this chapter, consideration must be
 910 given to the need to promote uniformity of the law with respect
 911 to its subject matter among states that have enacted a similar
 912 law.
 913 714.27 Relation to electronic signatures in global and
 914 national commerce act.—This act modifies, limits, or supersedes
 915 the Electronic Signatures in Global and National Commerce Act,
 916 15 U.S.C. ss. 7001 et seq., but does not modify, limit, or
 917 supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or
 918 authorize electronic delivery of any of the notices described in
 919 s. 103(b) of that act, 15 U.S.C. s. 7003(b).
 920 714.28 Transition.—This chapter does not apply to a
 921 receivership for which the receiver was appointed before July 1,
 922 2020.
 923 Section 2. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20

Meeting Date

660

Bill Number (if applicable)

Topic Uniform Commercial Real Estate Receivership Act

Amendment Barcode (if applicable)

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Job Title _____

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing The Business 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.

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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 726

INTRODUCER: Senator Rouson

SUBJECT: Florida Commission on Human Relations

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2. <u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3. <u>Hackett</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 726 amends several statutes pertaining to the Florida Commission on Human Relations (Commission). The Commission is responsible for investigating and resolving discrimination complaints in the areas of employment, housing, and certain public accommodations, as well as investigating state employee whistle-blower complaints of retaliation.

Specifically, the bill:

- Changes the number of Commissioners required for a quorum from seven to a majority of the currently appointed commissioners and establishes a quorum of three for panels.
- Allows the Commission to nominate fewer than 10 people for the Florida Civil Rights Hall of Fame each year.
- Requires the Commission to provide notice to an aggrieved person of its failure to determine reasonable cause if the Commission fails to make a determination within 1 year of the complaint's filing.
- Removes the requirement that facilities and communities designed for the housing of elderly must register with the Commission and renew the registration every 2 years, and removes associated fees and fines.
- Removes the requirement that the Commission or Attorney General investigate public housing discrimination complaints and increases the time period the Attorney General has to resolve a complaint regarding discriminatory practices of certain clubs from 30 to 45 days.
- Revises various deadlines and time constraints regarding the Commission's fact-finding investigation period for a retaliation claim.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect July 1, 2020.

II. Present Situation:

Florida Civil Rights Act (Part I, Chapter 760, F.S.)

The Florida Civil Rights Act (FCRA) protects persons from discrimination based on race, color, religion, sex, pregnancy, national origin, age, handicap, and marital status. The FCRA establishes the Florida Commission on Human Relations (the Commission) within the Department of Management Services. The Commission possesses the requisite powers to enforce the FCRA.¹ The Governor appoints, and the Senate confirms, the 12 members of the Commission.²

The Florida Commission on Human Relations

The Commission, created in s. 760.03, F.S., is empowered to receive, initiate, investigate, conciliate, hold hearings, and act upon complaints alleging discriminatory practices.³ Additionally, the Attorney General may initiate a civil action for damages, injunctive relief, civil penalties of up to \$10,000 per violation, and other appropriate relief.⁴

Administrative and Civil Remedies

An aggrieved person, the Commission, a commissioner, or the Attorney General has 365 days after the alleged violation to file a complaint with the Commission naming the person responsible for the violation and describing the violation.⁵ Within 180 days after the filing, the Commission must make a determination of whether reasonable cause exists to believe that discriminatory practice has occurred.⁶

If the Commission issues a finding of reasonable cause, the aggrieved person may request an administrative hearing or bring a civil action.⁷ A civil action must be brought within 1 year after the determination of reasonable cause.⁸ The FCRA expressly requires a plaintiff to exhaust his or her administrative remedy as a prerequisite to filing a civil action alleging unlawful discrimination, including housing discrimination.⁹ The remedies available through an administrative hearing are affirmative relief from the effects of the practice, including back pay, and attorney's fees, while remedies available through a civil action include affirmative relief such as back pay, injunctive relief, compensatory damages, punitive damages up to \$100,000, and attorney's fees.¹⁰

¹ Section 760.06(6), F.S.

² Section 760.03(1), F.S.

³ Section 760.06(5), F.S.

⁴ Section 760.021(1), F.S.

⁵ Section 760.11(1), F.S.

⁶ Section 760.11(3), F.S.

⁷ Section 760.11(4), F.S.

⁸ Section 760.11(5), F.S. If, however, the commission fails to make a determination of reasonable cause, the four-year statute of limitations for cause of action based on statutory liability applies. *Joshua v. City of Gainesville*, 768 So.2d 432 at 439 (Fla. 2000).

⁹ Section 760.07, F.S.

¹⁰ Section 760.11(5), (6), and (7), F.S.

Alternatively, under s. 760.11(7), F.S., if the Commission makes a determination that there is not reasonable cause, the claimant may request an administrative hearing, but must do so within 35 days of the date of the “no cause” determination. If the claim is not made within 35 days, the claim is barred.¹¹

Commission Administration

Section 760.03(1), F.S., requires that the Commission be comprised of 12 members. Currently, the Commission has just six members appointed to serve on its board.¹²

Current law provides that seven members constitute a quorum for the Commission to conduct business.¹³ Due to the low number of commissioners currently appointed, the Commission has cannot meet the seven member quorum requirement. In contrast, other commissions and government entities may satisfy their quorum requirements with a majority of their currently appointed members.¹⁴

The Commission is also permitted to establish panels of not less than three members to exercise its powers under the Florida Civil Rights Act, subject to procedures and limitations the Commission may provide by rule.¹⁵

Halls of Fame in Florida

It is the intent of the Florida Legislature to recognize and honor those persons, living or dead, who have made significant contributions to this state. The Legislature has established various Halls of Fame including the Florida Women’s Hall of fame, Florida Artists Hall of Fame, Florida Educator Hall of Fame, Florida Sports Hall of Fame, and the Florida Civil Rights Hall of Fame.

The Florida Civil Rights Hall of Fame was created by the Legislature in 2010.¹⁶ Each year the Commission is required to recommend 10 people for induction into the Florida Civil Rights Hall of Fame, from which list the Governor selects up to 3 new members.¹⁷ An eligible nominee must:

- Be at least 18 years of age;
- Have been born in Florida or adopted Florida as his or her home state and base of operations; and
- Have made a significant contribution and provided exemplary leadership toward Florida’s progress and achievements in civil rights.¹⁸

¹¹ Section 760.11(7), F.S.

¹² *Commissioners*, Florida Commission on Human Relations, <https://fchr.myflorida.com/fchrcommissioners> (last accessed December 3, 2020).

¹³ Section 760.03(5), F.S.

¹⁴ *See, e.g.* ss. 43.291(6) (Judicial Nominating Commissions), 265.003(3)(b) (Florida Veterans’ Hall of Fame), and 456.011(3) (Boards and Commissions within DOH).

¹⁵ Section 760.03(5), F.S.

¹⁶ *See* ch. 2010-53, Laws of Fla.

¹⁷ Section 760.065(3)(a), F.S.

¹⁸ Section 760.065(3)(b), F.S.

The Commission has failed to receive the minimum 10 recommendations several times. In 2014, 2015, and 2016, the Commission faced violating the statute by submitting fewer than 10 recommendations.¹⁹ In each year, however, the Governor has selected the maximum three inductees.

Fair Housing Act

Part II of ch. 760, F.S., constitutes the Florida Fair Housing Act, which protects citizens against discrimination in housing practices.²⁰ The Florida Fair Housing Act provides that any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be injured by a discriminatory housing practice may file a complaint with the Commission.²¹ The complainant must file the complaint within 1 year after the alleged discriminatory practice has occurred.²² The Commission has 100 days after receipt of the complaint to complete its investigation and give notice in writing to the person aggrieved whether it intends to resolve it.²³ The Commission may attempt to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.²⁴

The provisions of the Florida Fair Housing Act apply to all housing and housing-related entities (realtors, brokers, mortgage companies, financial institutions) in Florida. In 2001, the Legislature created exemptions for which charges of housing discrimination do not apply. Certain housing for older persons is exempt from charges of discrimination based on familial status.²⁵ Housing for older persons is any housing intended for and solely occupied by persons 62 years of age or older, or if occupancy is by persons 55 years of age or older, at least 80 percent of the units are occupied by at least one person age 55 years or older. These facilities must register with the Commission and renew the registration every 2 years and pay a fee that does not exceed \$20 for registration and renewal.²⁶ The Commission may impose an administrative fine of up to \$500 for submission of false information,²⁷ but there is no penalty for failure to register with the Commission. Failure to register does not prohibit a community from claiming the exemption and the Commission does not actively seek out entities that are not registered.

The Commission has not charged a fee to register or renew facilities and communities since 2015.²⁸ The registry is not determinative as to whether the community actually qualifies from the housing for older persons' exemption under the Florida Fair Housing Act. A facility or community that registers is still subject to an investigation if a complaint were filed against it and would have to prove that it meets the exemption. The same is true of a facility or community that has not registered.

¹⁹ The Commission submitted six nominations in 2014, and nine nominations both in 2015 and 2016.

²⁰ Sections 760.20-760.37, F.S.

²¹ Section 760.34(1), F.S.

²² Section 760.34(2), F.S.

²³ Section 760.34(1), F.S.

²⁴ *Id.*

²⁵ Section 760.29(4), F.S.

²⁶ Section 760.29(4)(c), F.S.

²⁷ *Id.*

²⁸ See Florida Commission on Human Relations, Housing – 55 & Older Communities, *How to Register for Housing for Older Persons*, <https://fchr.myflorida.com/fchr55andolderhousing>.

Whistleblower Investigations

The Commission is authorized to investigate any allegation of an adverse action against a state employee, former employee, applicant for employment, or an employee of a contractor with the state in retaliation for exposing gross mismanagement, fraud, wrongful act, or other violations by state government.²⁹ When an employer retaliates against an employee who makes such a disclosure (a whistleblower), the whistleblower may make a complaint to either the Inspector General or the Commission within 60 days.³⁰ The office must provide notice of receipt of such a complaint, and the Commission will begin a fact finding investigation into the complaint.³¹ The Commission must investigate the complaint and, if a violation is found, move to protect the whistleblower by petitioning for relief and recommending disciplinary proceedings as the Commission sees fit.³²

If an agency does not implement the recommended action of the Commission in 20 days, the Commission must terminate its investigation and notify the complainant of the right to appeal to the Public Employees Relations Commission or petition the agency for corrective action.³³ A complainant may file a complaint against the employer-agency with the Public Employees Relations Commission after the termination of an investigation by the Commission.³⁴

If the Commission is unable to resolve a complaint within 60 days after receipt of the fact-finding report, the Commission must terminate the investigation. The Commission must then notify the complainant and agency head of the termination of the investigation, provide a summary of relevant facts found during the investigation, and state the reasons for terminating the investigation.³⁵

Discriminatory Practices in Certain Clubs

As part of the Florida Civil Rights Act, the Legislature prohibits certain clubs from discriminating against individuals based on race, color, religion, gender, national origin, handicap, age (above the age of 21), or marital status in evaluating an application for membership.³⁶ This prohibition only applies to clubs that have more than 400 members, provide regular meal service, and receive payment for dues, fees, use of space, facilities, services, meals, or beverages directly or indirectly from non-members for business purposes.³⁷ The law also prohibits the publication, circulation, issuance, display, posting, or mailing of any advertisement, notice, or solicitation that contains a statement to the effect that the accommodations, advantages, facilities, membership, or privileges of the club are denied to any individual because of race, color, religion, gender, national origin, handicap, age (above the age of 21), or marital

²⁹ See s. 112.3187(4), (5), (6), and (7).

³⁰ Section 112.31895(1), F.S.

³¹ Section 112.31895(2), F.S.

³² Section 112.31895(3), F.S.

³³ Section 112.31895(3)(e), F.S.

³⁴ Section. 112.31895(4)(a), F.S.

³⁵ Section 112.31895(3)(d), F.S.

³⁶ Section 760.60(1), F.S.

³⁷ *Id.*

status.³⁸ This prohibition does not apply to fraternal or benevolent organizations, ethnic clubs, or religious organizations where business activity is not prevalent.³⁹

Any person who has been discriminated against by a club meeting these specifications may file a complaint with the Commission or with the Attorney General's Office of Civil Rights.⁴⁰ Upon receipt, the Commission or the Attorney General must provide a copy of the complaint to the club and, within 30 days, investigate the alleged discrimination and inform the complainant in writing if it intends to resolve the complaint.⁴¹

If the Commission or the Attorney General decides to resolve the complaint, it must attempt to eliminate or correct the alleged discriminatory practices of a club by the informal methods of conference, conciliation, and persuasion.⁴² If the Commission or Attorney General fails to give notice of its intent to eliminate or correct the alleged discriminatory practices of a club within 30 days, or if the Commission or Attorney General fails to resolve the complaint within 30 days after giving such notice, the person or the Attorney General on behalf of the person filing the complaint may commence a civil action against the club, its officers, or its members to enforce its rights under the FCRA.⁴³ If the court finds a discriminatory practice has occurred at the club, the court may enjoin the club, its officers, or its members from engaging in such practice or may order other appropriate action.⁴⁴

III. Effect of Proposed Changes:

Florida Commission on Human Relations

Section 1 amends s. 760.03, F.S., to change the number of commissioners required for a quorum from seven to a majority of the currently appointed commissioners. This change should avoid a situation where action needs to be taken but, due to unfilled commissioner slots, having seven commissioners is impracticable. For example, the section allows the Commission, as it sits today with only six commissioners, to meet and conduct business with a quorum of four members. The section also establishes a quorum of three members for panels.

Section 2 amends s. 760.065, F.S., to allow the Commission to recommend fewer than 10 people for the Florida Civil Rights Hall of Fame each year. Currently, the Commission must recommend exactly 10 people each year, while the Governor may accept between zero and three new members. This prevents the Commission from violating the law when they receive fewer than 10 nominations from which to select.

Section 3 amends s. 760.11, F.S., to require the Commission to notify an aggrieved person of the failure to conciliate or determine reasonable cause if the Commission fails to make a

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Section 760.60(2), F.S.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Section 760.60(3), F.S.

⁴⁴ *Id.*

determination within 180 days of the complaint's filing. It further requires that this notice include a statement of the aggrieved person's rights.

The section requires that any civil action must be commenced within 1 year after the Commission's notice of dismissal is mailed.

Florida Fair Housing Act

Section 4 deletes s. 760.29(4)(e), F.S., and removes the requirement that facilities and communities designed for the housing of elderly persons must register with the Commission, renew the registration every two years, and pay associated fees and fines.

Section 5 amends s. 760.31, F.S., to remove instructions for fees, forms, and procedures made obsolete by changes made in Section 4 of the bill.

Discriminatory Practices in Certain Clubs

Section 6 amends s. 760.60, F.S., to delete the requirement that the Commission or the Attorney General investigate the public accommodation discrimination complaint. The section also extends from 30 days to 45 days the time for the Commission or the Attorney General to resolve the dispute.

State Employee Whistle-Blower's Act

Section 7 amends s. 112.31895, F.S., to alter various deadlines and time constraints regarding the Commission's fact-finding investigation period for a whistleblower retaliation claim. Specifically, Section 7:

- Increases the time from 3 to 5 working days to acknowledge receipt of a complaint;
- Removes the requirement that the Commission separately acknowledge receipt of a complaint;
- Increases the time from 90 to 180 days for the Commission to complete its fact-finding report;
- Decreases the time from 60 to 35 days for the Commission to terminate its investigation after receipt of the fact-finding report if the Commission is unable to conciliate a complaint;
- Increases the time from 20 to 35 days for the relevant agency to implement the Commission's recommended action; and
- Decreases the time from 60 to 21 days for a complainant to appeal following a notice of termination of the investigation.

These changes bring most of the timeframes for s. 112.31895, F.S., (whistleblower) complaint investigations in line with complaints filed with the Commission under s. 760.11, F.S. (discrimination complaints).

The bill takes effect July 1, 2020.

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

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

Elderly housing organizations will no longer have to register every 2 years, which may have an indeterminate positive impact.

C. Government Sector Impact:

The Commission will have a longer period of time to investigate whistleblower allegations, which will allow it more freedom in organizing its efforts. The Commission will no longer have to register elderly housing organizations. Both changes may have an indeterminate impact on workload of the Commission but is not expected to impact overall revenues or expenditures of the Commission.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 760.03, 760.065, 760.11, 760.29, 760.31, 760.60, and 112.31895.

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 Rouson

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1 A bill to be entitled
 2 An act relating to the Florida Commission on Human
 3 Relations; amending s. 760.03, F.S.; revising quorum
 4 requirements for the Commission on Human Relations and
 5 its panels; amending s. 760.065, F.S.; revising the
 6 number of persons the commission must recommend for
 7 the Florida Civil Rights Hall of Fame; amending s.
 8 760.11, F.S.; requiring the commission to provide
 9 notice to an aggrieved person under specified
 10 circumstances; providing notice requirements; limiting
 11 the time the aggrieved person has to commence a civil
 12 action regarding a violation of the Florida Civil
 13 Rights Act; amending s. 760.29, F.S.; deleting a
 14 requirement that a facility or community that provides
 15 housing for older persons register with and submit a
 16 letter to the commission; amending s. 760.31, F.S.;
 17 conforming a provision to changes made by the act;
 18 amending s. 760.60, F.S.; deleting the requirement for
 19 the commission or Attorney General to investigate a
 20 complaint of discrimination in evaluating an
 21 application for club membership; revising the length
 22 of time the commission or Attorney General has to
 23 resolve such a complaint; amending s. 112.31895, F.S.;
 24 revising the timeline relating to a complaint alleging
 25 a prohibited personnel action; deleting a requirement
 26 that the commission notify a complainant upon receipt
 27 of the complaint; providing an effective date.
 28
 29 Be It Enacted by the Legislature of the State of Florida:

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30
 31 Section 1. Subsection (5) of section 760.03, Florida
 32 Statutes, is amended to read:
 33 760.03 Commission on Human Relations; staff.—
 34 (5) A quorum is necessary for the conduct of official
 35 business. Unless otherwise provided by law, a quorum consists of
 36 a majority of the currently appointed commissioners. ~~Seven~~
 37 ~~members shall constitute a quorum for the conduct of business,~~
 38 ~~however,~~ The commission may establish panels of not less than
 39 three of its members to exercise its powers under the Florida
 40 Civil Rights Act of 1992, subject to such procedures and
 41 limitations as the commission may provide by rule.
 42 Notwithstanding this subsection, three appointed members serving
 43 on panels shall constitute a quorum for the conduct of official
 44 business of the panel.
 45 Section 2. Paragraph (a) of subsection (3) of section
 46 760.065, Florida Statutes, is amended to read:
 47 760.065 Florida Civil Rights Hall of Fame.—
 48 (3) (a) The commission shall annually accept nominations for
 49 persons to be recommended as members of the Florida Civil Rights
 50 Hall of Fame. The commission shall recommend up to 10 persons
 51 from which the Governor shall select up to 3 hall-of-fame
 52 members.
 53 Section 3. Subsection (8) of section 760.11, Florida
 54 Statutes, is amended to read:
 55 760.11 Administrative and civil remedies; construction.—
 56 (8) ~~If in the event that~~ the commission fails to conciliate
 57 or determine whether there is reasonable cause on any complaint
 58 under this section within 180 days of the filing of the

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59 complaint;

60 (a) An aggrieved person may proceed under subsection (4) if
61 as if the commission determined that there was reasonable cause.

62 (b) The commission shall promptly notify the aggrieved
63 person of the failure to conciliate or determine whether there
64 is reasonable cause. The notice shall provide the options
65 available to the aggrieved person under subsection (4) and
66 inform the aggrieved person that a civil action is prohibited if
67 not filed within 1 year after the date the commission certifies
68 that the notice was mailed.

69 (c) Any civil action brought by an aggrieved person under
70 this section must be commenced within 1 year after the date the
71 commission certifies that the notice was mailed pursuant to
72 paragraph (b).

73 Section 4. Subsection (4) of section 760.29, Florida
74 Statutes, is amended to read:

75 760.29 Exemptions.—

76 (4) (a) Any provision of ss. 760.20-760.37 regarding
77 familial status does not apply with respect to housing for older
78 persons.

79 (b) As used in this subsection, the term “housing for older
80 persons” means housing:

81 1. Provided under any state or federal program that the
82 commission determines is specifically designed and operated to
83 assist elderly persons, as defined in the state or federal
84 program;

85 2. Intended for, and solely occupied by, persons 62 years
86 of age or older; or

87 3. Intended and operated for occupancy by persons 55 years

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88 of age or older that meets the following requirements:

89 a. At least 80 percent of the occupied units are occupied
90 by at least one person 55 years of age or older.

91 b. The housing facility or community publishes and adheres
92 to policies and procedures that demonstrate the intent required
93 under this subparagraph. If the housing facility or community
94 meets the requirements of sub-subparagraphs a. and c. and the
95 recorded governing documents provide for an adult, senior, or
96 retirement housing facility or community and the governing
97 documents lack an amendatory procedure, prohibit amendments, or
98 restrict amendments until a specified future date, then that
99 housing facility or community shall be deemed housing for older
100 persons intended and operated for occupancy by persons 55 years
101 of age or older. If those documents further provide a
102 prohibition against residents 16 years of age or younger, that
103 provision shall be construed, for purposes of the Fair Housing
104 Act, to only apply to residents 18 years of age or younger, in
105 order to conform with federal law requirements. Governing
106 documents which can be amended at a future date must be amended
107 and properly recorded within 1 year after that date to reflect
108 the requirements for consideration as housing for older persons,
109 if that housing facility or community intends to continue as
110 housing for older persons.

111 c. The housing facility or community complies with rules
112 made by the Secretary of the United States Department of Housing
113 and Urban Development pursuant to 24 C.F.R. part 100 for
114 verification of occupancy, which rules provide for verification
115 by reliable surveys and affidavits and include examples of the
116 types of policies and procedures relevant to a determination of

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117 compliance with the requirements of sub-subparagraph b. Such
 118 surveys and affidavits are admissible in administrative and
 119 judicial proceedings for the purposes of such verification.

120 (c) Housing shall not fail to be considered housing for
 121 older persons if:

122 1. A person who resides in such housing on or after October
 123 1, 1989, does not meet the age requirements of this subsection,
 124 provided that any new occupant meets such age requirements; or

125 2. One or more units are unoccupied, provided that any
 126 unoccupied units are reserved for occupancy by persons who meet
 127 the age requirements of this subsection.

128 (d) A person shall not be personally liable for monetary
 129 damages for a violation of this subsection if such person
 130 reasonably relied in good faith on the application of the
 131 exemption under this subsection relating to housing for older
 132 persons. For purposes of this paragraph, a person may show good
 133 faith reliance on the application of the exemption only by
 134 showing that:

135 1. The person has no actual knowledge that the facility or
 136 the community is ineligible, or will become ineligible, for such
 137 exemption; and

138 2. The facility or community has stated formally, in
 139 writing, that the facility or community complies with the
 140 requirements for such exemption.

141 ~~(e) A facility or community claiming an exemption under~~
 142 ~~this subsection shall register with the commission and submit a~~
 143 ~~letter to the commission stating that the facility or community~~
 144 ~~complies with the requirements of subparagraph (b)1.,~~
 145 ~~subparagraph (b)2., or subparagraph (b)3. The letter shall be~~

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146 ~~submitted on the letterhead of the facility or community and~~
 147 ~~shall be signed by the president of the facility or community.~~
 148 ~~This registration and documentation shall be renewed biennially~~
 149 ~~from the date of original filing. The information in the~~
 150 ~~registry shall be made available to the public, and the~~
 151 ~~commission shall include this information on an Internet~~
 152 ~~website. The commission may establish a reasonable registration~~
 153 ~~fee, not to exceed \$20, that shall be deposited into the~~
 154 ~~commission's trust fund to defray the administrative costs~~
 155 ~~associated with maintaining the registry. The commission may~~
 156 ~~impose an administrative fine, not to exceed \$500, on a facility~~
 157 ~~or community that knowingly submits false information in the~~
 158 ~~documentation required by this paragraph. Such fines shall be~~
 159 ~~deposited in the commission's trust fund. The registration and~~
 160 ~~documentation required by this paragraph shall not substitute~~
 161 ~~for proof of compliance with the requirements of this~~
 162 ~~subsection. Failure to comply with the requirements of this~~
 163 ~~paragraph shall not disqualify a facility or community that~~
 164 ~~otherwise qualifies for the exemption provided in this~~
 165 ~~subsection.~~

166
 167 A county or municipal ordinance regarding housing for older
 168 persons may not contravene the provisions of this subsection.

169 Section 5. Subsection (5) of section 760.31, Florida
 170 Statutes, is amended to read:

171 760.31 Powers and duties of commission.—The commission
 172 shall:

173 (5) Adopt rules necessary to implement ss. 760.20-760.37
 174 and govern the proceedings of the commission in accordance with

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chapter 120. Commission rules shall clarify terms used with regard to handicapped accessibility, exceptions from accessibility requirements based on terrain or site characteristics, and requirements related to housing for older persons. ~~Commission rules shall specify the fee and the forms and procedures to be used for the registration required by s. 760.29(4)(e).~~

Section 6. Subsections (2) and (3) of section 760.60, Florida Statutes, are amended to read:

760.60 Discriminatory practices of certain clubs prohibited; remedies.—

(2) A person who has been discriminated against in violation of this act may file a complaint with the Commission on Human Relations or with the Attorney General's Office of Civil Rights. A complaint must be in writing and must contain such information and be in such form as the commission requires. Upon receipt of a complaint, the commission or the Attorney General shall provide a copy to the person who represents the club. Within 30 days after receiving a complaint, the commission or the Attorney General shall ~~investigate the alleged discrimination and~~ give notice in writing to the person who filed the complaint if it intends to resolve the complaint. If the commission or the Attorney General decides to resolve the complaint, it shall attempt to eliminate or correct the alleged discriminatory practices of a club by informal methods of conference, conciliation, and persuasion.

(3) If the commission or the Attorney General fails, within 30 days after receiving a complaint filed pursuant to subsection (2), to give notice of its intent to eliminate or correct the

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alleged discriminatory practices of a club, or if the commission or the Attorney General fails to resolve the complaint within 45 ~~30~~ days after giving such notice, the person or the Attorney General on behalf of the person filing the complaint may commence a civil action in a court against the club, its officers, or its members to enforce this section. If the court finds that a discriminatory practice occurs at the club, the court may enjoin the club, its officers, or its members from engaging in such practice or may order other appropriate action.

Section 7. Subsections (1) and (2), paragraphs (d) and (e) of subsection (3), and paragraph (a) of subsection (4) of section 112.31895, Florida Statutes, are amended to read:

112.31895 Investigative procedures in response to prohibited personnel actions.—

(1)(a) If a disclosure under s. 112.3187 includes or results in alleged retaliation by an employer, the employee or former employee of, or applicant for employment with, a state agency, as defined in s. 216.011, that is so affected may file a complaint alleging a prohibited personnel action, which complaint must be made by filing a written complaint with the Office of the Chief Inspector General in the Executive Office of the Governor or the Florida Commission on Human Relations, no later than 60 days after the prohibited personnel action.

(b) Within 5 ~~three~~ working days after receiving a complaint under this section, the office or officer receiving the complaint shall acknowledge receipt of the complaint and provide copies of the complaint and any other preliminary information available concerning the disclosure of information under s. 112.3187 to each of the other parties named in paragraph (a),

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which parties shall each acknowledge receipt of such copies to the complainant.

(2) FACT FINDING.—The Florida Commission on Human Relations shall:

(a) Receive any allegation of a personnel action prohibited by s. 112.3187, including a proposed or potential action, and conduct informal fact finding regarding any allegation under this section, to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel action under s. 112.3187 has occurred, is occurring, or is to be taken.

~~(b) Notify the complainant, within 15 days after receiving a complaint, that the complaint has been received by the department.~~

(b)(e) Within 180 ~~90~~ days after receiving the complaint, provide the agency head and the complainant with a fact-finding report that may include recommendations to the parties or proposed resolution of the complaint. The fact-finding report shall be presumed admissible in any subsequent or related administrative or judicial review.

(3) CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION.—

(d) If the Florida Commission on Human Relations is unable to conciliate a complaint within 35 ~~60~~ days after receipt of the fact-finding report, the Florida Commission on Human Relations shall terminate the investigation. Upon termination of any investigation, the Florida Commission on Human Relations shall notify the complainant and the agency head of the termination of the investigation, providing a summary of relevant facts found during the investigation and the reasons for terminating the

19-01053-20

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investigation. A written statement under this paragraph is presumed admissible as evidence in any judicial or administrative proceeding but is not admissible without the consent of the complainant.

(e)1. The Florida Commission on Human Relations may request an agency or circuit court to order a stay, on such terms as the court requires, of any personnel action for 45 days if the Florida Commission on Human Relations determines that reasonable grounds exist to believe that a prohibited personnel action has occurred, is occurring, or is to be taken. The Florida Commission on Human Relations may request that such stay be extended for appropriate periods of time.

2. If, in connection with any investigation, the Florida Commission on Human Relations determines that reasonable grounds exist to believe that a prohibited action has occurred, is occurring, or is to be taken which requires corrective action, the Florida Commission on Human Relations shall report the determination together with any findings or recommendations to the agency head and may report that determination and those findings and recommendations to the Governor and the Chief Financial Officer. The Florida Commission on Human Relations may include in the report recommendations for corrective action to be taken.

3. If, after 35 ~~20~~ days, the agency does not implement the recommended action, the Florida Commission on Human Relations shall terminate the investigation and notify the complainant of the right to appeal under subsection (4), or may petition the agency for corrective action under this subsection.

4. If the Florida Commission on Human Relations finds, in

19-01053-20

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291 consultation with the individual subject to the prohibited
292 action, that the agency has implemented the corrective action,
293 the commission shall file such finding with the agency head,
294 together with any written comments that the individual provides,
295 and terminate the investigation.

296 (4) RIGHT TO APPEAL.—

297 (a) Not more than 21 ~~60~~ days after receipt of a notice of
298 termination of the investigation from the Florida Commission on
299 Human Relations, the complainant may file, with the Public
300 Employees Relations Commission, a complaint against the
301 employer-agency regarding the alleged prohibited personnel
302 action. The Public Employees Relations Commission shall have
303 jurisdiction over such complaints under ss. 112.3187 and
304 447.503(4) and (5).

305 Section 8. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 16, 2020

I respectfully request that **Senate Bill # 726**, relating to Commission on Human Relations, be placed on the:

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

A handwritten signature in cursive script that reads "Darryl Ervin Rouson".

Senator Darryl Ervin Rouson
Florida Senate, District 19

THE FLORIDA SENATE
APPEARANCE RECORD

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

2 March 20
Meeting Date

726
Bill Number (if applicable)

Topic FLHR

Amendment Barcode (if applicable)

Name Christopher Turner

Job Title Deputy Director Legislative Affairs

Address _____
Street

Phone 850-901-8761

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Commission on Human Relations

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 798

INTRODUCER: Rules Committee; and Senators Rouson and Pizzo

SUBJECT: Procurement of Human Organs and Tissue

DATE: March 4, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Williams	Brown	HP	Favorable
2.	Wagoner	Jones	CJ	Favorable
3.	Williams	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 798 prohibits a for-profit eye bank from engaging, directly or indirectly, in the procurement of any eye, cornea, eye tissue, or corneal for use in live-cell corneal transplantation. Such conduct constitutes a second degree felony. The bill provides exceptions for specified entities.

The bill may have a positive indeterminate prison bed impact. See Section V. Fiscal Impact Statement.

The effective date of the bill is July 1, 2020.

II. Present Situation:

Regulations and Standards for Tissue Processing

Tissue processing in the United States is governed by mandatory requirements enforced by federal and state regulatory authorities. The authorization of donated tissues is governed by the Uniform Anatomical Gift Act. Tissue banks in the United States are governed by the National Organ Transplantation Act (NOTA), which provides that tissue cannot be bought or sold. The law does allow for reimbursement of costs associated with the recovery, processing, and storing of tissue and the development of tissue processing technologies. Such activities can include

research, screening and testing, sterilization processes, and precision-tooled shaping of allografts for transplantation.¹

Regardless of their status, all tissue banks must meet the same regulatory requirements and have the same goal of assisting in the process of making tissue safely available for transplants. Human tissue processed and distributed for transplantation by the American Association of Tissue Banks (AATB)-accredited tissue banks is subject to federal Food and Drug Administration regulation and AATB's standards.²

Statutory Provisions Specific to Eye Banks in Florida

Part V of ch. 765, F.S., contains provisions specific to the donation and procurement of human organs and tissues. Under this part, "procurement" is defined in s. 765.511(18), F.S., as "any retrieval, recovery, processing, storage, or distribution of human organs or tissues for transplantation, therapy, research, or education."

Section 765.542, F.S., provides requirements for the certification of procurement organizations in the state of Florida. Procurement organizations, as defined in s. 765.511(19), F.S., include organ procurement organizations, eye banks, and tissue banks. Per s. 765.511(11), F.S., an eye bank is "an entity that is accredited by the Eye Bank Association of America or otherwise regulated under federal or state law to engage in the retrieval, screening, testing, processing, storage, or distribution of human eye tissue."

In accordance with s. 765.542(3), F.S., a person may not engage in the practice of eye procurement in the state of Florida without being appropriately certified as an eye bank by the AHCA. Funeral directors or direct disposers who retrieve eye tissue for a certified eye bank are exempt from being certified as eye banks.³

All procurement organizations, including eye banks, are required to file an annual report and an annual assessment fee to the AHCA based on reported revenues from procurement and processing activities, as provided in s. 765.544, F.S. During State Fiscal Year 2018-2019, \$4,000 in annual assessment fees were received by the AHCA from for-profit eye banks.⁴

Chapter 873, F.S., governs the sale of anatomical matter by a person or a for-profit entity and includes provisions related to the purchase, sale, and transfer of human organs and tissues, including, but not limited to: the eye, cornea, kidney, liver, heart, lung, pancreas, bone, and skin.⁵

Section 873.01(2), F.S., prohibits for-profit entities, or any employee of a for-profit entity, from transferring human organs and tissues or arranging for the transfer of human organs and tissues for valuable consideration. "Valuable consideration" does not include the reasonable costs

¹ American Association of Tissue Banks, Regulation and Standards, available at <https://www.aatb.org/regulatory> (last visited on Feb. 7, 2020).

² *Id.*

³ Section 765.542(3), F.S.

⁴ Agency for Health Care Administration, *Senate Bill 798 Analysis* (updated Feb. 5, 2020) (on file with the Senate Committee on Criminal Justice).

⁵ Section 873.01(3)(a), F.S.

associated with the removal, storage, and transportation of a human organ or tissue. A violation of this section constitutes a second degree felony.⁶

Procurement Organizations Regulated by the Agency for Health Care Administration

According to the AHCA, there are currently 155 procurement organizations certified in the state of Florida. Of these, four are certified as organ procurement organizations, 24 are certified as eye banks, and 127 are certified as tissue banks. Of the 24 certified eye banks, three are physically located in Florida, and the remaining 21 eye banks certified in Florida are out-of-state organizations. The three eye banks located in Florida are not-for-profit corporations. The profit status of Florida's certified eye banks is as follows:

- Sixteen not-for-profit entities, and
- Eight for-profit entities.⁷

Corporate Trends in the Eye-Tissue Banking Industry

In recent years, the market for corneal tissue procurement, transport, and surgeon partnerships has experienced somewhat of a shift from local, community-based eye banks to larger companies. Some of these larger companies are represented by not-for-profit corporations affiliated with for-profit “daughter” companies, which, in partnership with each other, play defined roles in the process, with the non-profit organization recovering the tissue while the for-profit organization processes, evaluates, and distributes the tissues to cornea surgeons.⁸

The for-profit status of any participant in the process has drawn criticism. However, defenders of such partnerships respond by noting that such for-profit companies operate under the NOTA, which states that it is illegal to buy or sell organs and tissues while it is legal to obtain reasonable payment associated with the removal, transportation, processing, preservation, quality control, and storage of corneas and eye tissue. Similarly, local eye banks routinely obtain payment related to these actions. Some argue that the for-profit connection fundamentally alters the relationship between physicians, eye banks, and donors by rendering the gift of the tissue as a commodity. The resulting ethical debate may be crucial to the future of eye banks.⁹

III. Effect of Proposed Changes:

Section 1 amends s. 765.542, F.S., relating to requirements to engage in organ, tissue, or eye procurement, to specify that a for-profit eye bank may not engage, directly or indirectly, in the procurement of any eye, cornea, eye tissue, or corneal tissue for use in live-cell corneal transplantation. The bill stipulates that this new provision does not apply to any hospital or ambulatory surgical center licensed under ch. 395, F.S., or to a district medical examiner appointed under ch. 406, F.S.

⁶ Section 873.01(4), F.S. A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S. Section 775.084, F.S., provides enhanced penalties for qualifying repeat offenders.

⁷ *Supra* note 4.

⁸ Majid Moshirfar, Jackson L. Goldberg, et al., *A paradigm shift in eye banking: how new models are challenging the status quo*, U.S. National Library of Medicine, National Institutes of Health (Dec. 27, 2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6311318/> (last visited Feb. 7, 2020).

⁹ *Id.*

Section 2 amends s. 873.01, F.S., relating to the prohibition on the purchase or sale of human organs and tissues, to specify that a for-profit eye bank may not engage, directly or indirectly, in the procurement, as defined in s. 765.511, F.S., of any eye, cornea, eye tissue, or corneal tissue for use in live-cell corneal transplantation. The bill stipulates that this new provision does not apply to any hospital or ambulatory surgical center licensed under ch. 395, F.S., or to a district medical examiner appointed under ch. 406, F.S. Such conduct constitutes a second degree felony.¹⁰

Section 3 provides an effective date of July 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:

Depending on their current scope of activities, a for-profit eye bank doing business in Florida may see its scope of activities somewhat limited by the bill as amended.

¹⁰ A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S. Section 775.084, F.S., provides enhanced penalties for qualifying repeat offenders.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, has not yet considered the bill. However, the bill may have a positive indeterminate prison bed impact (an increase in the need for prison beds) on the Department of Corrections because the bill creates a new felony offense.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The statutory provisions proposed in the bill do not appear to conflict with applicable federal law relating to prohibition of organ purchases.¹¹

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 765.542 and 873.01.

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 March 2, 2020:**

The CS:

- More narrowly applies to a for-profit eye bank, rather than a for-profit organ, tissue, or eye procurement entity as in the underlying bill, and
- Indicates a more narrow scope of activity, limited to tissue use for live-cell corneal transplantation.

B. Amendments:

None.

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

¹¹ See 42 U.S.C. 274e.



804792

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2020	.	
	.	
	.	
	.	

The Committee on Rules (Rouson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 17 - 19
and insert:

(4) A for-profit eye bank may not engage, directly or indirectly, in the procurement of any eye, cornea, eye tissue, or corneal tissue for use in live-cell corneal transplantation. This subsection does not apply to a hospital

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

And the title is amended as follows:



804792

12 Delete lines 4 - 5
13 and insert:
14 profit eye banks from procuring certain human organs
15 and tissue for specified purposes, with certain
16 exceptions; amending s.



202180

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2020	.	
	.	
	.	
	.	

The Committee on Rules (Rouson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 35 - 37
and insert:

(3) A for-profit eye bank, as defined in s. 765.511, may not engage, directly or indirectly, in the procurement, as defined in s. 765.511, of any eye, cornea, eye tissue, or corneal tissue for use in live-cell corneal transplantation.
This subsection does

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



202180

12 And the title is amended as follows:

13 Delete lines 6 - 7

14 and insert:

15 873.01, F.S.; prohibiting for-profit eye banks from
16 procuring certain human organs and tissue for
17 specified purposes, with

By Senator Rouson

19-00897A-20

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A bill to be entitled

An act relating to the procurement of human organs and tissue; amending s. 765.542, F.S.; prohibiting for-profit entities from procuring certain human organs and tissue, with certain exceptions; amending s. 873.01, F.S.; prohibiting for-profit entities from procuring certain human organs and tissue, with certain exceptions; providing an effective date.

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

Section 1. Present subsection (4) of section 765.542, Florida Statutes, is redesignated as subsection (5), and a new subsection (4) is added to that section, to read:

765.542 Requirements to engage in organ, tissue, or eye procurement.—

(4) A for-profit entity may not engage, directly or indirectly, in the procurement of any eye, cornea, eye tissue, or corneal tissue. This subsection does not apply to a hospital or an ambulatory surgical center licensed under chapter 395 or to a district medical examiner appointed under chapter 406.

Section 2. Present subsections (3) and (4) of section 873.01, Florida Statutes, are redesignated as subsections (4) and (5), respectively, a new subsection (3) is added to that section, and subsections (1) and (2) of that section are amended, to read:

873.01 Purchase or sale of human organs and tissue prohibited.—

(1) A ~~No~~ person may not ~~shall~~ knowingly offer to purchase

Page 1 of 2

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

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or sell, or purchase, sell, or otherwise transfer, any human organ or tissue for valuable consideration.

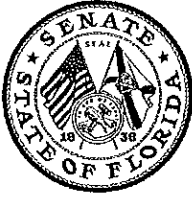
(2) A ~~No~~ for-profit corporation or any employee thereof may ~~not shall~~ transfer or arrange for the transfer of any human body part for valuable consideration.

(3) A for-profit entity may not engage, directly or indirectly, in the procurement, as defined in s. 765.511, of any eye, cornea, eye tissue, or corneal tissue. This subsection does not apply to a hospital or an ambulatory surgical center licensed under chapter 395 or to a district medical examiner appointed under chapter 406.

Section 3. This act shall take effect July 1, 2020.

Page 2 of 2

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: February 11, 2020

I respectfully request that **Senate Bill #0798**, relating to Procurement of Human Organs and Tissue, be placed on the:

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

A handwritten signature in cursive script, reading "Darryl Ervin Rouson".

Senator Darryl Ervin Rouson
Florida Senate, District 19

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 792

INTRODUCER: Rules Committee; Banking and Insurance Committee; Health Policy Committee; and Senators Albritton and Harrell

SUBJECT: Physical Therapy Practice

DATE: March 4, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Fav/CS
2.	Johnson	Knudson	BI	Fav/CS
3.	Rossitto-Van Winkle	Phelps	RC	Fav/Cs

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 792 amends several provisions within the Physical Therapy Practice Act. The bill amends the definition of “physical therapy assessment” to alter the purpose of such assessments and the definition of “practice of physical therapy” to add modalities of treatment while removing provisions relating to a physical therapist’s performance of acupuncture, along with related restrictions and the Board of Medicine’s oversight of the criteria for such acupuncture. The bill adds definitions of “dry needling” and “myofascial trigger point.”

The bill requires the Department of Health (DOH) to submit a report to the President of the Senate and the Speaker of the House of Representatives on or before December 31, 2022, detailing specific items about physical therapists (PTs).

The bill excludes acupuncture from the practice of physical therapy. The bill requires the Board of Physical Therapy Practice (Board) to establish minimum standards of practice for physical therapy relating to dry needling with specific requirements to be included.

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

II. Present Situation:

The Practice of Physical Therapy in Florida

The Physical Therapy Practice Act is codified in ch. 486, F.S. Licensed PTs are regulated by the Board within the DOH.¹ A PT must practice physical therapy in accordance with the provisions of the practice act and Board rules.² Currently, 17,403 PTs hold active Florida licenses.³

The practice of physical therapy includes:

- The performance of physical therapy assessments;
- The treatment of any disability, injury, disease, or other health condition of human beings, or the prevention of such disability, injury, disease, or other condition of health, and rehabilitation as related thereto, by the use of:
 - The physical, chemical, and other properties of air;
 - Electricity;
 - Exercise;
 - Massage;
 - The performance of acupuncture only upon compliance with criteria set forth by the Board of Medicine⁴ when no penetration of the skin occurs;
 - Radiant energy, including ultraviolet, visible, and infrared rays;
 - Ultrasound;
 - Water; and
 - Apparatus and equipment as they relate to the application of the above;
- The performance of tests of neuromuscular functions to aid in the diagnosis or treatment of any human condition; or
- The performance of electromyography to aid in the diagnosis of any human condition only upon compliance with criteria set forth by the Board of Medicine.⁵

To be eligible for licensure as a PT, an applicant must:

- Be 18 years of age;
- Be of good moral character; and
- Satisfy the following educational requirements:
 - Have graduated from a school of physical therapy which has been approved for the educational preparation of physical therapists by the appropriate accrediting agency recognized by the Commission on Recognition of Postsecondary Accreditation or the U.S. Department of Education at the time of her or his graduation and have passed, to the satisfaction of the Board, the American Registry Examination prior to 1971 or a national examination approved by the Board to determine her or his fitness for practice as a physical therapist;

¹ Section 486.023, F.S.

² Sections 486.031 and 486.102, F.S.

³ Number of active Florida licenses was calculated by adding “In State Active” practitioners and “Out of State Active” practitioners, and “Active Military” practitioners. See Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2018-2019: Table 1 Summary of Licensed Practitioners*, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/index.html> (last visited Jan. 16, 2020).

⁴ See s. 458.307, F.S., and <https://flboardofmedicine.gov/> (last visited Jan. 16, 2020)

⁵ Section 486.021(11), F.S.

- Have received a diploma from a program in physical therapy in a foreign country and have educational credentials deemed equivalent to those required for the educational preparation of physical therapists in this country, as recognized by the appropriate agency as identified by the Board, and have passed to the satisfaction of the Board an examination to determine her or his fitness for practice as a physical therapist; or
- Be entitled to licensure without examination.⁶

The Board of Physical Therapy Practice

The Board is composed of seven members appointed by the Governor and subject to confirmation by the Senate. Five Board members must be licensed PTs in good standing who are residents of this state and who have been engaged in the practice of physical therapy for at least four years immediately prior to their appointment. One licensed PT Board member may be a full-time faculty member teaching in a physical therapy curriculum in an educational institution in this state. The two remaining members must be residents of this state who have never been licensed health care practitioners.⁷

The Board may administer oaths, summon witnesses, and take testimony in all matters relating to its duties, establish or modify minimum standards of practice, and adopt rules to implement the provisions of ch. 486, F.S. The Board may also review the standing and reputability of any school or college that offers courses in physical therapy and whether the courses of such school or college meet the standards established by the appropriate accrediting agency. In determining the standing and reputability of any such school and whether the school and courses meet the standards, the Board may investigate and make a personal inspection.⁸

Physical Therapy Scope of Practice

A PT's professional responsibilities include, but are not limited to:

- Interpretation of a practitioner's referral;⁹
- Provision of a patient's initial physical therapy assessment;
- Initial identification and documentation of precautions, special problems, contraindications;
- Development of a treatment plan for a patient including the long- and short-term goals;
- Implementation of or directing implementation of the treatment plan;
- Delegation of appropriate tasks; and
- Reassessment of the patient in reference to goals and, when necessary, modification of the treatment plan.¹⁰

⁶ Section 486.081, F.S.

⁷ Section 486.023, F.S.

⁸ Section 486.025, F.S.

⁹ Under s. 486.021(11)(a), F.S., a health care practitioner licensed under ch. 458, F.S., (medical practice), ch. 459, F.S., (osteopathic medicine), ch. 460, F.S., (chiropractic medicine), ch. 461, F.S., (podiatric medicine), or ch. 466, F.S., (dentistry) and engaged in active practice is eligible to serve as a physical therapy patient's practitioner of record. A practitioner of record or an advanced practice registered nurse may develop a patient's plan of physical therapy treatment and may refer a patient to a PT for such treatment.

¹⁰ Fla. Admin. Code R. 64B17-6.001(3), (2019).

A PT performs a physical therapy assessment for the purpose of making recommendations for treatment. The physical therapy assessment includes observational, verbal, and manual determinations of the function of the musculoskeletal or neuromuscular system relative to physical therapy. The assessment can include, but is not limited to, the following testing:

- Range of motion of a joint;
- Motor power;
- Postural attitudes;
- Biomechanical function;
- Locomotion; and
- Functional abilities.¹¹

Physical Therapy Treatment Plan and Referral for Treatment

A PT may implement a plan of treatment that he or she develops for a patient and may also implement a treatment plan provided for a patient by a practitioner of record or by an advance practice registered nurse.¹² However, a PT must refer a patient to, or consult with, the patient's practitioner of record if a patient's condition is found to be outside the scope of physical therapy.¹³

A PT may implement a treatment plan for a patient without a written order from a practitioner of record. However, if physical therapy treatment is required beyond 30 days for a condition not previously assessed by a patient's practitioner of record, the PT must obtain a review of the treatment plan by a practitioner of record, along with his or her signature on the plan. This requirement for review and signature does not apply if a patient has been physically examined by a physician licensed in another state, the patient has been diagnosed by the physician as having a condition for which physical therapy is required, and the PT is treating that condition.¹⁴

Dry Needling

What is dry needling?

Dry needling, sometimes referred to as trigger point dry needling, is a skilled intervention that uses a thin filiform needle to penetrate the skin and stimulate underlying myofascial trigger points, muscular, and connective tissues for the management of neuromusculoskeletal pain and movement impairments. According to the American Physical Therapy Association, dry needling may be used to treat dysfunctions in skeletal muscle, fascia, and connective tissue, and to diminish persistent peripheral nociceptive input and reduce or restore impairments of body structure and function leading to improved activity and participation.¹⁵

¹¹ Section 486.021(10), F.S.

¹² Section 486.021(11)(a), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ American Physical Therapy Association, *Description of Dry Needling in Clinical Practice: An Educational Resource Paper*, (February 2013) available at <http://www.apta.org/StateIssues/DryNeedling/ClinicalPracticeResourcePaper/> (last visited Jan. 16, 2020).

Recent research has shown that the most common adverse event of dry needling is minor bleeding.¹⁶

Is Dry Needling Within the Scope of Practice of Physical Therapy?

The issue of whether the performance of dry needling should fall within the professional and legal scope of physical therapist practice continues to be a question posed to state regulatory boards, legislatures, and governmental agencies.¹⁷ The laws of 34 states and the District of Columbia permit PTs to perform dry needling.¹⁸ Seven states – California, Florida, Hawaii, New Jersey, New York, Oregon and Washington – prohibit PTs from performing dry needling.¹⁹

III. Effect of Proposed Changes:

Section 1 amends the definition of “physical therapy assessment” in s. 486.021(10), F.S., to provide that an assessment is for the purpose of “physical therapy treatment” instead of for the purpose of “making recommendations for treatment.” The definition is further amended to provide that an assessment relates to the function of the “movement system” instead of the “musculoskeletal or neuromuscular system” and includes motor control and posture as components of the former.

The bill also amends the definition of the “practice of physical therapy” in s. 486.021(11), F.S., to expand the scope of practice by providing that the practice of physical therapy may include alleviating impairments, functional movement limitations, and disabilities by designing, implementing, and modifying treatment interventions through:

- Therapeutic exercise;
- Functional movement training in self-management and in-home, community, or work integration or reintegration;
- Manual therapy;
- Massage;
- Airway clearance techniques;
- Maintaining and restoring integumentary integrity and wound care;
- Physical agents or modalities;
- Mechanical and electrotherapeutic modalities; and
- Patient-related instruction.

¹⁶ Brady, S., McEvoy, J., Dommerholt, J., Doody, C.: *Adverse events following trigger point dry needling: a prospective survey of chartered physiotherapists* (August 22, 2014), available at <https://www.ncbi.nlm.nih.gov/pubmed/25125935>.

¹⁷ American Physical Therapy Association, *Dry Needling in Physical Therapy*, (last updated November 7, 2019), available at <http://www.apta.org/StateIssues/DryNeedling/> (last visited Jan. 16, 2020).

¹⁸ American Physical Therapy Association, *State Laws and Regulations Governing Dry Needling Performed by Physical Therapists in the US*, available at http://www.apta.org/uploadedFiles/APTAorg/Advocacy/State/Issues/Dry_Needling/APTADryNeedlingLawsByState.pdf (last visited Jan. 16, 2020). The States that permit dry needling include: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wyoming.

¹⁹ *Id.*

The bill also amends the definition of the “practice of physical therapy” to remove provisions that currently allow for physical therapy treatment by the use of:

- The physical, chemical, and other properties of air;
- Electricity;
- Exercise;
- Massage;
- The performance of acupuncture only upon compliance with criteria set forth by the Board of Medicine when no penetration of the skin occurs;
- Radiant energy, including ultraviolet, visible, and infrared rays;
- Ultrasound; and
- Water.

In several instances, the two lists above (one adding elements and the other removing elements) merely substitute a modality with a similar modality, e.g. when the use of “electricity” is replaced by “electrotherapeutic modalities.” Other elements being added are new to the definition altogether, such as airway clearance techniques and maintaining and restoring integumentary integrity and wound care.

One element in the list of modalities being removed under the bill is accompanied by substantive limitations on how that element may be employed and under what criteria. The bill removes acupuncture as a treatment that PTs may perform, and, in so doing, it also removes the restriction that such acupuncture may be performed only upon compliance with criteria set forth by the Board of Medicine and may not involve penetration of the skin. The bill goes on to specify that the practice of physical therapy does not authorize a PT to practice acupuncture.

The bill defines “dry needling” as a skilled technique based on western medical concepts using apparatus or equipment of filiform needles to stimulate a myofascial trigger point for the evaluation and management of neuromusculoskeletal conditions, pain, movement impairments, and disabilities.

The bill further defines “myofascial trigger point” as an irritable section of tissue often associated with palpable taut bands of muscle fibers.

Section 2 amends s. 486.025, F.S., to authorize the Board to establish minimum standards for physical therapy, including, without limitation, standards of practice for the performance of dry needling by PTs.

Section 3 creates s. 486.117, F. S., which requires the Board to establish minimum standards of practice for the performance of dry needling by PTs, which must include, at a minimum, the following:

- Completion of two years of practice as a licensed PT;
- Completion of two years of practice as a PT;
- Completion of 50 hours of face-to-face continuing education from an accredited entity on the topic of dry needling, which must include a determination by the PT instructor that the PT demonstrates the requisite psychomotor skills to safely perform dry needling;
- Continuing education requirements in all of the following areas:

- Dry needling theory;
- Selection and safe handling of needles, other apparatus, and equipment used in dry needling, including the proper handling of biohazardous waste;
- Indications and contraindications for dry needling;
- Psychomotor skills needed to perform dry needling;
- Post intervention care, including:
 - Adverse responses;
 - Adverse event recordkeeping; and
 - Reporting obligations.
- Completion of 25 patient sessions of dry needling performed:
 - Under the supervision of a PT actively licensed to practice physical therapy in any state or the District of Columbia and who has actively practiced dry needling for at least one year, and who will document that the physical therapist has met the supervision requirements and needs no additional supervised sessions to perform dry needling; or
 - As a PT licensed in another state or in the United States Armed Forces.
- A requirement that dry needling may not be performed without patient consent, and patient consent must be part of the patient's documented care plan;
- A requirement that dry needling may not be delegated to any person other than a PT who is authorized to engage in dry needling under Florida law; and
- Require additional supervision and training before a PT's performance of dry needling of the head and neck or torso if the board deems it necessary for patient safety.

The bill requires the DOH, within existing resources, to submit a report to the President of the Senate and the Speaker of the House of Representatives on or before December 31, 2022, detailing:

- The number of physical therapists in this state;
- The number of physical therapists in this state performing dry needling;
- The increases or decreases in the number of physical therapists in this state by geographic area; and
- Any adverse medical incidents involving physical therapists performing dry needling.

The bill expands the scope of practice for physical therapy, since dry needling is not currently a treatment that PTs may perform. The bill gives no oversight to the Board of Medicine for physical therapists who perform dry needling the way current law provides for a PT's performance of acupuncture, which may be performed by a PT under current law only when no penetration of the skin occurs.

The bill further provides that the performance of dry needling in the practice of physical therapy under ch. 486, F.S., may not be construed to limit the scope of practice of any other licensed health care practitioners.

Section 4 provides an effective date of July 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.

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

None.

B. Private Sector Impact:

The expansion of the scope of practice for physical therapists could provide new avenues through which their services might be more in demand.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not address the following:

- What constitutes the “psychomotor skills” that a PT must demonstrate to a PT instructor to safely perform dry needling;
- The method or procedure the DOH is to follow to designate, certify or license, and track, a PT who has, or has not, met the minimum standards set by the Board to perform dry needling, to protect the public from PT’s who may be performing dry needling without meeting the minimum standards;

- Whether or not any of the 50 required face-to-face continuing education hours, from a college or university accredited by an accrediting agency approved by the United States Department of Education, may be counted toward the 24 hours of continuing education required for biennial license renewal under current law; and
- Whether or not, once a PT has initially demonstrated that he or she has satisfied the minimum required standards set by the Board to perform dry needling, any re-evaluation or further continuing education credits are required to maintain his or her status as a PT competent to perform dry needling.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 486.021 and 486.025.

The bill creates section 486.117 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 March 2, 2020:

The CS:

- authorizes the Board to adopt rules; and in determining the standing and reputability of any such school or college offering courses in physical therapy, the Board may investigate and personally inspect the school and courses;
- Creates s. 486.117, F. S., requiring the Board to establish minimum standards of practice and performance of dry needling by PTs, which adds the following specified criteria:
 - That the 25 patient sessions of dry needling performed under the supervision of a PT actively licensed to practice physical therapy who has actively practiced dry needling for at least one year, will also document that the PT has met the supervision requirements and needs no additional supervised sessions to perform dry needling;
 - That additional supervision and training is required before a PT's may performance dry needling of the head and neck or torso, if the board deems it necessary for patient safety.
- Requires the DOH, within existing resources, to submit a report to the President of the Senate and the Speaker of the House of Representatives on or before December 31, 2022, detailing specific information.

CS/CS by Banking and Insurance on February 11, 2020:

The CS limits PT rehabilitation for a disability, injury, disease, or other health condition by alleviating impairments, to:

- Movement limitations, rather than functional, and modifying treatment interventions through therapeutic exercise;

- Functional movement training in self-management, rather than all functional training in self-care; and
- Removes the term “therapeutic” as a modifier for massage.

CS by Health Policy on January 21, 2020:

The CS:

- Defines “dry needling” and “myofascial trigger point”;
- Requires the Board to make rules to establish minimal standards of practice for providing dry needling and specifies certain items that those standards must include at a minimum; and
- Specifically excludes acupuncture from the practice of physical therapy.

B. Amendments:

None.



415392

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2020	.	
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	.	

The Committee on Rules (Albritton) recommended the following:

Senate Amendment (with title amendment)

Delete lines 99 - 153
and insert:
Practice.—The board may administer oaths, summon witnesses, take
testimony in all matters relating to its duties under this
chapter, establish or modify minimum standards of practice of
physical therapy as defined in s. 486.021, including, but not
limited to, standards of practice for the performance of dry
needling by physical therapists, and adopt rules pursuant to ss.
120.536(1) and 120.54 to implement ~~the provisions of this~~



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chapter. The board may also review the standing and reputability of any school or college offering courses in physical therapy and whether the courses of such school or college in physical therapy meet the standards established by the appropriate accrediting agency referred to in s. 486.031(3)(a). In determining the standing and reputability of any such school and whether the school and courses meet such standards, the board may investigate and personally inspect the school and courses ~~make personal inspection of the same.~~

Section 3. Section 486.117, Florida Statutes, is created to read:

486.117 Physical therapist; performance of dry needling.—

(1) The board shall establish minimum standards of practice for the performance of dry needling by physical therapists, to include, at a minimum, all of the following:

(a) Completion of 2 years of licensed practice as a physical therapist.

(b) Completion of 50 hours of face-to-face continuing education from an entity accredited in accordance with s. 486.109 on the topic of dry needling which must include a determination by the physical therapist instructor that the physical therapist demonstrates the requisite psychomotor skills to safely perform dry needling. The continuing education must include instruction on all of the following areas:

1. Theory of dry needling.

2. Selection and safe handling of needles and other apparatus and equipment used in dry needling, including instruction on the proper handling of biohazardous waste.

3. Indications and contraindications for dry needling.



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41 4. Psychomotor skills needed to perform dry needling.

42 5. Postintervention care, including adverse responses,
43 adverse event recordkeeping, and any reporting obligations.

44 (c)1. Completion of at least 25 patient sessions of dry
45 needling performed under the supervision and competency of a
46 physical therapist who holds an active license to practice
47 physical therapy in any state or the District of Columbia, who
48 has actively practiced dry needling for at least 1 year and who
49 will document that the physical therapist has met the
50 supervision requirements and needs no additional supervised
51 sessions to perform dry needling; or

52 2. Completion of 25 patient sessions of dry needling
53 performed as a physical therapist licensed in another state or
54 in the United States Armed Forces.

55 (d) A requirement that dry needling may not be performed
56 without patient consent and must be a part of a patient's
57 documented plan of care.

58 (e) A requirement that dry needling may not be delegated to
59 any person other than a physical therapist who is authorized to
60 engage in dry needling under this chapter.

61 (2) The board shall require additional supervision and
62 training before a physical therapist's performance of dry
63 needling of the head and neck or torso if the board deems it
64 necessary for patient safety.

65 (3) The department shall, within existing resources, submit
66 a report to the President of the Senate and the Speaker of the
67 House of Representatives on or before December 31, 2022,
68 detailing the number of physical therapists in this state, the
69 number of physical therapists in this state performing dry



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needling, increases or decreases in the number of physical therapists in this state by geographic area, and any adverse medical incidents as defined in s. 381.028 involving physical therapists performing dry needling.

(4) The performance of dry needling in the practice of physical therapy may not be construed to limit the scope of practice of other licensed health care practitioners not governed by this chapter.

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

And the title is amended as follows:

Delete lines 6 - 8

and insert:

creating s. 486.117, F.S.; requiring the board to establish minimum standards of practice for the performance of dry needling by physical therapists; requiring the Department of Health to submit a report detailing certain information to the Legislature on or before a specified date; providing construction; providing



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2020	.	
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	.	
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The Committee on Rules (Albritton) recommended the following:

Senate Amendment to Amendment (415392)

Delete lines 45 - 50
and insert:
needling performed under the supervision of a physical therapist
who holds an active license to practice physical therapy in any
state or the District of Columbia, who has actively practiced
dry needling for at least 1 year, and who will document that the
physical therapist has met the supervision and competency
requirements and needs no additional supervised

By the Committees on Banking and Insurance; and Health Policy;
and Senators Albritton and Harrell

597-03514-20

2020792c2

A bill to be entitled

An act relating to physical therapy practice; amending s. 486.021, F.S.; revising and defining terms; amending s. 486.025, F.S.; revising the powers and duties of the Board of Physical Therapy Practice; requiring the board to establish minimum standards of practice for the performance of dry needling by physical therapists; providing construction; providing an effective date.

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

Section 1. Subsections (10) and (11) of section 486.021, Florida Statutes, are amended, and subsections (12) and (13) are added to that section, to read:

486.021 Definitions.—In this chapter, unless the context otherwise requires, the term:

(10) "Physical therapy assessment" means observational, verbal, or manual determinations of the function of the movement ~~musculoskeletal or neuromuscular~~ system relative to physical therapy, including, but not limited to, range of motion of a joint, motor power, motor control, posture ~~postural attitudes~~, biomechanical function, locomotion, or functional abilities, for the purpose of physical therapy ~~making recommendations for~~ treatment.

(11) "Practice of physical therapy" means the performance of physical therapy assessments and the treatment of any disability, injury, disease, or other health condition of human beings, or the prevention of such disability, injury, disease,

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

597-03514-20

2020792c2

or other health condition ~~of health~~, and the rehabilitation of ~~such disability, injury, disease, or other health condition as~~ related thereto by alleviating impairments, functional movement ~~limitations, and disabilities by designing, implementing, and~~ modifying treatment interventions through therapeutic exercise; functional movement training in self-management and in-home, community, or work integration or reintegration; manual therapy; massage; airway clearance techniques; maintaining and restoring the integumentary system and wound care; physical agent or modality; mechanical or electrotherapeutic modality; patient- related instruction the use of the physical, chemical, and other ~~properties of air; electricity; exercise; massage; the~~ performance of acupuncture only upon compliance with the criteria set forth by the Board of Medicine, when no penetration of the skin occurs; the use of radiant energy, including ultraviolet, visible, and infrared rays; ultrasound; water; the use of apparatus and equipment in the application of such treatment, prevention, or rehabilitation the foregoing or ~~related thereto;~~ the performance of tests of neuromuscular functions as an aid to the diagnosis or treatment of any human condition; or the performance of electromyography as an aid to the diagnosis of any human condition only upon compliance with the criteria set forth by the Board of Medicine.

(a) A physical therapist may implement a plan of treatment developed by the physical therapist for a patient or provided for a patient by a practitioner of record or by an advanced practice registered nurse licensed under s. 464.012. The physical therapist shall refer the patient to or consult with a practitioner of record if the patient's condition is found to be

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

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outside the scope of physical therapy. If physical therapy treatment for a patient is required beyond 30 days for a condition not previously assessed by a practitioner of record, the physical therapist shall have a practitioner of record review and sign the plan. The requirement that a physical therapist have a practitioner of record review and sign a plan of treatment does not apply when a patient has been physically examined by a physician licensed in another state, the patient has been diagnosed by the physician as having a condition for which physical therapy is required, and the physical therapist is treating the condition. For purposes of this paragraph, a health care practitioner licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466 and engaged in active practice is eligible to serve as a practitioner of record.

(b) The use of roentgen rays and radium for diagnostic and therapeutic purposes and the use of electricity for surgical purposes, including cauterization, are not "physical therapy" for purposes of this chapter.

(c) The practice of physical therapy does not authorize a physical therapy practitioner to practice chiropractic medicine as defined in chapter 460, including specific spinal manipulation, or acupuncture as defined in chapter 457. For the performance of specific chiropractic spinal manipulation, a physical therapist shall refer the patient to a health care practitioner licensed under chapter 460.

(d) This subsection does not authorize a physical therapist to implement a plan of treatment for a patient currently being treated in a facility licensed pursuant to chapter 395.

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(12) "Dry needling" means a skilled technique based on western medical concepts using apparatus or equipment of filiform needles to stimulate a myofascial trigger point for the evaluation and management of neuromusculoskeletal conditions, pain, movement impairments, and disabilities.

(13) "Myofascial trigger point" means an irritable section of the tissue often associated with palpable taut bands of muscle fibers.

Section 2. Section 486.025, Florida Statutes, is amended to read:

486.025 Powers and duties of the Board of Physical Therapy Practice.—

(1) The board may administer oaths, summon witnesses, take testimony in all matters relating to its duties under this chapter, establish or modify minimum standards of practice of physical therapy as defined in s. 486.021, including, but not limited to, standards of practice for the performance of dry needling by physical therapists, and adopt rules pursuant to ss. 120.536(1) and 120.54 to implement ~~the provisions of~~ this chapter. The board may also review the standing and reputability of any school or college offering courses in physical therapy and whether the courses of such school or college in physical therapy meet the standards established by the appropriate accrediting agency referred to in s. 486.031(3)(a). In determining the standing and reputability of any such school and whether the school and courses meet such standards, the board may investigate and personally inspect the school and courses ~~make personal inspection of the same~~.

(2) The board shall establish minimum standards of practice

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for the performance of dry needling by physical therapists, to include, at a minimum, all of the following:

(a) Completion of 2 years of licensed practice as a physical therapist.

(b) Completion of 50 hours of face-to-face continuing education from an entity accredited in accordance with s. 486.109 on the topic of dry needling which must include a determination by the physical therapist instructor that the physical therapist demonstrates the requisite psychomotor skills to safely perform dry needling. The continuing education must include instruction on all of the following areas:

1. Theory of dry needling.

2. Selection and safe handling of needles and other apparatus and equipment used in dry needling, including instruction on the proper handling of biohazardous waste.

3. Indications and contraindications for dry needling.

4. Psychomotor skills needed to perform dry needling.

5. Postintervention care, including adverse responses, adverse event recordkeeping, and any reporting obligations.

(c) 1. Completion of 25 patient sessions of dry needling performed under the indirect supervision of a physical therapist who holds an active license to practice physical therapy in any state or the District of Columbia and who has actively practiced dry needling for at least 1 year; or

2. Completion of 25 patient sessions of dry needling performed as a physical therapist licensed in another state or in the United States Armed Forces.

(d) A requirement that dry needling may not be performed without patient consent and must be a part of a patient's

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documented plan of care.

(e) A requirement that dry needling may not be delegated to any person other than a physical therapist who is authorized to engage in dry needling under this chapter.

(3) The performance of dry needling in the practice of physical therapy may not be construed to limit the scope of practice of other licensed health care practitioners not governed by this chapter.

Section 3. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 13, 2020

I respectfully request that **Senate Bill #792**, relating to Physical Therapy, be placed on the:

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

Senator Ben Albritton
Florida Senate, District 26

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/20

Meeting Date

SB 792

Bill Number (if applicable)

415392

Amendment Barcode (if applicable)

CURRENT AMENDMENT

Topic SB 792 - Amendment

Name DAVID BIBBEY

Job Title VP FLORIDA STATE ORIENTAL MED. ASSOC

Address 441 SE KINGS BAY DRIVE

Street

CRYSTAL RIVER, FL 34429

City

State

Zip

Phone

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA STATE ORIENTAL MEDICAL 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)

3/2/2020

Meeting Date

SB 792

Bill Number (if applicable)

Topic Dry needling

Amendment Barcode (if applicable)

Name Min Tian

Job Title Acupuncture physician

Address 362 office plaza drive

Phone 850-894-8999

Street

Tallahassee

State

FL

Zip

Email drmintian@a.yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Acupuncture 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)

3/2/20
Meeting Date

SB 792
Bill Number (if applicable)

Topic Physical Therapy Practice

Amendment Barcode (if applicable)

Name Burt Reed

Job Title Physical Therapist

Address 800 N. Calhoun St. Suite 1-A

Phone 850. 222. 1243

Street

Tallahassee, FL 32303

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Physical Therapy Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 822

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Albritton

SUBJECT: Drones

DATE: February 28, 2020 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rogers</u>	<u>Rogers</u>	<u>EN</u>	Favorable
2.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
3.	<u>Rogers</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 822 amends s. 934.50, F.S., to create an exception from the prohibition against law enforcement agencies using drones to gather information. The bill authorizes the use of drones by a non-law enforcement employee of the Fish and Wildlife Conservation Commission or of the Florida Forest Service for the purpose of managing and eradicating invasive exotic plants or animals on public lands and suppressing or mitigating wildfire threats.

There may be a positive indeterminate impact to the state associated with using drone technology (rather than manned aircraft) for invasive species management.

The bill takes effect on July 1, 2020.

II. Present Situation:

A drone, also called an Unmanned Aerial Vehicle (UAV) or Unmanned Aerial System (UAS), is defined in s. 934.50, F.S., as a powered, aerial vehicle that:

- Does not carry a human operator;
- Uses aerodynamic forces to provide vehicle lift;
- Can fly autonomously or be piloted remotely;

- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.¹

Drones range in size from wingspans of 6 inches to 246 feet, and can weigh from approximately 4 ounces to over 25,600 pounds.² They may be controlled manually or through an autopilot that uses a data link to connect the drone's pilot to the drone.³ Drones can be equipped with infrared cameras,⁴ and "LADAR" (laser radar).⁵ In 2011, it was reported that the U.S. Army contracted with two corporations to develop facial recognition and behavioral recognition technologies for drone use.⁶

Federal Aviation Authority

In February 2012, Congress passed the Federal Aviation Authority (FAA) Modernization and Reform Act of 2012 (Act), which required the FAA to safely open the nation's airspace to drones by September 2015.⁷ The FAA regulates the use of drones as it does all aircraft in the national airspace, with an emphasis on safety, efficiency, and national security, but views considerations such as privacy beyond the scope of FAA authority.⁸

Under the authority granted in the 2012 Act, the FAA issued its regulations on the operation and certification of small (less than 55 pounds at take-off) unmanned aircraft systems in June 2016.⁹ The 2016 small drone regulations are still in effect and include airspace restrictions and a waiver

¹ Section 934.50(2), F.S.

² 14 C.F.R. Part 91, Docket No. FAA-2006-25714, Department of Transportation, Federal Aviation Administration, *Unmanned Aircraft Operations in the National Airspace System*, February 6, 2007.

³ *Id.*

⁴ Infrared cameras can see objects through walls based on the relative levels of heat produced by the objects. *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Congressional Response*, Congressional Research Service, April 3, 2013, available at www.fas.org/sgp/crs/natsec/R42701.pdf; Search and rescue drones equipped with thermal imaging help first responders identify the location of people lost in chaotic scenes, and police departments have started using drones with thermal capabilities to identify the location of suspects while keeping an infrared eye on their officers. *Best Infrared Drones (Buying Guide)*, Spire Drones, <https://buythebestdrone.com/best-infrared-drones/> (last visited Dec. 23, 2019).

⁵ The research and development laboratory at the Massachusetts Institute of Technology has developed airborne lidar systems that generate detailed 3D imagery of terrain and structures, including those beneath dense foliage. The lab reports that the micro-lidar could be used under both clear and heavy foliage conditions for surveillance and reconnaissance missions as well as for humanitarian assistance and disaster relief operations. Lincoln Laboratory, Massachusetts Institute of Technology, R & D Projects, *Micro-lidar*, <https://www.ll.mit.edu/r-d/projects/micro-lidar> (last visited Dec. 23, 2019).

⁶ Popular Science, Clay Dillow, *Army Developing Drones That Can Recognize Your Face From a Distance*, September 28, 2011, <https://www.popsoci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind/> (last visited Dec. 23, 2019); see also PoliceOne.com, 2017 Guide to Emerging Technologies, Val Van Brocklin, *Facial recognition technology and a 'reasonable expectation of privacy'*, May 16, 2017, <https://www.policeone.com/emerging-tech-guide/articles/facial-recognition-technology-and-a-reasonable-expectation-of-privacy-cxdcrWsBRCu8Dieb/> (last visited Dec. 23, 2019).

⁷ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Congressional Response*, Congressional Research Service, April 3, 2013, available at www.fas.org/sgp/crs/natsec/R42701.pdf.

⁸ 14 C.F.R. Parts 21, 43, 61, 91, 101, 107, 119, 133, and 183; *Operation and Certification of Small Unmanned Aircraft Systems*, 81 Fed. Reg. 42064-42214.

⁹ *Id.*

mechanism allowing for deviations from drone operational restrictions upon application and authorization by the FAA.¹⁰

FAA Drone Airspace Restrictions

The FAA has designated generally restricted airspace including drone flight around and over sports stadiums and wildfires at specified times or under specified conditions. Drone operators must educate themselves on these restrictions prior to flying.¹¹

Use of Drones in Florida – Section 934.50, F.S.

A law enforcement agency is defined in s. 934.50, F.S., as a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.¹²

Section 934.50(3)(b), F.S., provides that a real property owner, tenant, occupant, invitee, or licensee of the property is presumed to have a reasonable expectation of privacy from drone surveillance¹³ of the property or the owner, tenant, occupant, invitee, or licensee by another person, state agency,¹⁴ or political subdivision,¹⁵ if he or she cannot be seen by persons at ground level who are in a place they have a legal right to be.¹⁶

Section 934.50, F.S., prohibits law enforcement agencies from using a drone to gather evidence or other information, with certain exceptions.¹⁷ Evidence obtained or collected by a law enforcement agency using a drone is not admissible in a criminal prosecution in any court of law in this state unless it is permitted under one of the statute's exceptions.¹⁸ An aggrieved party may

¹⁰ *Id.*

¹¹ It is a federal crime, punishable by up to 12 months in prison, to interfere with firefighting efforts on public lands. Congress has authorized the FAA to impose a civil penalty of up to \$20,000 against any drone pilot who interferes with wildfire suppression, law enforcement or emergency response operations. FAA, Unmanned Aircraft Systems, *Airspace Restrictions*, https://www.faa.gov/uas/where_to_fly/airspace_restrictions/#wildfires (last visited Nov. 6, 2019).

¹² Section 934.50(2)(d), F.S.

¹³ Surveillance is defined in s. 934.50(2)(e), F.S.: With respect to an owner, tenant, occupant, invitee, or licensee of privately owned real property, the observation of such persons with sufficient visual clarity to be able to obtain information about their identity, habits, conduct, movements, or whereabouts; or with respect to privately owned real property, the observation of such property's physical improvements with sufficient visual clarity to be able to determine unique identifying features or its occupancy by one or more persons.

¹⁴ A state agency, as defined in s. 11.45, F.S., is a separate agency or unit of state government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, commission, department, division, institution, office, officer, or public corporation, as the case may be, except any such agency or unit within the legislative branch of state government other than the Florida Public Service Commission.

¹⁵ A political subdivision is defined in s. 11.45, F.S., as a separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

¹⁶ Section 934.50(3)(b), F.S.; *see also* s. 934.50(5)(b)-(d) F.S., providing for compensatory damages, injunctive relief, attorney fees, and punitive damages for a violation of s. 934.50(3)(b), F.S.

¹⁷ Section 934.50(3)(a), F.S.

¹⁸ Section 934.50(6), F.S.

initiate a civil action against a law enforcement agency to obtain all appropriate relief in order to prevent or remedy a violation of s. 934.50, F.S.¹⁹

The exceptions in s. 934.50(4), F.S., for law enforcement agencies using drones to gather evidence and other information are as follows:

- The U.S. Secretary of Homeland Security determines that credible intelligence exists indicating a high risk of a terrorist attack by an individual or organization and the drone is used to counter the risk;
- The law enforcement agency first obtains a search warrant authorizing the use of a drone; or
- The law enforcement agency has reasonable suspicion that swift action is necessary to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve purposes including, but not limited to, facilitating the search for a missing person.²⁰

Non-law enforcement exceptions authorize use of a drone:

- By a person or an entity engaged in a business or profession licensed by the state if the drone is used only to perform reasonable tasks within the scope permitted under such person's or entity's license.
- By a property appraiser who uses a drone solely for the purpose of assessing property for ad valorem taxation.
- To capture images by or for an electric, water, or natural gas utility.
- For aerial mapping, if the person or entity using a drone for this purpose is operating in compliance with Federal Aviation Administration regulations.
- To deliver cargo, if the person or entity using a drone for this purpose is operating in compliance with Federal Aviation Administration regulations.
- To capture images necessary for the safe operation or navigation of a drone that is being used for a purpose allowed under federal or Florida law.
- By a communications service provider for routing, siting, installation, maintenance, or inspection of facilities used to provide communications services.

The Fish and Wildlife Conservation Commission,²¹ the Florida Department of Agriculture and Consumer Services (housing the Florida Forest Service²² and the Office of Agricultural Law Enforcement²³), and the Department of Environmental Protection²⁴ all have law enforcement personnel and could be considered law enforcement agencies.

¹⁹ Section 934.50(5)(a), F.S.

²⁰ Section 934.50(4)(a)-(c), F.S. There are additional exceptions to the prohibition on the use of drones that are not law enforcement agency related. These exceptions can be found in s. 934.50(4)(d)-(j), F.S.

²¹ FWC, *Law Enforcement*, <https://myfwc.com/about/inside-fwc/le/> (last visited Dec. 27, 2019).

²² DACS, Florida Forest Service, <https://www.fdacs.gov/Divisions-Offices/Florida-Forest-Service> (last visited Dec. 27, 2019).

²³ DACS, *Office of Agricultural Law Enforcement*, <https://www.fdacs.gov/Divisions-Offices/Agricultural-Law-Enforcement> (last visited Dec. 27, 2019).

²⁴ DEP, *Division of Law Enforcement and Emergency Response*, <https://floridadep.gov/dleer> (last visited Dec. 27, 2019).

Weaponized Drones Prohibited in Florida

In Florida, s. 330.411, F.S., prohibits a person from possessing or operating an unmanned aircraft or unmanned aircraft system as defined in s. 330.41, F.S., with an attached weapon, firearm, explosive, destructive device, or ammunition as defined in s. 790.001, F.S.²⁵ North Dakota is the only state that allows law enforcement agencies to utilize weaponized drones. The weapons are limited to the non-lethal variety such as tear gas, rubber bullets, beanbags, pepper spray, and tasers.²⁶

Use of Drones for Land Management

The U.S. Department of Interior (DOI)²⁷ and the U.S. Forest Service²⁸ use drones extensively to enhance science, safety, and savings in relation to their core missions. Drones can be less disruptive to sensitive animal species than manned aircraft.²⁹ They can carry sophisticated sensors and possess the ability to transmit real-time data that can be recorded for future analysis.³⁰ Drones can gather repeatable, scientifically valid observations leading to better science and therefore better policy decisions.³¹ DOI missions often expose personnel to significant safety hazards. From 1937 to 2000, 66 percent of all field biologist fatalities in DOI were aviation-related.³² Additionally, drones have also been used to replace ground personnel in certain missions, reducing their risk of injury. The cost of using drones can be significantly less expensive than using manned flights.³³ DOI identifies the following types of endeavors as being particularly well suited to drone technology:

- Wildfires;
- Wildlife Monitoring;
- Hydrology;
- Geological surveys;
- Geophysical surveys; and
- Volcanic activity.³⁴

²⁵ Section 330.41(2)(c), F.S., defines an unmanned aircraft system as a drone and its associated elements, including communication links and the components used to control the drone which are required for the pilot in command to operate the drone safely and efficiently; s. 330.41(2)(b), F.S., specifies that “drone” has the same meaning as s. 934.50(2), F.S.

²⁶ North Dakota House Bill 1328 (2015), available at <https://www.legis.nd.gov/assembly/64-2015/documents/15-0259-05000.pdf?20150501154934>.

²⁷ Department of Interior, *Unmanned Aircraft Systems (UAS) Integration Strategy* (2015-2020), available at https://www.doi.gov/sites/doi.gov/files/uploads/DOI_UAS_Integration_Strategy_2015-2020.pdf.

²⁸ U.S. Forest Service, *Unmanned Aircraft Systems*, <https://www.fs.fed.us/managing-land/fire/aviation/uas> (last visited Dec. 23, 2019).

²⁹ Department of Interior, *Unmanned Aircraft Systems (UAS) Integration Strategy* (2015-2020), available at https://www.doi.gov/sites/doi.gov/files/uploads/DOI_UAS_Integration_Strategy_2015-2020.pdf.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Department of Interior Office of Aviation Services, *DOI Unmanned Aircraft Systems (UAS)*, <https://www.doi.gov/aviation/uas> (last visited Dec. 23, 2019).

The U.S. Fish and Wildlife Service uses drones for wildfire detection and observation, invasive plant and animal monitoring and mapping, wildlife population counts, mapping coastal erosion, discovering illegal activity on public lands, and search and rescue operations.³⁵

Invasive Species Management

The Florida Fish and Wildlife Conservation Commission (FWC) regulates nonnative animal species and invasive aquatic plants.³⁶ Nonnative species are animals living outside captivity and which are not historically present in the state.³⁷ More than 500 fish and wildlife nonnative species have been documented in Florida.³⁸ Nonnative species do not all pose a threat to Florida's ecology, but some can become invasive species by causing harm to native species and domestic pets, posing a threat to human health and safety, or causing economic damage.³⁹ A few of Florida's nonnative species arrived by natural range expansions, but many were introduced by humans. The most common pathway by which exotic fish and wildlife species find their way into Florida's habitats is through escape or release by pet owners.⁴⁰

Examples of invasive species in Florida that were originally pets are Burmese pythons, Nile monitor lizards, Gambian pouched rats, monk parakeets, and Cuban tree frogs. Other invasive species in Florida include lionfish, several other species of python and anaconda, wild boar, Rhesus macaque, green iguana, Nile crocodile, and Argentine tegu.⁴¹

To manage and minimize the impacts of nonnative species, it is unlawful to import for sale or use, or to release within the state, any species not native to Florida, unless authorized by FWC.⁴² FWC has identified priority invasive species, including tegu lizards, several snake species, and lionfish.⁴³ FWC implemented a pilot program in 2018 to use private contractors to slow the advance and eradicate the priority invasive species from the state.⁴⁴

Department of Agriculture and Consumer Services' (DACS's) Division of Plant Industry has the primary responsibility for addressing invasive plant species with a focus on plant pests and noxious weeds.⁴⁵ DACS's Forest Service also plays an important role in invasive species management. Invasive plants can displace native plants and associated wildlife, and can alter natural processes such as fire regimes and hydrology.⁴⁶

³⁵ U.S. Fish and Wildlife Service, *Unmanned Aircraft Systems take flight in Southeast Region*, <https://www.fws.gov/southeast/articles/unmanned-aircraft-systems-take-flight-in-southeast-region/> (last visited Dec. 23, 2019).

³⁶ Sections 369.252, 379.231, and 379.2311, F.S.

³⁷ FWC, *Nonnative Species Information*, <https://myfwc.com/wildlifehabitats/nonnatives/exotic-information/> (last visited Dec. 23, 2019).

³⁸ FWC, *Florida's Nonnative Fish and Wildlife*, <http://myfwc.com/wildlifehabitats/nonnatives/> (last visited Dec. 23, 2019).

³⁹ *Id.*

⁴⁰ FWC, *Nonnative Species Information*, <https://myfwc.com/wildlifehabitats/nonnatives/exotic-information/> (last visited Jan 7, 2020).

⁴¹ Section 379.2311, F.S.

⁴² Section 379.231, F.S.

⁴³ Section 379.2311, F.S.

⁴⁴ *Id.*

⁴⁵ See generally, chapter 581, F.S.; Fla. Admin. Code R. Chap. 5B-57.

⁴⁶ DACS, Forest Service, *Invasive Non-Native Plants*, <https://www.fdacs.gov/Divisions-Offices/Florida-Forest-Service/Our-Forests/Forest-Health/Invasive-Non-Native-Plants> (last visited Dec. 23, 2019).

The Division of State Lands within the Department of Environmental Protection is tasked with addressing the management of state lands, including the management of invasive species on conservation lands.⁴⁷ The water management districts are responsible for managing district-owned lands, and the South Florida Water Management District (SFWMD), in particular, has extensive programs for invasive plant and animal species. Specifically, SFWMD “is the largest single landowner in the region with nearly 1.5 million acres of public land within our boundaries.... Non-native plants and animals often aggressively invade natural habitats and drastically alter the ecology of natural systems.”⁴⁸ SFWMD has numerous programs to combat invasive species including utilizing aerial drone technology to survey district lands from above to spot invasive pythons and alert hunters where they have been seen to help find and eliminate them faster.⁴⁹ Note, however, that the water management districts do not employ law enforcement personnel.

Wildfire Management

The Florida Forest Service works to manage fire levels across the state to reduce threat to life, property, forests, and at-risk resources while promoting natural resource management. DACS has several programs intended to control wildfires, including the Fire Prevention Program, the Firewise USA Program, and Prescribed Fire. DACS also provides assistance in many forms including the Florida Risk Assessment System, a Smoke Screening Tool, and the Fire Management Information System Mapping Tool.⁵⁰

III. Effect of Proposed Changes:

CS/SB 822 amends s. 934.50, F.S., to authorize a non-law enforcement employee of the FWC or of the Florida Forest Service to use drones for the purpose of managing and eradicating invasive exotic plants or animals on public lands.

The bill provides an effective date of July 1, 2020.

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.

⁴⁷ Sections 253.034(5)(b) and 259.032(9)(e), F.S.

⁴⁸ SFWMD, *Vegetation and Exotic Control*, <https://www.sfwmd.gov/our-work/vegetation> (last visited Dec. 23, 2019).

⁴⁹ SFWMD, *SFWMD Python Hunters Nearing 2,000 Snakes Eliminated*, <https://myemail.constantcontact.com/SFWMD-Python-Hunters-Nearing-2-000-Snakes-Eliminated.html?soid=1117910826311&aid=9hpww0vXYtw> (last visited Jan. 23, 2019).

⁵⁰ FDACS, *Wildland Fire*, <https://www.fdacs.gov/Forest-Wildfire/Wildland-Fire> (last visited Jan. 27, 2020).

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:

There may be a positive indeterminate impact to the state associated with using drone technology for invasive species management. One example of the cost savings associated with the use of drones is that the U.S. Fish and Wildlife Service and U.S. Geological Survey estimated the cost to survey a specific project was about \$2,500 using drone technology. Estimates to fly a similarly equipped manned aircraft for that mission ranged from \$40,000-\$50,000.⁵¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

During the 2019 Legislative session, certain law enforcement positions were transferred from FWC to DEP, making DEP a law enforcement agency. Additionally, the Forest Service may not be the only entity within DACS that could potentially utilize drones for invasive exotic species management. Under the bill as written, the Division of Plant Industry may not be able to use drones to manage invasive species.

⁵¹ Department of Interior, *Unmanned Aircraft Systems (UAS) Integration Strategy* (2015-2020), available at https://www.doi.gov/sites/doi.gov/files/uploads/DOI_UAS_Integration_Strategy_2015-2020.pdf.

VIII. Statutes Affected:

This bill substantially amends section 934.50 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on January 27, 2020:

The CS allows non-law enforcement employees of the FWC or of the Florida Forest Service to use drones for the purpose of suppressing and mitigating wildfires in addition to managing and eradicating invasive exotic plants or animals on public lands.

- B. **Amendments:**

None.

By the Committee on Governmental Oversight and Accountability;
and Senator Albritton

585-02630-20

2020822c1

1 A bill to be entitled
2 An act relating to drones; amending s. 934.50, F.S.;
3 adding an exception to prohibited uses of a drone;
4 providing an effective date.
5
6 Be It Enacted by the Legislature of the State of Florida:
7
8 Section 1. Paragraph (k) is added to subsection (4) of
9 section 934.50, Florida Statutes, and subsection (3) of that
10 section is republished, to read:
11 934.50 Searches and seizure using a drone.—
12 (3) PROHIBITED USE OF DRONES.—
13 (a) A law enforcement agency may not use a drone to gather
14 evidence or other information.
15 (b) A person, a state agency, or a political subdivision as
16 defined in s. 11.45 may not use a drone equipped with an imaging
17 device to record an image of privately owned real property or of
18 the owner, tenant, occupant, invitee, or licensee of such
19 property with the intent to conduct surveillance on the
20 individual or property captured in the image in violation of
21 such person's reasonable expectation of privacy without his or
22 her written consent. For purposes of this section, a person is
23 presumed to have a reasonable expectation of privacy on his or
24 her privately owned real property if he or she is not observable
25 by persons located at ground level in a place where they have a
26 legal right to be, regardless of whether he or she is observable
27 from the air with the use of a drone.
28 (4) EXCEPTIONS.—This section does not prohibit the use of a
29 drone:

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

585-02630-20

2020822c1

30 (k) By a non-law enforcement employee of the Fish and
31 Wildlife Conservation Commission or of the Florida Forest
32 Service for the purposes of managing and eradicating invasive
33 exotic plants or animals on public lands and suppressing and
34 mitigating wildfire threats.
35 Section 2. This act shall take effect July 1, 2020.

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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: January 27, 2020

I respectfully request that **822**, relating to Drones, be placed on the:

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

Senator Ben Albritton
Florida Senate, District 26

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 1042

INTRODUCER: Senator Albritton

SUBJECT: Aquatic Preserves

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Anderson	Rogers	EN	Favorable
2. Hackett	McVane	GO	Favorable
3. Anderson	Phelps	RC	Favorable

I. Summary:

SB 1042 designates the coastal region of Pasco, Hernando, and Citrus counties as the Nature Coast Aquatic Preserve and provides legislative intent. The bill provides the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) with the authority to maintain the preserve in a manner that is in the public interest and specifies authorized and prohibited activities within the preserve. The bill requires the Board of Trustees to adopt and enforce rules related to the management and preservation of the preserve and specifies that the creation of the preserve shall not infringe upon the riparian rights of adjacent property owners. The bill provides for civil penalties and specifies the preserve is subject to the Power Plant Siting Act.

The Department of Environmental Protection estimates to need 3 full-time equivalent positions and roughly \$400,000 in the 2020-21 fiscal year to implement the aquatic preserve. See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2020.

II. Present Situation:

Sovereign Submerged Lands

Upon attaining statehood in 1845, “the state of Florida by virtue of its sovereignty assumed title to and sovereignty over the navigable waters in the state and lands thereunder.”¹ The title to lands under navigable waters passed from the United States to the state through operation of the

¹ *Merrill-Stevens Co. v. Durkee*, 62 Fla. 549, 57 So. 428, 432 (1912).

federal “equal footing” doctrine,² and included the submerged bed up to the “ordinary high water mark” of navigable rivers and lakes.³

The Florida Constitution⁴ provides that:

The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.

Sovereign submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters. Title to sovereign submerged lands is held by the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees).⁵ The Board of Trustees is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by the state, including all sovereign submerged lands.⁶ The Department of Environmental Protection’s Office of Resilience and Coastal Protection carries out the Aquatic Preserve Program on behalf of the Board of Trustees.

Aquatic Preserves

The Florida Aquatic Preserve Act of 1975⁷ was created to ensure that the state-owned submerged lands in areas which have exceptional biological, aesthetic, and scientific value be set aside forever as aquatic preserves or sanctuaries for the benefit of future generations.⁸ An aquatic preserve is an exceptional area of submerged lands and its associated waters set aside to be maintained in its natural condition.⁹ Florida has 41 aquatic preserves, encompassing about 2.2 million acres.¹⁰ All but four of these submerged lands are located along Florida’s 8,400 miles of coastline, in the shallow waters of marshes and estuaries. The other four are located inland, near springs and rivers. Aquatic preserves serve many valuable ecological and economic functions, including providing nurseries for juvenile fish and other aquatic life, and providing habitat for shorebirds. The aquatic preserves are also valuable for recreation, providing a host of outdoor activities such as fishing, swimming, and boating.¹¹

² *Pollard v. Hagan*, 44 U.S. 212 (1845) (Under the Equal Footing Doctrine, the new states admitted into the Union since the adoption of the Constitution were given the same rights in submerged lands as the original states).

³ *Coastal Petroleum Co. v. American Cyanamid Co.*, 492 So. 2d 339, 342 (Fla 1986); *Tilden v. Smith*, 94 Fla. 502, 113 So. 708, 712 (1927) (Concerning the boundary of fresh waters, the ordinary high water mark is the point where the presence and action of the water are so common and usual as to leave a mark upon the soil).

⁴ Art. X, s. 11 of the Florida Constitution.

⁵ DEP, *Submerged Land Management*, <https://floridadep.gov/lands/bureau-public-land-administration/content/submerged-lands-management> (last visited Jan. 13, 2020).

⁶ Section 253.03, F.S.

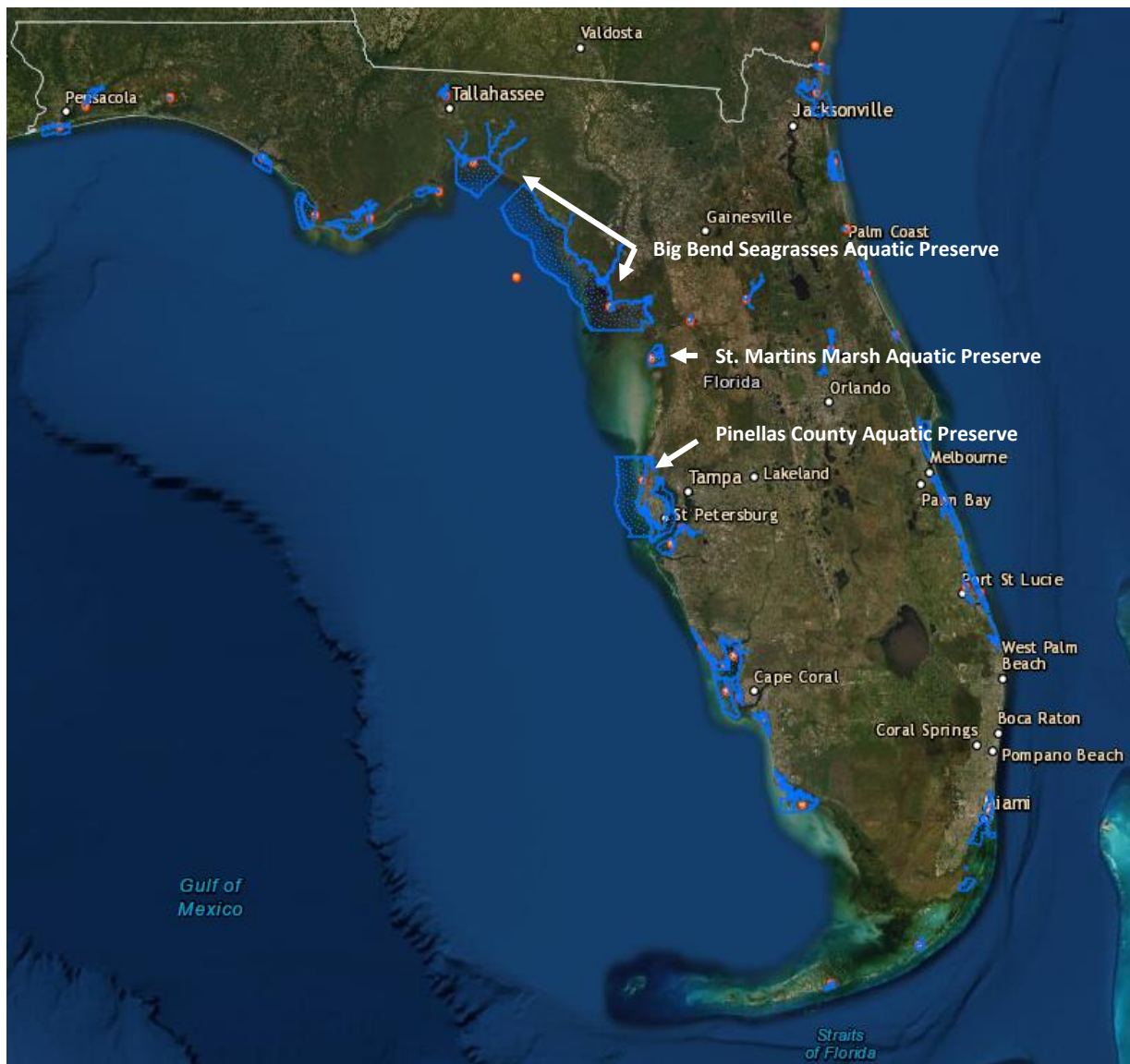
⁷ Section 258.35, F.S.

⁸ Section 258.36, F.S.

⁹ Section 258.37, F.S.

¹⁰ DEP, *Aquatic Preserve Program*, <https://floridadep.gov/rcp/aquatic-preserve> (last visited Jan. 1, 2020).

¹¹ *Id.*



Above is a map of Florida's aquatic preserves¹² with the Big Bend Seagrasses Aquatic Preserve, the Pinellas County Aquatic Preserve, and the St. Martins March Aquatic Preserve specifically identified (each are mentioned in the bill as the proposed preserve would lie between them).

Current law¹³ restricts certain activities, such as the construction of utility cables and pipes and spoil disposal, in aquatic preserves in order to conserve their unique biological, aesthetic, and scientific value. Section 258.42, F.S., directs the Board of Trustees to maintain aquatic preserves subject to the following requirements:

¹² DEP, Aquatic Preserves of Florida StoryMap Component, <https://fdep.maps.arcgis.com/home/webmap/viewer.html?webmap=4cf441902aef48dfac100d90f37df3f0> (last visited Jan. 4, 2020).

¹³ Section 258.42, F.S.

- No further sale, lease, or transfer of sovereign submerged lands may be approved or consummated by the Board of Trustees except when such sale, lease, or transfer is in the public interest.
- The Board of Trustees cannot approve the waterward relocation or setting of bulkhead lines waterward of the line of mean high water within the preserve except when public road and bridge construction projects have no reasonable alternative and it is shown to be not contrary to the public interest.
- No further dredging or filling of submerged lands may be approved by the Board of Trustees except for certain activities that must be authorized pursuant to a permit.

The Board of Trustees' rules further provide that only minimal or maintenance dredging is permitted in a preserve, and any alteration of the preserves' physical conditions is restricted unless the alteration enhances the quality or utility of the preserve or the public health generally.¹⁴ Minerals may not be mined (with the exception of oyster shells), and oil and gas well drilling is prohibited. However, the state is not prohibited from leasing the oil and gas rights and permitting drilling from outside the preserve to explore for oil and gas if approved by the Board of Trustees. Docking facilities and structures for shore protection are restricted as to size and location.¹⁵

No wastes or effluents may be discharged into the preserve which substantially inhibit the accomplishment of the purposes of this act. Riparian owners may selectively trim or alter mangroves on adjacent publicly owned submerged lands, provided that the selective trimming or alteration is in compliance with the requirements of state law including permit requirements for mangrove trimming.¹⁶

Fees

Leases of sovereign submerged lands are significantly more expensive for leases within aquatic preserves. The annual fee for standard term leases is six percent of the annual income, the base fee (currently \$0.1413/sq. ft.), or the minimum annual fee (currently \$423.89). Leases in aquatic preserves carry an additional charge equal to twice the base fee, which currently amounts to \$0.2826 per square foot. The additional charge is applied as long as 75% or more of the lease shoreline and the adjacent 1000 feet on either side of the leased area is in a natural, unbulkheaded, non-seawalled or non-riprapped condition.¹⁷

Nature Coast

"The Nature Coast" is located along Florida's Big Bend region and encompasses 980,000 acres across eight counties (Citrus, Dixie, Hernando, Jefferson, Pasco, Levy, Taylor, and Wakulla) and

¹⁴ Fla. Admin. Code R. 18-20.004. Note that every aquatic preserve in the state has specific restrictions and policies that are set out in the Florida Administrative Code and/or ch. 258, F.S.

¹⁵ Section 258.42, F.S. Administrative rules applicable to aquatic preserves generally may be found in Chapters 18-20, F.A.C., Management Policies, Standards and Criteria.

¹⁶ Section 258.42, F.S.

¹⁷ Fla. Admin. Code Rule 18-21.011.

the City of Dunnellon.¹⁸ This area is a sanctuary to endangered species¹⁹ and has many natural resources, including mangroves, spring fed rivers, limestone outcroppings, sandy beaches, oyster bars, mud flats, and seagrass beds.²⁰

Florida Electrical Power Plant Siting Act

The Power Plant Siting Act (PPSA)²¹ is the state's centralized process for licensing large power plants. DEP acts as the lead agency in the certification process, which replaces local and state permits.²² The certification addresses permitting, land use and zoning, and property interests. A certification grants approval for the location of the power plant and its associated facilities such as a natural gas pipeline supplying the plant's fuel, rail lines for bringing coal to the site, and roadways and electrical transmission lines carrying power to the electrical grid, among others. As it relates to aquatic preserves, the PPSA specifically provides that the certification can exempt the applicant from state statutes or rules protecting aquatic preserves upon a finding that the public interests set forth in the PPSA override the public interest protected by the statute or rule.²³

¹⁸ Nature Coast Coalition, Nature Coast History, <http://www.naturecoastcoalition.com/nchistory.htm> (last visited Jan. 13, 2020), see also Florida Nature Coast, *Where would you like to go?*, <http://floridanaturecoast.org/> (last visited Jan. 14, 2020).

¹⁹ *Id.*

²⁰ Department of Environmental Protection, *House Bill 1123*, 2 (Feb. 27, 2014)(on file with the Senate Committee on Environmental and Natural Resources).

²¹ Sections 403.501-403.518, F.S.

²² Section 403.504, F.S.

²³ Section 403.511(2)(b)2., F.S.

III. Effect of Proposed Changes:



SB 1042 creates the Nature Coast Aquatic Preserve in the area described by the map above.

The bill creates the “Nature Coast Aquatic Preserve” in the area identified above. The intent of the designation is that the Nature Coast Aquatic Preserve be preserved in an essentially natural condition so that its biological and aesthetic values may endure for the enjoyment of future generations.

The following restrictions will be applicable within the aquatic preserve:

- The Board of Trustees may not sell, transfer, or lease sovereign submerged lands in the preserve, except upon a showing of extreme hardship on the part of the applicant and a determination by the board that such sale, transfer, or lease is in the public interest.
- The Board of Trustees may not approve the further dredging or filling of submerged lands of the preserve except:
 - Minimum dredging and spoiling of submerged lands may be authorized for existing public navigation projects, as a public necessity, or for preservation of the preserve.

- Other alterations of the physical conditions of the submerged lands, including the placement of riprap, may be authorized as necessary to enhance the quality and utility of the aquatic preserve.
- The Board of Trustees may authorize minimum dredging and filling of the submerged lands for the construction and maintenance of marinas, piers, or docks and the maintenance of existing attendant navigation channels and access roads. Such projects may be authorized only upon a specific finding by the board that there is assurance that the project will be constructed and operated in a manner that will not adversely affect the water quality, valuable habitats, and utility of the preserve. This provision does not authorize the connection of upland canals to the waters of the preserve.
- The Board of Trustees may authorize the dredging of submerged lands if the Board of Trustees determines that such dredging is necessary to eliminate conditions hazardous to the public health or to eliminate stagnant waters, islands, and spoil banks, and that such dredging would enhance the aesthetic and environmental quality, habitats, and utility of the preserve and is clearly in the public interest as determined by the board.
- Before approving any dredging or filling the board must provide for public notice of such dredging or filling.
- There may not be any drilling of wells, excavation for shell or minerals, or erection of structures other than docks within the preserve unless such activity is associated with activity that is authorized by the bill.
- The Board of Trustees may not approve the seaward relocation of bulkhead lines or the further establishment of bulkhead lines except when a proposed bulkhead line is located at the line of mean high water along the shoreline. Construction, replacement, or relocation of a seawall is prohibited without the approval of the Board of Trustees, which approval may be granted only if riprap construction is used in the seawall. Approval is granted by a letter of consent.
- The Board of Trustees may, for lands lying within the preserve:
 - Enter into agreements for and establish lines delineating sovereignty and privately owned lands.
 - Enter into agreements for the exchange of, and exchange, sovereignty lands for privately owned lands.
 - Accept gifts of land within or contiguous to the preserve.
 - Negotiate or enter into agreements with owners of lands contiguous to public lands for any public or private use of any of such lands.
 - Take any action that is convenient or necessary to accomplish any of the acts and matters authorized under this paragraph.
 - Conduct restoration and enhancement efforts in the preserve and its tributaries.
 - Stabilize eroding shorelines of the preserve and its tributaries which are contributing to turbidity by planting natural vegetation to the greatest extent feasible and placing riprap, as determined by Pasco, Hernando, and Citrus Counties in conjunction with the Department of Environmental Protection.

The Board of Trustees is required to adopt and enforce rules that provide:

- Additional preserve management criteria as necessary to accommodate special circumstances.

- Regulation of human activity within the preserve in such a manner as not to interfere unreasonably with lawful and traditional public uses of the preserve, such as sport fishing, commercial fishing, boating, and swimming.
- Other uses of the preserve, or human activity within the preserve, although not originally contemplated, may be authorized, but only after a formal finding of compatibility with the purposes of the aquatic preserve.

The establishment or the management of the preserve is not authorized to infringe upon the riparian rights of upland property owners adjacent to or within the preserve. Reasonable improvement for ingress and egress, mosquito control, shore protection, public utility expansion, and similar purposes may be authorized by the board or the Department of Environmental Protection, subject to any other applicable laws under the jurisdiction of other agencies. However, before approving any such improvements, the board or the department must give public notice. In addition, the bill authorizes enforcement pursuant to the Environmental Protection Act,²⁴ and authorizes the Department of Legal Affairs to bring a civil action with a penalty of \$5,000 per day against a person who violates the provisions of the bill.

The bill clarifies that it is subject to the Florida Electrical Power Plant Siting Act.

The bill takes effect July 1, 2020.

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 a state tax shares 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.

²⁴ Section 403.412, F.S., is the Environmental Protection Act, which authorizes the Department of Legal Affairs, any political subdivision, or citizen of the state to maintain an action for injunctive relief against any agency with the duty of enforcing laws, rules, and regulations for the protection of the air, water, and other natural resources of the state to compel such governmental authority to enforce such laws, rules, and regulations.

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

None.

B. Private Sector Impact:

Sovereign submerged lands leases within the area identified for the Nature Coast Aquatic Preserve will become more expensive under the current fee schedules. This negatively impacts future lessees.

C. Government Sector Impact:**Revenues**

Fees for leases of sovereign submerged lands located within the new aquatic preserve will increase under the current fee schedule, resulting in higher revenues for the state.

Expenditures

The Department of Environmental Protection estimates it will incur roughly \$216,000 in recurring costs, as well as roughly \$175,000 in non-recurring start-up costs. These costs include three additional full-time equivalent positions to establish and maintain the new aquatic preserve. These costs and workload needs are an amount higher than the Department of Environmental Protection is able to absorb within current funding.

The Department of Environmental Protection will incur some costs associated with the adoption of rules required by this bill. Such costs should be absorbed within the department's current level of resources.

The bill allows the Department of Legal Affairs to bring an action for civil penalties of \$5,000 per day for persons who violate provisions relating to the Nature Coast Aquatic Preserve. This would have a positive fiscal impact to the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 258.3991 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 Albritton

26-01332-20

20201042__

A bill to be entitled

An act relating to aquatic preserves; creating s. 258.3991, F.S.; creating the Nature Coast Aquatic Preserve; designating the preserve for inclusion in the aquatic preserve system; describing the boundaries of the preserve; outlining the authority of the Board of Trustees of the Internal Improvement Trust Fund in respect to the preserve; requiring the board to adopt rules; prohibiting the establishment and management of the preserve from infringing upon the riparian rights of upland property owners adjacent to or within the preserve; providing civil penalties; providing applicability; providing an effective date.

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

Section 1. Section 258.3991, Florida Statutes, is created to read:

258.3991 Nature Coast Aquatic Preserve.—

(1) DESIGNATION.—The area described in subsection (2) which lies within Pasco, Hernando, and Citrus Counties, is designated by the Legislature for inclusion in the aquatic preserve system under the Florida Aquatic Preserve Act of 1975 and shall be known as the "Nature Coast Aquatic Preserve." It is the intent of the Legislature that the Nature Coast Aquatic Preserve be preserved in an essentially natural condition so that its biological and aesthetic values may endure for the enjoyment of future generations.

(2) BOUNDARIES.—For the purposes of this section, the

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

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Nature Coast Aquatic Preserve consists of the state-owned submerged lands lying west of the right-of-way of U.S. Highway 19 within the boundaries of Pasco County, as described in s. 7.51, Hernando County, as described in s. 7.27, and Citrus County, as described in s. 7.09, to the south boundary of St. Martins Marsh Aquatic Preserve, as described in s. 258.39(20), and the westerly projection thereof, and also including all the state-owned submerged lands within Citrus County lying west of the west boundary of St. Martins Marsh Aquatic Preserve, lying north of the westerly projection of the south boundary of St. Martins Marsh Aquatic Preserve, and lying south of a line extending westerly along northerly coordinate 1663693 feet, Florida West Zone (NAD83), where the northern and southern boundaries of the Nature Coast Aquatic Preserve will be continuous with the southern boundary of the Big Bend Seagrasses Aquatic Preserve and the northern boundary of the Pinellas County Aquatic Preserve, respectively.

(3) AUTHORITY OF TRUSTEES.—The Board of Trustees of the Internal Improvement Trust Fund shall maintain the aquatic preserve subject to the following:

(a) The board may not approve or consummate the further sale, transfer, or lease of sovereign submerged lands in the preserve, except upon a showing of extreme hardship on the part of the applicant and a determination by the board that such sale, transfer, or lease is in the public interest.

(b) The board may not approve the further dredging or filling of submerged lands of the preserve except:

1. Minimum dredging and spoiling of submerged lands may be authorized for existing public navigation projects, as a public

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necessity, or for preservation of the preserve according to the expressed intent of this section.

2. Other alterations of the physical conditions of the submerged lands, including the placement of riprap, may be authorized as necessary to enhance the quality and utility of the aquatic preserve.

3. The board may authorize minimum dredging and filling of the submerged lands for the construction and maintenance of marinas, piers, or docks and the maintenance of existing attendant navigation channels and access roads. Such projects may be authorized only upon a specific finding by the board that there is assurance that the project will be constructed and operated in a manner that will not adversely affect the water quality, valuable habitats, and utility of the preserve. This subparagraph does not authorize the connection of upland canals to the waters of the preserve.

4. The board may authorize the dredging of submerged lands if the board determines that such dredging is necessary to eliminate conditions hazardous to the public health or to eliminate stagnant waters, islands, and spoil banks, and that such dredging would enhance the aesthetic and environmental quality, habitats, and utility of the preserve and is clearly in the public interest as determined by the board.

(c) Before approving any dredging or filling as provided in paragraph (b), the board must give public notice of such dredging and filling as required under s. 253.115.

(d) There may not be any drilling of wells, excavation for shell or minerals, or erection of structures other than docks within the preserve unless such activity is associated with

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activity that is authorized under this section.

(e) The board may not approve the seaward relocation of bulkhead lines or the further establishment of bulkhead lines except when a proposed bulkhead line is located at the line of mean high water along the shoreline. Construction, replacement, or relocation of a seawall is prohibited without the approval of the board, which approval may be granted only if riprap construction is used in the seawall. The board may grant approval under this paragraph by a letter of consent.

(f) Notwithstanding this section, the board may, for lands lying within the preserve:

1. Enter into agreements for and establish lines delineating sovereignty and privately owned lands.

2. Enter into agreements for the exchange of, and exchange, sovereignty lands for privately owned lands.

3. Accept gifts of land within or contiguous to the preserve.

4. Negotiate or enter into agreements with owners of lands contiguous to public lands for any public or private use of any of such lands.

5. Take any action that is convenient or necessary to accomplish any of the acts and matters authorized under this paragraph.

6. Conduct restoration and enhancement efforts in the preserve and its tributaries.

7. Stabilize eroding shorelines of the preserve and its tributaries which are contributing to turbidity by planting natural vegetation to the greatest extent feasible and placing riprap, as determined by Pasco, Hernando, and Citrus Counties in

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117 conjunction with the Department of Environmental Protection.

118 (4) RULES.—

119 (a) The board shall adopt and enforce reasonable rules to

120 carry out this section and to provide:

121 1. Additional preserve management criteria as necessary to

122 accommodate special circumstances.

123 2. Regulation of human activity within the preserve in such

124 a manner as not to interfere unreasonably with lawful and

125 traditional public uses of the preserve, such as sport fishing,

126 commercial fishing, boating, and swimming.

127 (b) Other uses of the preserve, or human activity within

128 the preserve, although not originally contemplated, may be

129 authorized by the board, but only subsequent to a formal finding

130 of compatibility with the purposes of this section.

131 (5) RIPARIAN RIGHTS.—The establishment or the management of

132 the preserve may not operate to infringe upon the riparian

133 rights of upland property owners adjacent to or within the

134 preserve. Reasonable improvement for ingress and egress,

135 mosquito control, shore protection, public utility expansion,

136 and similar purposes may be authorized by the board or the

137 Department of Environmental Protection, subject to any other

138 applicable laws under the jurisdiction of other agencies.

139 However, before approving any such improvements, the board or

140 the department must give public notice as required under s.

141 253.115.

142 (6) ENFORCEMENT.—This section may be enforced in accordance

143 with s. 403.412. In addition, the Department of Legal Affairs

144 may bring an action for civil penalties of \$5,000 per day

145 against a person as defined in s. 1.01(3) who violates this

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146 section or any rule or regulation issued hereunder.

147 (7) APPLICABILITY.—This section is subject to the Florida

148 Electrical Power Plant Siting Act, as described in ss. 403.501-

149 403.518.

150 Section 2. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 10, 2020

I respectfully request that **Senate Bill #1042**, relating to Aquatic Preserves, be placed on the:

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

A handwritten signature in cursive script, appearing to read "Ben Albritton".

Senator Ben Albritton
Florida Senate, District 26

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 1082

INTRODUCER: Agriculture Committee and Senator Albritton

SUBJECT: Domestic Violence Injunctions

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Akhavein	Becker	AG	Fav/CS
2. Davis	Cibula	JU	Favorable
3. Akhavein	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1082 expressly authorizes a court, when granting a domestic violence injunction, to:

- Award the petitioner the exclusive care, possession, or control of an animal that is owned, possessed, harbored, kept, or held by the petitioner, the respondent, or a minor child who is residing in the residence or household of the petitioner or respondent.
- Order the respondent to have no contact with the animal.
- Prohibit the respondent from taking, transferring, encumbering, concealing, harming, or otherwise disposing of the animal.

The bill does not apply to animals owned primarily for a bona fide agricultural purpose or to a service animal if the respondent is the service animal's handler.

The bill takes effect July 1, 2020.

II. Present Situation:

Domestic Violence Data

According to data compiled by the Florida Department of Law Enforcement, 104,914 incidents of domestic violence were reported in 2018. The vast majority of the crimes were considered simple assaults, accounting for 83,980 incidents, with an additional 16,000 crimes labeled as

aggravated assaults. Of the more serious crimes, there were 19 cases of manslaughter and 196 cases of criminal homicide.¹

Domestic Violence Injunctions

Temporary Injunctions

If someone believes that she or he is a victim of domestic violence² or has reasonable cause to believe that she or he is in imminent danger of becoming a victim of domestic violence, that person may petition a circuit court for an injunction for protection against domestic violence. The clerk of the court is required by statute to provide simplified forms for the petitioner to file as well as an informational brochure about the process. The petitioner may not be charged a fee for filing the petition.³ The clerk's office will take the sworn petition to a judge who rules on the petition, generally within 24 hours.

The petition form contains a list of circumstances that the petitioner may check to demonstrate that various instances or threats of domestic violence have occurred. One of these instances is whether the respondent has ever intentionally injured or killed a family pet.⁴

The judge examines the petition, *ex parte*, meaning that the judge examines only the information submitted by the petitioner. The parties are generally not present, and no additional evidence is submitted. If it appears to the court that an immediate and present danger of domestic violence exists, the court may grant a temporary injunction, pending a full hearing at a later date. In addition to the temporary injunction, the court may grant relief as it deems proper, including an injunction:

- Restraining the respondent from committing any acts of domestic violence.
- Awarding the petitioner the temporary and exclusive use of the dwelling that the parties share or excluding the respondent from the petitioner's residence.
- Providing the petitioner a temporary parenting plan in which the petitioner may receive up to 100 percent of time-sharing.⁵

Any *ex parte* temporary injunction is effective for a fixed period of time that does not exceed 15 days. A full hearing will be set for a date that is no later than the date when the temporary injunction expires, although the court may grant a continuance for good cause shown, including a

¹ Florida Department of Law Enforcement, *Domestic Violence, Victim to Offender Relationships*, <http://www.fdle.state.fl.us/FSAC/Crime-Data/DV.aspx> and Florida Department of Law Enforcement, *Florida's County and Jurisdictional Reported Domestic Violence Offenses*, 2018, http://www.fdle.state.fl.us/FSAC/Documents/PDF/DV_OFF_JUR18.aspx.

² "Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. Section 741.28(2), F.S.

"Family or household member means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit." Section 741.28(3), F.S.

³ Section 741.30(1)(a) and (2)(a), F.S.

⁴ Section 741.30(3)(a), F.S.

⁵ Section 741.30(5)(a) and (b), F.S.

continuance to obtain service of process on the respondent. A temporary injunction will be extended if it is necessary to remain in full force and effect during the continuance.⁶

Injunctions

Once notice is given and a hearing is held, and the court concludes that the petitioner is a victim of domestic violence or has reasonable cause to believe that she or he is in imminent danger of becoming a victim, the court may grant an injunction, no longer a temporary injunction:

- Restraining the respondent from committing any acts of domestic violence.
- Awarding the petitioner the exclusive use of the dwelling or excluding the respondent from the petitioner's residence.
- Providing the petitioner a temporary parenting plan in which the petitioner may receive up to 100 percent of time-sharing.
- Establishing temporary support for a minor child or children of the petitioner.
- Ordering the respondent to participate in treatment, intervention, or counseling.
- Referring a petitioner to a certified domestic violence center.
- Order other relief that the court deems necessary to protect the domestic violence victim, including injunctions or directives to law enforcement agencies.⁷

The injunction remains in effect until it is modified or dissolved. The petitioner or respondent may move at any time for those actions.⁸

Domestic Violence and Animal Abuse

According to the Florida Coalition Against Domestic Violence, there is an interconnection between domestic violence and animal abuse. The Coalition states that the American Humane Association reports that 71 percent of women who enter emergency shelters report that their abuser injured, maimed, killed, or threatened harm to family pets for the purpose of revenge or to psychologically control their victims. The Coalition also states that between 25 percent and 40 percent of battered women postpone leaving abusive situations because they fear harm will be done to their animals.⁹

A 2020 Michigan State University College of Law publication notes that 35 states, the District of Columbia, and Puerto Rico have enacted legislation that includes references to pets in domestic violence protection injunctions and orders.¹⁰

Domestic Violence Injunctions and the Award of Animals

Staff has been unable to find a statute authorizing a court to order an equitable property distribution in an injunction proceeding. Although pets may be considered by some to be a

⁶ Section 741.30(5)(c), F.S.

⁷ Section 741.30(6), F.S.

⁸ Section 741.30(6)(c), F.S.

⁹ Florida Coalition Against Domestic Violence, *Darby Against Domestic Violence*, <https://www.fcadv.org/darby>.

¹⁰ Rebecca F. Wisch, Michigan State University College of Law, *Domestic Violence and Pets: List of States that Include Pets in Protection Orders* (2020), <https://www.animallaw.info/article/domestic-violence-and-pets-list-states-include-pets-protection-orders>.

member of the family, under Florida law, pets are considered personal property and subject to the equitable distribution statute.¹¹ Therefore, without a specific authorization, a court would likely be reluctant to make a determination that someone is entitled to the care of an animal in an injunction proceeding.

III. Effect of Proposed Changes:

The bill expressly authorizes a court, when granting a domestic violence injunction, to:

- Award the petitioner the exclusive care, possession, or control of an animal that is owned, possessed, harbored, kept, or held by the petitioner, the respondent, or a minor child who is residing in the residence of the petitioner or respondent. (In a temporary injunction, the petitioner's care is "temporary" but in the injunction, the care is not restricted to temporary care.)
- Order the respondent to temporarily have no contact with the animal. (Similarly, in the temporary injunction, the respondent is "temporarily" ordered to have no contact with the animal, but the injunction removes the reference to "temporarily.")
- Prohibit the respondent from taking, transferring, encumbering, concealing, harming, or otherwise disposing of the animal.

This provision does not apply to an animal that is owned primarily for a bona fide agricultural purpose,¹² as defined under s. 193.461, F.S., or to a service animal,¹³ as defined under s. 413.08, F.S., if the respondent is the service animal's handler.

The bill also conforms cross-references and makes technical changes.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹¹ *Bennett v. Bennett*, 655 So. 2d 109 (Fla. 1st DCA 1995).

¹² The term "bona fide agricultural purposes" means a good faith commercial agricultural use of the land. In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration: The length of time the land has been so used; whether the use has been continuous; the purchase price paid; the size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment; whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforesting, and other accepted agricultural practices; whether the land is under lease and, if so, the effective length, terms, and conditions of the lease; and such other factors as may become applicable. Section 193.461(3)(b), F.S.

¹³ "Service animal" means an animal that is trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. A service animal is not a pet. Section 413.08(1)(d), 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 741.30 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 Agriculture on January 14, 2020:

The committee substitute corrects an error that appears two places in the bill by changing the word “defendant” to the word “respondent.”

B. Amendments:

None.

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

By the Committee on Agriculture; and Senator Albritton

575-02270-20

20201082c1

A bill to be entitled

An act relating to domestic violence injunctions; amending s. 741.30, F.S.; authorizing a court to take certain actions regarding the care, possession, or control of an animal in domestic violence injunctions; providing applicability; conforming a cross-reference; making technical changes; providing an effective date.

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

Section 1. Paragraph (a) of subsection (5) and subsection (6) of section 741.30, Florida Statutes, are amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.—

(5)(a) If it appears to the court that an immediate and present danger of domestic violence exists, the court may grant a temporary injunction ex parte, pending a full hearing, and may grant such relief as the court deems proper, including an injunction:

1. Restraining the respondent from committing any acts of domestic violence.

2. Awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner.

3. On the same basis as provided in s. 61.13, providing the petitioner a temporary parenting plan, including a time-sharing schedule, which may award the petitioner up to 100 percent of

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the time-sharing. The temporary parenting plan remains in effect until the order expires or an order is entered by a court of competent jurisdiction in a pending or subsequent civil action or proceeding affecting the placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the minor child.

4. Awarding to the petitioner the temporary exclusive care, possession, or control of an animal that is owned, possessed, harbored, kept, or held by the petitioner, the respondent, or a minor child residing in the residence or household of the petitioner or respondent. The court may order the respondent to temporarily have no contact with the animal and prohibit the respondent from taking, transferring, encumbering, concealing, harming, or otherwise disposing of the animal. This subparagraph does not apply to an animal owned primarily for a bona fide agricultural purpose, as defined under s. 193.461, or to a service animal, as defined under s. 413.08, if the respondent is the service animal's handler.

(6)(a) Upon notice and hearing, when it appears to the court that the petitioner is either the victim of domestic violence as defined by s. 741.28 or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, the court may grant such relief as the court deems proper, including an injunction:

1. Restraining the respondent from committing any acts of domestic violence.

2. Awarding to the petitioner the exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner.

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3. On the same basis as provided in chapter 61, providing the petitioner with 100 percent of the time-sharing in a temporary parenting plan that remains in effect until the order expires or an order is entered by a court of competent jurisdiction in a pending or subsequent civil action or proceeding affecting the placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the minor child.

4. On the same basis as provided in chapter 61, establishing temporary support for a minor child or children or the petitioner. An order of temporary support remains in effect until the order expires or an order is entered by a court of competent jurisdiction in a pending or subsequent civil action or proceeding affecting child support.

5. Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent. When the court orders the respondent to participate in a batterers' intervention program, the court, or any entity designated by the court, must provide the respondent with a list of batterers' intervention programs from which the respondent must choose a program in which to participate.

6. Referring a petitioner to a certified domestic violence center. The court must provide the petitioner with a list of certified domestic violence centers in the circuit which the petitioner may contact.

7. Awarding to the petitioner the exclusive care, possession, or control of an animal that is owned, possessed, harbored, kept, or held by the petitioner, the respondent, or a minor child residing in the residence or household of the

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petitioner or respondent. The court may order the respondent to have no contact with the animal and prohibit the respondent from taking, transferring, encumbering, concealing, harming, or otherwise disposing of the animal. This subparagraph does not apply to an animal owned primarily for a bona fide agricultural purpose, as defined under s. 193.461, or to a service animal, as defined under s. 413.08, if the respondent is the service animal's handler.

~~8.7-~~ Ordering such other relief as the court deems necessary for the protection of a victim of domestic violence, including injunctions or directives to law enforcement agencies, as provided in this section.

(b) In determining whether a petitioner has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, the court shall consider and evaluate all relevant factors alleged in the petition, including, but not limited to:

1. The history between the petitioner and the respondent, including threats, harassment, stalking, and physical abuse.

2. Whether the respondent has attempted to harm the petitioner or family members or individuals closely associated with the petitioner.

3. Whether the respondent has threatened to conceal, kidnap, or harm the petitioner's child or children.

4. Whether the respondent has intentionally injured or killed a family pet.

5. Whether the respondent has used, or has threatened to use, against the petitioner any weapons such as guns or knives.

6. Whether the respondent has physically restrained the

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petitioner from leaving the home or calling law enforcement.

7. Whether the respondent has a criminal history involving violence or the threat of violence.

8. The existence of a verifiable order of protection issued previously or from another jurisdiction.

9. Whether the respondent has destroyed personal property, including, but not limited to, telephones or other communications equipment, clothing, or other items belonging to the petitioner.

10. Whether the respondent engaged in any other behavior or conduct that leads the petitioner to have reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence.

In making its determination under this paragraph, the court is not limited to those factors enumerated in subparagraphs 1.-10.

(c) The terms of an injunction restraining the respondent under subparagraph (a)1. or ordering other relief for the protection of the victim under subparagraph (a)8. ~~(a)7.~~ shall remain in effect until modified or dissolved. Either party may move at any time to modify or dissolve the injunction. No specific allegations are required. Such relief may be granted in addition to other civil or criminal remedies.

(d) A temporary or final judgment on injunction for protection against domestic violence entered under ~~pursuant to~~ this section shall, on its face, indicate that:

1. The injunction is valid and enforceable in all counties of the State of Florida.

2. Law enforcement officers may use their arrest powers

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under ~~pursuant to~~ s. 901.15(6) to enforce the terms of the injunction.

3. The court had jurisdiction over the parties and matter under the laws of Florida and that reasonable notice and opportunity to be heard was given to the person against whom the order is sought sufficient to protect that person's right to due process.

4. The date the respondent was served with the temporary or final order, if obtainable.

(e) An injunction for protection against domestic violence entered under ~~pursuant to~~ this section, on its face, may order that the respondent attend a batterers' intervention program as a condition of the injunction. Unless the court makes written factual findings in its judgment or order which are based on substantial evidence, stating why batterers' intervention programs would be inappropriate, the court shall order the respondent to attend a batterers' intervention program if:

1. It finds that the respondent willfully violated the ex parte injunction;

2. The respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence; or

3. The respondent, in this state or any other state, has had at any time a prior injunction for protection entered against the respondent after a hearing with notice.

(f) The fact that a separate order of protection is granted to each opposing party is ~~shall~~ not ~~be~~ legally sufficient to deny any remedy to either party or to prove that the parties are

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equally at fault or equally endangered.

(g) A final judgment on injunction for protection against domestic violence entered under ~~pursuant to~~ this section must, on its face, indicate that it is a violation of s. 790.233, and a first degree misdemeanor, for the respondent to have in his or her care, custody, possession, or control any firearm or ammunition.

(h) All proceedings under this subsection shall be recorded. Recording may be by electronic means as provided by the Rules of Judicial Administration.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20
Meeting Date

1082
Bill Number (if applicable)

Topic Domestic Violence Injunctions

Amendment Barcode (if applicable)

Name Corinne Mixon

Job Title Lobbyist

Address 511 N Adams St.
Street

Phone 850 7665795

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: SB 1244

INTRODUCER: Senator Albritton

SUBJECT: State Workforce Development Boards

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>McMillan</u>	<u>McKay</u>	<u>CM</u>	Favorable
2. <u>Wiehle</u>	<u>Imhof</u>	<u>IT</u>	Favorable
3. <u>McMillan</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 1244 amends the structure of Florida's Workforce Development System. The bill:

- Replaces CareerSource Florida, Inc. (CareerSource) with the state board or the Department of Economic Opportunity (DEO) in provisions relating to the implementation of the Workforce Innovation and Opportunity Act (WIOA);
- Clarifies the purpose, operation, and structure of CareerSource and the state board;
- Requires the state board, rather than CareerSource, to produce a state plan that creates an educated and skilled workforce;
- Clarifies the duties of the local workforce development boards;
- Replaces CareerSource with the state board or the DEO in provisions relating to Florida's Youth Summer Jobs Pilot Program;
- Authorizes the state board to create and administer the Workforce Training Institute;
- Restructures the organization of the one-stop delivery system;
- Replaces CareerSource with the DEO in provisions relating to workforce information systems and transitional services;
- Requires the DEO to consult with the state board in provisions relating to workforce information systems; and
- Replaces CareerSource with the state board in provisions relating to individual development.

The bill takes effect July 1, 2020.

II. Present Situation:

Florida's Workforce Development System

The federal Workforce Investment Act of 1998 (WIA) was passed by Congress in an effort to improve the quality of the nation's workforce through implementation of a comprehensive

workforce investment system.¹ The WIA required each state to establish an investment board at the state level and to also establish workforce investment boards to represent local service areas.² The WIA also called for the delivery of workforce development services through a system of “one-stop” centers in local communities.³ Some key principles of the WIA were to better integrate workforce services, empower individuals, provide universal access to participants, increase accountability, and improve youth programs.⁴

In response to the WIA, Florida established a workforce development system under the Workforce Investment Act of 2000.⁵ The act aimed to better connect the state’s economic development strategies with its workforce development system and to implement the principles of the federal WIA.⁶

Federal Workforce Innovation and Opportunity Act of 2014

In 2014, Congress passed the Workforce Innovation and Opportunity Act (WIOA), which superseded the Workforce Investment Act of 1998.⁷ The WIOA requires each state to develop a single, unified plan for aligning workforce services through the identification and evaluation of core workforce programs.⁸ In general, the WIOA maintains the one-stop framework of the WIA, and encompasses provisions aimed at streamlining services, easing reporting requirements, and reducing administrative barriers.⁹ The WIOA officially became effective on July 1, 2015, the first full program year after enactment.

Core Programs

The WIOA identifies four core programs that must coordinate and complement each other in a manner that ensures job seekers have access to needed resources.¹⁰ The core programs are:

- Adult, Dislocated Worker and Youth Programs;
- Employment Services under the Wagner-Peyser Employment Act;
- Vocational Rehabilitation Services; and
- Adult Education and Literacy Activities.

Performance Measures

In an effort to promote transparency and accountability, the WIOA created a single set of common measures for the evaluation of core programs.¹¹ The WIOA requires performance

¹ Workforce Investment Act of 1998, 29 U.S.C. § 2801 (1998), *repealed by* Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, H.R. 803, 113th Cong. (July 22, 2014)(codified at 29 U.S.C. § 3101, et seq.).

² See 29 U.S.C. § 2821 and 29 U.S.C. § 2832 (1998).

³ See 29 U.S.C. § 2841 (1998).

⁴ See 29 U.S.C. § 2811 (1998).

⁵ Chapter 2000-165, Laws of Fla.

⁶ See s. 445.003, F.S.

⁷ Workforce Innovation and Opportunity Act, 29 U.S.C. § 3101 et seq. (2014).

⁸ See 29 U.S.C. § 3112(a).

⁹ See 29 U.S.C. § 3111.

¹⁰ See 29 U.S.C. § 3102(13).

¹¹ See 29 U.S.C. § 3141.

reports to be provided at the state, local, and trainer provider levels. The performance measures that now apply across all core programs are:

- The percentage of participants in unsubsidized employment during second quarter after exit;
- The percentage of participants in unsubsidized employment during fourth quarter after exit;
- The median earnings of participants during second quarter after exit;
- The percentage of participants who obtain a postsecondary credential or secondary school diploma within 1 year after exit;
- The achievement of measureable skill gains toward credentials or employment; and
- The effectiveness in serving employers.

State Workforce Development Plan

Using the common performance measures for core programs, the WIOA requires each state to develop and submit a unified state plan based on a 4-year strategy for workforce development.¹² The state plan must describe an overall strategy for the core programs and how the strategy will meet needs for workers, job seekers, and employers.¹³ The WIOA also provides an option for states to submit a combined plan that outlines plans for the core programs along with additional workforce programs.¹⁴

Regional Planning and Local Workforce Development Boards

The WIOA requires states to identify regional planning areas for workforce development strategies.¹⁵ Within each area, a local workforce development board must be established.¹⁶ Each local workforce development board is required to coordinate planning and service delivery strategies within their area.¹⁷ Formulated strategies are then used by the local workforce development board to develop and submit a local plan for the delivery of workforce services.¹⁸

One-Stop Delivery System

The WIOA aims to strengthen the one-stop delivery system by requiring each local area to have at least one comprehensive one-stop delivery provider.¹⁹ A comprehensive one-stop delivery provider supplies physical access to services provided by core partners, as well as other mandatory partners.²⁰ The WIOA mandates that each partner shares in the funding of services and infrastructure costs of the one-stop delivery system.²¹

¹² See 29 U.S.C. § 3112(a).

¹³ See 29 U.S.C. § 3112(b).

¹⁴ See 29 U.S.C. § 3113.

¹⁵ See 29 U.S.C. § 3121.

¹⁶ *Id.*

¹⁷ See 29 U.S.C. § 3122.

¹⁸ See 29 U.S.C. § 3123.

¹⁹ See 29 U.S.C. § 3151.

²⁰ Other mandatory partners may include programs under the Older Americans Act, Adult Education and Literacy, Department of Housing and Urban Development, Social Security Act, Perkins Career and Technical Education Act, and the Community Service Block Grant Act. 29 U.S.C. § 3151(b).

²¹ See 29 U.S.C. § 3151(2).

Florida's Implementation of The WIOA

In 2016, Florida made changes to the workforce development system to conform to the new federal guidelines established by the WIOA.²² Under the current workforce development system, the DEO, CareerSource, and 24 local workforce development boards act as partners in administering Florida's comprehensive system for the delivery of workforce strategies, services, and programs.

The Department of Economic Opportunity

The DEO serves as Florida's lead workforce agency.²³ The DEO is responsible for the fiscal and administrative affairs of the workforce development system.²⁴ The DEO receives and distributes federal funds for employment-related programs to the local workforce development boards.²⁵ Additionally, under the direction of CareerSource, the DEO must annually meet with each local workforce development board to review the board's performance and to certify that the board is in compliance with applicable state and federal law.²⁶

CareerSource Florida, Inc.

CareerSource Florida, Inc., a not-for-profit corporation, serves as Florida's *state-level* workforce development board.²⁷ CareerSource is responsible for the development of a 4-year plan that is consistent with the requirements of the WIOA²⁸ and collaborates with the DEO, the local workforce development boards, and one-stop service providers to ensure workforce services are consistent with state and local plans.²⁹ CareerSource also provides state-level policy direction, planning, and performance evaluation of the delivery of workforce services.³⁰

Local Workforce Development Boards

Twenty-four local workforce development boards deliver Florida's workforce development services through over 100 one-stop service providers.³¹ The one-stop service providers give Floridians access to available workforce services; including job placement, career counseling, and skills training.³² Collectively, the local workforce development boards operate under a charter approved by CareerSource.³³ Each local workforce development board formulates a local budget and oversees the one-stop delivery system within its local area.³⁴

²² Chapter 2016-216, Laws of Fla.

²³ Primarily through the Division of Workforce Services. *See* s. 20.60, F.S.

²⁴ Section 445.009(3)(c), F.S.

²⁵ *See* s. 445.003, F.S.

²⁶ *See* s. 445.007(3), F.S.

²⁷ Section 445.004(5)(a), F.S. Prior to 2014, CareerSource was known as Workforce Florida, Inc.

²⁸ Section 445.003(2), F.S.

²⁹ *See* s. 445.004, F.S.

³⁰ *Id.*

³¹ Florida Department of Economic Opportunity, *CareerSource Florida Network Directory*, <http://lcd.floridajobs.org/> (last visited Jan. 17, 2020).

³² *See* s. 445.009, F.S.

³³ *See* s. 445.004, F.S.

³⁴ Section 445.007(12), F.S.

On May 15, 2019, the Acting Regional Administrator for the U.S. Department of Labor, Employment and Training Administration sent a letter to the Executive Director of the Florida Department of Economic Opportunity reporting on the comprehensive compliance review that the administration had conducted in conjunction with the Department of Economic Opportunity under the Workforce Innovation and Opportunity Act. The letter indicated that the review confirmed numerous violations of the Workforce Investment Act and the Workforce Innovation and Opportunity Act by CareerSource Tampa Bay and CareerSource Pinellas. The review confirmed that fake job placements were made, that records are falsified, and including numerous other violations of the act resulting in over \$17 million in question costs subject disallowance.³⁵ The letter further stated:

The improper administration of capital federal employment and training funds by the two local workforce boards led to blatant noncompliance with WIOA requirements. This was further compounded by the lack of fiduciary oversight which fostered an environment vulnerable to mismanagement, waste, fraud, and abused to occur undetected.³⁶

The report issued by the administrator outlined in detail each of the 17 findings of noncompliance in three areas of concern. The letter indicated that the state was required to submit a corrective action plan and formally respond to each of the 17 findings in question costs.³⁷ The report further stated that “[W]hile it is appropriate for the State to allow local flexibilities, it does not appear that the State provided adequate policy guidance, training, and technical assistance to ensure that the implementation of the workforce development system was compliant with WIOA.”³⁸

III. Effect of Proposed Changes:

Workforce Services

Section 1 amends s. 445.002, F.S., to define the terms “for cause” and “state board.”

- “For cause” includes, but is not limited to, engaging in fraud or other criminal acts, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance. The “for cause” standard is used in ch. 445, F.S., as a standard by which:
 - the Governor may remove a member of a local board; and
 - a chief elected official may remove a member of a local board.
- “State board” means the state workforce development board established pursuant to the Workforce Innovation and Opportunity Act. The state board shall be supported by CareerSource, which works at the direction of the state board in consultation with the DEO as required by ch. 445, F.S.

³⁵ Available at <https://assets.documentcloud.org/documents/6021994/Final-Florida-Compliance-Review-CSTB-CSP.pdf> (last visited February 5, 2020).

³⁶ *Id.*

³⁷ *Id.*

³⁸ Finding #16: State Did Not conduct Adequate and Effective Oversight, *Compliance Review of CareerSource Tampa Bay and CareerSource Pinellas*, at p. 36, U.S. Department of Labor Employment and Training Administration, Atlanta Regional Office, May 15, 2019.

Implementation of the Federal Workforce Innovation and Opportunity Act

Section 2 makes numerous changes to the procedures relating to the implantation of the WIOA in s. 445.003, F.S.

The bill replaces CareerSource with the state board or the DEO in provisions relating to the implementation of the WIOA.

- The state board must prepare and submit a 4-year plan, consistent with the requirements of the WIOA.
- Title I, WIOA, Wagner-Peyser, and NAFTA/Trade Act funds will be expended based on the 4-year plan of the state board.
- A local workforce board must use at least 50 percent of the Title I funds for Adults and Dislocated Workers on Individual Training Accounts³⁹ unless a waiver is obtained from the state board.
- State administration costs include the costs of funding for the state board and state board staff; operating fiscal, compliance, and management accountability systems though the department conducting evaluation and research on workforce development activities; and providing technical and capacity building assistance to local workforce development areas at the direction of the state board.
- Individual Training Accounts and other workforce development strategies for other training is designed and tailored by the DEO in consultation with the state board.
- Individual Training Accounts for distressed urban and rural communities must be designed, adopted, and funded by the DEO in consultation with the state board.
- The state board may establish guidelines necessary to implement the Incumbent Worker Training Program.
- The DEO must maintain an Emergency Preparedness Fund from Rapid Response funds.
- All Rapid Response funds must be expended based on a plan developed by the state board in consultation with the DEO.
- The state board, in consultation with the DEO may make modifications to the state's plan, policies, and procedures to comply with federally mandated requirements the must be complied with to maintain funding.
- The state board must enter into a memorandum of understanding with the Florida Department of Education to ensure that federally mandated requirements are met and are in compliance with the state plan for workforce development.
- The state board may recommend workforce related divisions, bureaus, units, programs, duties, commissions, boards, and councils for elimination, consolidation, or privatization.

The bill makes reservation of \$2 million of the Title I funds retained at the state level for the Incumbent Worker Training Program discretionary instead of mandatory.⁴⁰

³⁹ Individual Training Account expenditures include tuition, books, and fees of training providers and other training services authorized by the WIOA. See s. 445.003, F.S.

⁴⁰ The Incumbent Worker Training Program helps workers by providing grant funding for continuing education and training of incumbent employees at existing Florida businesses. See s. 445.003, F.S.

The bill creates a new subsection (6) in s. 445.003, F.S., which authorizes the state board to hire a director and staff that must be authorized by the state board to work with the DEO in carrying out the functions of the WIOA.

CareerSource and the State Board

Section 3 amends s. 445.004, F.S., to revise provisions relating to the purpose, operation, and organizational structure of CareerSource and the state board.

- CareerSource must operate at the direction of the state board, and under an agreement with the DEO.
- CareerSource provides administrative support for the state board.
- The purpose of the state board is to design and implement strategies to foster Florida's workforce development system.
- CareerSource must implement the policy directives of the state board and administer state workforce development programs.
- All provisions stating that CareerSource must be governed by a board of directors are removed, and "board of directors" is replaced with the "state board."
- The state board is the board of directors of CareerSource.
- The state board is required to hire an executive director, and the executive director is the president, the chief executive officer, and an employee of CareerSource.
- The president of CareerSource serves at the pleasure of the Governor.
- The state board is authorized to provide policy direction to ensure the DEO is properly administering workforce development activities to conform to approved plans.⁴¹
- The DEO may consult with the state board to issue technical assistance letters on the operation of federal programs and the expenditure of federal funds by the state board or any workforce development board.⁴²
 - A technical assistance letter must be in writing, posted on the DEO's website, and remains in effect until superseded or terminated.
- The state board is authorized to notify the Governor and the DEO of statewide or local workforce development and training needs that may require policy changes or an update to the state plan.
- The state board must have a policy that all resources and equipment purchased for training WIOA clients be available for use at all times by eligible populations.
- The state board may make expenditures to recognize performance and for promotional items.
- The state board must submit a complete and detailed annual report by December 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

⁴¹ Authorized workforce development activities include the following: Programs authorized under Title I of the WIOA, the Wagner-Peyser Act of 1993, Title II of the Trade Act of 2002, employment and training activities carried out under funds awarded to Florida by the United States Department of Housing and Urban Development, welfare transition services funded by the Temporary Assistance for Needy Families Program, the Florida Bonding Program, the Food Assistance Employment and Training Program, the Quick-Response Training Program, and the Work Opportunity Tax Credit. See s. 445.004, F.S.

⁴² The bill establishes that a technical assistance letter is not a declaratory statement issued pursuant to s. 120.565, F.S., an order issued pursuant to s. 120.569, F.S., or a rule of general applicability under s. 120.54, F.S. Section 120.53, F.S., does not apply to technical assistance letters.

- The Auditor General is authorized to conduct an audit of the state board and CareerSource, or the programs and entities created by the state board.
- The state board must establish uniform performance accountability measures that monitor the performance of the state and local workforce development boards in achieving the workforce development strategy.
 - The performance accountability measures of success that are adopted by the state board, or the local workforce development boards must provide an equitable comparison of the relative success or failure of any service provider.
- The workforce development strategy for Florida must be designed by the state board, in consultation with the DEO, and approved by the Governor.
- The workforce development system must encourage local design and control of service delivery and targeted activities.
- The state board, in consultation with the DEO, must ensure that local workforce development boards have a valid membership and have developed an adequate plan.

The bill establishes that the state board must establish proper incentives, outline rewards for successful job placements, and institute collaborative approaches among local service providers.

The bill clarifies that CareerSource, under the direction of the state board, must enter into an agreement with Space Florida and collaborate with vocational institutes, community colleges, colleges, and universities in Florida to develop and implement a workforce development strategy.

State Plan for Workforce Development

Section 4 amends s. 445.006, F.S., to require the state board, rather than CareerSource, to take actions relating to the state plan for workforce development.

The bill provides that the state board in conjunction with state and local partners, must produce a state plan that creates an educated and skilled workforce, as well as develop strategic planning elements and operational planning elements for the state plan.

Local Workforce Development Boards

Section 5 amends s. 445.007, F.S., to clarify the structure and duties of the local workforce development boards.⁴³

- The state board is authorized to waive the requirement that a local board must appoint a representative of a private education provider to the local board, as long as, a local workforce board requests a waiver, and it is demonstrated that a representative of a private education provider does not exist in the region.
- The DEO must assign staff to meet with each local workforce development board annually to review performance and compliance with state and federal law.
- The DEO approves a local workforce development board's administrative entity.

⁴³ The bill also refers to "local workforce development boards" as "local boards."

- The DEO, in conjunction with the state board, must provide a training program for the local workforce development boards to familiarize them with the state’s workforce development goals.
- The state board is required to create procedures for the local workforce development boards to request permission to operate under s. 445.007, F.S.
- The local workforce development boards are required to adopt a committee structure consistent with state policies and federal law established by the state board.
- The local workforce development boards are required to apply the procurement and expenditure procedures required by federal law, as well as, policies created by the DEO and the state board.
- Unless authorized by state law, the state board and the DEO may not use state and federal funds provided to the local workforce development boards to pay for food or beverages for board members, staff, or employees of the local workforce development boards.
- The DEO must monitor and provide fiscal or programmatic guidance to the state board, CareerSource, and all workforce development boards.
- A local workforce development board is required to receive approval from the DEO before contracting with a member of the local board, a relative of a member of the local board, or an employee of the local board.
 - A contract under \$25,000 between a local workforce development board and a member of that board, a relative of a local board member, or an employee of the local board is not required to receive prior approval by the DEO.⁴⁴
- Each local workforce development board is required to submit its annual budget to the DEO for review.

The bill deletes a provision defining the term “cause.”⁴⁵

The bill creates a provision that allows the chief elected official for the local workforce development board to remove a member of the local board, the executive director of the local board, or the designated person responsible for the operation and administration of the local board for cause.

Florida Youth Summer Jobs Pilot Program

Section 6 amends s. 445.0071, F.S., to replace CareerSource with the state board or the DEO in provisions relating to the Florida Youth Summer Jobs Pilot Program.⁴⁶

- The Broward Workforce Development Board, in consultation with the state board, must provide a program offering at-risk and disadvantaged children summer jobs.
- The pilot program must be administered by the local workforce development board in consultation with the state board.

⁴⁴ Such contracts must be approved by a two-thirds vote of the local board, and must be reported to the DEO and the state board within 30-days of approval. See s. 445.007, F.S.

⁴⁵ The bill amends s. 445.002, F.S., to define the term “for cause.”

⁴⁶ The Florida Youth Summer Jobs Pilot Program was developed within workforce development district 22, which is served by the Broward Workforce Development Board. The program offers at-risk and disadvantaged children summer jobs in partnership with local communities and public employees. See s. 445.0071, F.S.

- The Broward Workforce Development Board must report to the state board and the DEO.⁴⁷
- The state board must report the performance of the program to the Legislature by November 1 of each year.

Workforce Training Institute

Section 7 makes numerous changes to the organization and procedures of the Workforce Training Institute in s. 445.008, F.S.

The bill authorizes the state board, through CareerSource, to create the Workforce Training Institute and to engage in necessary administrative functions. Additionally, the bill requires CareerSource to report all donations and grants they receive to the state board and the DEO.

One-stop Delivery System

Section 8 amends s. 445.009, F.S., to replace CareerSource with the state board or the DEO in provisions relating to one-stop delivery systems.

- Subject to a process designed by the state board, local workforce development boards must designate one-stop delivery system operators.
- The DEO approves the designation of one-stop delivery system operators.⁴⁸
- The state board, in conjunction with the DEO, may notify the Governor of any one-stop delivery system partners that fail to enter into an understanding with the local workforce development board.
- The state board, the DEO, and local workforce development boards must create a centralized help center to assist local workforce development boards.
- The state board must develop an implementation plan for intensive services and training that is provided to individuals through Intensive Service Accounts and Individual Training Accounts.
- The DEO must periodically review Individual Training Account pricing schedules and present findings and recommendations for process improvement to the President of the Senate and the Speaker of the House of Representatives.
- The state board must develop a system to foster the leveraging of appropriated resources for the workforce system and must report on such efforts in the annual report.
- The state board and the DEO must coordinate a plan among the agencies for a One-Stop Electronic Network.

Workforce Information Systems

Section 9 amends s. 445.011, F.S., to replace CareerSource with the DEO and to require the DEO to consult with the state board in provisions relating to workforce information systems.

⁴⁷ The report must include the number of at-risk and disadvantaged children who enter the program, the types of work activities they participate in, and the number of children who return to school, go on to postsecondary school, or enter the workforce full time at the end of the program. *See* s. 445.0071, F.S.

⁴⁸ The bill provides that the DEO must require the local workforce development board to demonstrate that safeguards are in place to ensure fair competition and practices.

- The DEO, in consultation with the state board, must implement automated information systems.
- The DEO is authorized to procure independent verification and validation services associated with developing and implementing any workforce information system.
- The DEO must coordinate development and implementation of workforce information systems with the state chief information officer.

Transitional Benefits and Services

Section 10 amends s. 445.028, F.S., to replace CareerSource with the DEO in provisions relating to transitional benefits and services.

- In cooperation with DEO, the Department of Children and Families (DCF) must develop procedures to ensure that families leaving the temporary cash assistance program (TCA)⁴⁹ receive transitional benefits and services.
- The DEO and the DCF must develop procedures to maximize the utilization of transitional Medicaid by families who leave the TCA program.

Individual Development Accounts

Section 11 amends s. 445.051, F.S., to replace CareerSource with the state board in provisions relating to individual development.

- The state board must establish procedures for local workforce development boards to include in their annual program and financial plan an application to offer an individual development account program⁵⁰ as part of their Temporary Assistance for Needy Families (TANF)⁵¹ allocation.
- The state board must establish policies and procedures to ensure that funds held in an individual development account are not withdrawn without a qualified purpose.
- The state board must establish procedures for controlling the withdrawal of funds for uses other than qualified purposes.
- Pursuant to policy direction by the state board, the DEO must adopt the rules necessary to implement s. 445.051, F.S.

Authority for Audits

Section 12 amends s. 11.45, F.S., to clarify that the Auditor General may conduct audits of CareerSource, the state board, and the programs created by the state board.

⁴⁹ The Temporary Cash Assistance Program provides cash assistance to families with children under the age of 18 or under the age of 19 if the child is a full time high school student. The program helps support families while allowing children to remain in their homes. See Florida Department of Children and Families, *Temporary Cash Assistance (TCA)* <https://www.myflfamilies.com/service-programs/access/temporary-cash-assistance.shtml> (last visited Jan. 17, 2020).

⁵⁰ An Individual Development Account is a special bank account that helps low income families save for the purchase of a home, education expenses, or to start a business. See Social Security Administration, *Spotlight on Individual Development Accounts* (2019) <https://www.ssa.gov/ssi/spotlights/spot-individual-development.htm> (last visited Jan. 17, 2020).

⁵¹ The Temporary Assistance for Needy Families program is a federal grant that provides funding for cash welfare to needy families with children. See Florida Department of Children and Families, *Temporary Assistance for Needy Families* (January 2016) <https://www.myflfamilies.com/service-programs/access/docs/TANF%20101%20final.pdf> (last visited Jan. 17, 2020).

DEO Powers and Duties

Section 13 amends s. 443.171, F.S., to provide that the DEO must submit information to the state board annually as required by law.

Effective Date

Section 14 provides that the bill takes effect July 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The impacted governmental organizations will have to update their internal structures or policies in the administration and oversight of Florida's Workforce Development System. The costs are indeterminate, but expected to be minimal.

VI. Technical Deficiencies:

Lines 249-255 permit, but do not require, the state board to hire a “director.” However, lines 346-350 require the state board to hire an “executive director.” If the terms refer to the same position, the bill would be less susceptible to misinterpretation by using the same term. Also, if they do refer to the same position, it is unclear whether the intent is to authorize the state board to hire or require it to.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 445.002, 445.003, 445.004, 445.006, 445.007, 445.0071, 445.008, 445.009, 445.011, 445.028, 445.051, 11.45, and 443.171.

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 Albritton

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1 A bill to be entitled
 2 An act relating to state workforce development boards;
 3 amending s. 445.002, F.S.; defining the terms "for
 4 cause" and "state board"; amending s. 445.003, F.S.;
 5 replacing CareerSource Florida, Inc., with the state
 6 board or the Department of Economic Opportunity in
 7 provisions relating to the implementation of the
 8 federal Workforce Innovation and Opportunity Act;
 9 authorizing, rather than requiring, certain funds to
 10 be reserved for the Incumbent Worker Training Program;
 11 conforming provisions to changes made by the act;
 12 authorizing the state board to hire a director and
 13 staff; requiring the state board to authorize the
 14 director and staff to work with the department for
 15 specified reasons; amending s. 445.004, F.S.; revising
 16 provisions relating to the operation of CareerSource
 17 Florida, Inc.; revising the purpose of CareerSource
 18 Florida, Inc.; providing purpose for the state board;
 19 revising the organizational structure of CareerSource
 20 Florida, Inc.; providing requirements for the
 21 organizational structure of the state board; providing
 22 the state board with powers and authority previously
 23 held by CareerSource Florida, Inc.; revising the
 24 requirements related to such powers and authority;
 25 authorizing the department to consult with the state
 26 board to issue certain technical assistance letters;
 27 requiring the state board, rather than CareerSource
 28 Florida, Inc., to submit an annual report to the
 29 Governor and the Legislature; authorizing the Auditor

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30 General to conduct an audit of the state board and
 31 programs or entities created by the state board;
 32 requiring the state board, rather than CareerSource
 33 Florida, Inc., to establish certain uniform
 34 performance accountability measures; requiring the
 35 state board, in consultation with the department, to
 36 design the workforce development strategy for the
 37 state; requiring that the strategy be approved by the
 38 Governor; revising requirements relating to the
 39 workforce development system; amending s. 445.006,
 40 F.S.; requiring that the state board, rather than
 41 CareerSource Florida, Inc., take certain actions
 42 relating to the state plan for workforce development;
 43 amending s. 445.007, F.S.; replacing CareerSource
 44 Florida, Inc., with the state board or the department
 45 in provisions relating to local workforce development
 46 boards; deleting the definition of the term "cause";
 47 authorizing a chief elected official for a local
 48 workforce development board to remove certain persons
 49 from the board for cause; requiring the department to
 50 provide certain guidance to specified entities;
 51 deleting an obsolete provision; making technical
 52 changes; amending s. 445.0071, F.S.; replacing
 53 CareerSource Florida, Inc., with the state board or
 54 the department in provisions relating to the Florida
 55 Youth Summer Jobs Pilot Program; amending s. 445.008,
 56 F.S.; revising authority relating to the Workforce
 57 Training Institute; requiring that certain donations
 58 and grants be reported to the state board and the

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department; amending s. 445.009, F.S.; replacing CareerSource Florida, Inc., with the state board or the department in provisions relating to one-stop delivery systems; deleting an obsolete provision; amending s. 445.011, F.S.; replacing CareerSource Florida, Inc., with the department in provisions relating to workforce information systems; requiring the department to consult with the state board in implementing certain automated information systems; deleting a provision requiring CareerSource Florida, Inc., to take certain actions when procuring workforce information systems; amending s. 445.028, F.S.; replacing CareerSource Florida, Inc., with the department in provisions relating to transitional benefits and services; amending s. 445.051, F.S.; replacing CareerSource Florida, Inc., with the state board in provisions relating to individual development accounts; amending ss. 11.45 and 443.171, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Present subsections (2) and (3) of section 445.002, Florida Statutes, are redesignated as subsections (3) and (5), respectively, and new subsections (2) and (4) are added to that section, to read:

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

(2) "For cause" includes, but is not limited to, engaging

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in fraud or other criminal acts, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance.

(4) "State board" means the state workforce development board established pursuant to the Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, Title I, s. 101. The state board shall be supported by CareerSource Florida, Inc., which works at the direction of the state board in consultation with the department as required by this chapter.

Section 2. Subsections (2) and (3), paragraphs (b) and (c) of subsection (4), and subsection (5) of section 445.003, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

445.003 Implementation of the federal Workforce Innovation and Opportunity Act.—

(2) FOUR-YEAR PLAN.—~~The state board CareerSource Florida, Inc.,~~ shall prepare and submit a 4-year plan, consistent with the requirements of the Workforce Innovation and Opportunity Act. Mandatory and optional federal partners shall be fully involved in designing the plan's one-stop delivery system strategy. The plan must clearly define each program's statewide duties and role relating to the system. The plan must detail a process that would fully integrate all federally mandated and optional partners.

(3) FUNDING.—

(a) Title I, Workforce Innovation and Opportunity Act funds; Wagner-Peyser funds; and NAFTA/Trade Act funds will be expended based on the 4-year plan of the state board CareerSource Florida, Inc. The plan must outline and direct the

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method used to administer and coordinate various funds and programs that are operated by various agencies. The following provisions apply to these funds:

1. At least 50 percent of the Title I funds for Adults and Dislocated Workers which are passed through to local workforce development boards shall be allocated to and expended on Individual Training Accounts unless a local workforce development board obtains a waiver from the state board ~~CareerSource Florida, Inc.~~ Tuition, books, and fees of training providers and other training services prescribed and authorized by the Workforce Innovation and Opportunity Act qualify as Individual Training Account expenditures.

2. Fifteen percent of Title I funding shall be retained at the state level and dedicated to state administration and shall be used to design, develop, induce, and fund innovative Individual Training Account pilots, demonstrations, and programs. Of such funds retained at the state level, \$2 million may shall be reserved for the Incumbent Worker Training Program created under subparagraph 3. Eligible state administration costs include the costs of funding for the state board and state board staff of CareerSource Florida, Inc.; operating fiscal, compliance, and management accountability systems through the department CareerSource Florida, Inc.; conducting evaluation and research on workforce development activities; and providing technical and capacity building assistance to local workforce development areas at the direction of the state board ~~CareerSource Florida, Inc.~~ Notwithstanding s. 445.004, such administrative costs may not exceed 25 percent of these funds. An amount not to exceed 75 percent of these funds shall be

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allocated to Individual Training Accounts and other workforce development strategies for other training designed and tailored by the department in consultation with the state board ~~CareerSource Florida, Inc.~~, including, but not limited to, programs for incumbent workers, nontraditional employment, and enterprise zones. The department, in consultation with the state board CareerSource Florida, Inc., shall design, adopt, and fund Individual Training Accounts for distressed urban and rural communities.

3. The Incumbent Worker Training Program is created for the purpose of providing grant funding for continuing education and training of incumbent employees at existing Florida businesses. The program will provide reimbursement grants to businesses that pay for preapproved, direct, training-related costs.

a. The Incumbent Worker Training Program will be administered by CareerSource Florida, Inc., which may, at its discretion, contract with a private business organization to serve as grant administrator.

b. The program shall be administered pursuant to s. 134(d)(4) of the Workforce Innovation and Opportunity Act. Priority for funding shall be given to businesses with 25 employees or fewer, businesses in rural areas, businesses in distressed inner-city areas, businesses in a qualified targeted industry, businesses whose grant proposals represent a significant upgrade in employee skills, or businesses whose grant proposals represent a significant layoff avoidance strategy.

c. All costs reimbursed by the program must be preapproved by CareerSource Florida, Inc., or the grant administrator. The

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program may not reimburse businesses for trainee wages, the purchase of capital equipment, or the purchase of any item or service that may possibly be used outside the training project. A business approved for a grant may be reimbursed for preapproved, direct, training-related costs including tuition, fees, books and training materials, and overhead or indirect costs not to exceed 5 percent of the grant amount.

d. A business that is selected to receive grant funding must provide a matching contribution to the training project, including, but not limited to, wages paid to trainees or the purchase of capital equipment used in the training project; must sign an agreement with CareerSource Florida, Inc., or the grant administrator to complete the training project as proposed in the application; must keep accurate records of the project's implementation process; and must submit monthly or quarterly reimbursement requests with required documentation.

e. All Incumbent Worker Training Program grant projects shall be performance-based with specific measurable performance outcomes, including completion of the training project and job retention. CareerSource Florida, Inc., or the grant administrator shall withhold the final payment to the grantee until a final grant report is submitted and all performance criteria specified in the grant contract have been achieved.

f. The state board ~~CareerSource Florida, Inc.,~~ may establish guidelines necessary to implement the Incumbent Worker Training Program.

g. No more than 10 percent of the Incumbent Worker Training Program's total appropriation may be used for overhead or indirect purposes.

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4. At least 50 percent of Rapid Response funding shall be dedicated to Intensive Services Accounts and Individual Training Accounts for dislocated workers and incumbent workers who are at risk of dislocation. ~~The department CareerSource Florida, Inc.,~~ shall also maintain an Emergency Preparedness Fund from Rapid Response funds, which will immediately issue Intensive Service Accounts, Individual Training Accounts, and other federally authorized assistance to eligible victims of natural or other disasters. At the direction of the Governor, these Rapid Response funds shall be released to local workforce development boards for immediate use after events that qualify under federal law. Funding shall also be dedicated to maintain a unit at the state level to respond to Rapid Response emergencies and to work with state emergency management officials and local workforce development boards. All Rapid Response funds must be expended based on a plan developed by the state board in consultation with the department ~~CareerSource Florida, Inc.,~~ and approved by the Governor.

(b) The administrative entity for Title I, Workforce Innovation and Opportunity Act funds, and Rapid Response activities is the department ~~of Economic Opportunity,~~ which shall provide direction to local workforce development boards regarding Title I programs and Rapid Response activities ~~pursuant to the direction of CareerSource Florida, Inc.~~

(4) FEDERAL REQUIREMENTS, EXCEPTIONS AND REQUIRED MODIFICATIONS.—

(b) The state board, in consultation with the department ~~CareerSource Florida, Inc.,~~ may make modifications to the state's plan, policies, and procedures to comply with federally

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mandated requirements that in its judgment must be complied with to maintain funding provided pursuant to Pub. L. No. 113-128. The state board shall provide written notice to the Governor, the President of the Senate, and the Speaker of the House of Representatives within 30 days after any such changes or modifications.

(c) ~~The state board CareerSource Florida, Inc.,~~ shall enter into a memorandum of understanding with the Florida Department of Education to ensure that federally mandated requirements of Pub. L. No. 113-128 are met and are in compliance with the state plan for workforce development.

(5) LONG-TERM CONSOLIDATION OF WORKFORCE DEVELOPMENT.—~~The state board CareerSource Florida, Inc.,~~ may recommend workforce-related divisions, bureaus, units, programs, duties, commissions, boards, and councils for elimination, consolidation, or privatization.

(6) AUTHORITY TO HIRE DIRECTOR AND STAFF.—The state board may hire a director and staff to assist in carrying out the functions of the Workforce Innovation and Opportunity Act and in using funds made available through the act. The state board shall authorize the director and staff to work with the department in carrying out the functions of the Workforce Innovation and Opportunity Act.

Section 3. Section 445.004, Florida Statutes, is amended to read:

445.004 CareerSource Florida, Inc., and the state board; creation; purpose; membership; duties and powers.—

(1) CareerSource Florida, Inc., is created as a not-for-profit corporation, which shall be registered, incorporated,

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organized, and operated in compliance with chapter 617 and shall operate at the direction of the state board. CareerSource Florida, Inc., is not a unit or entity of state government and is exempt from chapters 120 and 287. CareerSource Florida, Inc., shall apply the procurement and expenditure procedures required by federal law for the expenditure of federal funds. CareerSource Florida, Inc., shall be administratively housed within the department and shall operate under agreement with the department of Economic Opportunity; ~~however, CareerSource Florida, Inc., is not subject to control, supervision, or direction by the department in any manner.~~ The Legislature finds that public policy dictates that CareerSource Florida, Inc., operate in the most open and accessible manner consistent with its public purpose. To this end, the Legislature specifically declares that CareerSource Florida, Inc., its board, councils, and any advisory committees or similar groups created by CareerSource Florida, Inc., are subject to the provisions of chapter 119 relating to public records, and those provisions of chapter 286 relating to public meetings.

(2) CareerSource Florida, Inc., provides administrative support for the state board, ~~is~~ the principal workforce policy organization for the state. The purpose of the state board CareerSource Florida, Inc., is to design and implement strategies that help Floridians enter, remain in, and advance in the workplace, so that they may become more highly skilled and successful, which benefits these Floridians, Florida businesses, and the entire state, and fosters the development of the state's business climate. CareerSource Florida, Inc., shall, consistent with its agreement with the department, implement the policy

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291 directives of the state board and administer state workforce
 292 development programs as authorized by law.

293 (3) (a) ~~CareerSource Florida, Inc., shall be governed by a~~
 294 ~~board of directors, whose membership and appointment must be~~
 295 ~~consistent with Pub. L. No. 113-128, Title I, s. 101(b).~~ Members
 296 of the state board described in Pub. L. No. 113-128, Title I, s.
 297 101(b)(1)(C)(iii)(I)(aa) shall be nonvoting members. The number
 298 of directors shall be determined by the Governor, who shall
 299 consider the importance of minority, gender, and geographic
 300 representation in making appointments to the board. When the
 301 Governor is in attendance, he or she shall preside at all
 302 meetings of the state board of directors.

303 (b) The state board of directors of CareerSource Florida,
 304 ~~Inc.,~~ shall be chaired by a board member designated by the
 305 Governor pursuant to Pub. L. No. 113-128. A member may not serve
 306 more than two terms.

307 (c) Members appointed by the Governor may serve no more
 308 than two terms and must be appointed for 3-year terms. However,
 309 in order to establish staggered terms for board members, the
 310 Governor shall appoint or reappoint one-third of the board
 311 members for 1-year terms, one-third of the board members for 2-
 312 year terms, and one-third of the board members for 3-year terms
 313 beginning July 1, 2016. Subsequent appointments or
 314 reappointments shall be for 3-year terms, except that a member
 315 appointed to fill a vacancy on the board shall be appointed to
 316 serve only the remainder of the term of the member whom he or
 317 she is replacing, and may be appointed for a subsequent 3-year
 318 term. Private sector representatives of businesses, appointed by
 319 the Governor pursuant to Pub. L. No. 113-128, shall constitute a

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320 majority of the membership of the board. Private sector
 321 representatives shall be appointed from nominations received by
 322 the Governor, including, but not limited to, those nominations
 323 made by the President of the Senate and the Speaker of the House
 324 of Representatives. Private sector appointments to the board
 325 must be representative of the business community of this state;
 326 no fewer than one-half of the appointments must be
 327 representative of small businesses, and at least five members
 328 must have economic development experience. Members appointed by
 329 the Governor serve at the pleasure of the Governor and are
 330 eligible for reappointment.

331 (d) The board must include the vice chairperson of the
 332 board of directors of Enterprise Florida, Inc., and one member
 333 representing each of the Workforce Innovation and Opportunity
 334 Act partners, including the Division of Career and Adult
 335 Education, and other entities representing programs identified
 336 in the Workforce Innovation and Opportunity Act, as determined
 337 necessary.

338 (e) A member of the state board of directors of
 339 ~~CareerSource Florida, Inc.,~~ may be removed by the Governor for
 340 cause. Absence from three consecutive meetings results in
 341 automatic removal. The chair of the state board CareerSource
 342 ~~Florida, Inc.,~~ shall notify the Governor of such absences.

343 (f) Representatives of businesses appointed to the state
 344 ~~board of directors~~ may not include providers of workforce
 345 services.

346 (g) The state board serves as the board of directors of
 347 CareerSource Florida, Inc. The state board shall hire an
 348 executive director. The executive director is the president, the

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chief executive officer, and an employee of CareerSource Florida, Inc.

(4) (a) The president of CareerSource Florida, Inc., ~~shall be hired by the board of directors of CareerSource Florida, Inc., and~~ shall serve at the pleasure of the Governor ~~in the capacity of an executive director and secretary of CareerSource Florida, Inc.~~

(b) The state board ~~of directors of CareerSource Florida, Inc.,~~ shall meet at least quarterly and at other times upon the call of its chair. The board and its committees, subcommittees, or other subdivisions may use any method of telecommunications to conduct meetings, including establishing a quorum through telecommunications, if the public is given proper notice of the telecommunications meeting and is given reasonable access to observe and, if appropriate, participate.

(c) A majority of the total current membership of the state board ~~of directors of CareerSource Florida, Inc.,~~ constitutes a quorum.

(d) A majority of those voting is required to organize and conduct the business of the board, except that a majority of the entire board of directors is required to adopt or amend the bylaws.

(e) Except as delegated or authorized by the state board ~~of directors of CareerSource Florida, Inc.,~~ individual members have no authority to control or direct the operations of CareerSource Florida, Inc., or the actions of its officers and employees, ~~including the president.~~

(f) Members of the state board ~~of directors of CareerSource Florida, Inc.,~~ and its committees serve without compensation,

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but these members, the president, and the employees of CareerSource Florida, Inc., may be reimbursed for all reasonable, necessary, and actual expenses pursuant to s. 112.061.

(g) The state board ~~shall of directors of CareerSource Florida, Inc.,~~ may establish an executive committee consisting of the chair and at least six additional board members selected by the chair, one of whom must be a representative of organized labor. The executive committee and the president have such authority as the board delegates to them, except that the state board ~~of directors~~ may not delegate to the executive committee authority to take action that requires approval by a majority of the entire state board ~~of directors~~.

(h) The chair may appoint committees to fulfill the board's responsibilities, to comply with federal requirements, or to obtain technical assistance, and must incorporate members of local workforce development boards into its structure.

(i) Each member of the state board ~~of directors~~ who is not otherwise required to file a financial disclosure pursuant to s. 8, Art. II of the State Constitution or s. 112.3144 must file disclosure of financial interests pursuant to s. 112.3145.

(5) ~~The state board CareerSource Florida, Inc.,~~ shall have all the powers and authority not explicitly prohibited by statute which are necessary or convenient to carry out and effectuate its purposes as determined by statute, Pub. L. No. 113-128, and the Governor, as well as its functions, duties, and responsibilities, including, but not limited to, the following:

(a) Serving as the state's Workforce Development Board pursuant to Pub. L. No. 113-128. Unless otherwise required by

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federal law, at least 90 percent of workforce development funding must go toward direct customer service.

(b) Providing oversight and policy direction to ensure that the following programs are administered by the department ~~consistent in compliance with approved plans and under contract with CareerSource Florida, Inc.:~~

1. Programs authorized under Title I of the Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, with the exception of programs funded directly by the United States Department of Labor under Title I, s. 167.

2. Programs authorized under the Wagner-Peyser Act of 1933, as amended, 29 U.S.C. ss. 49 et seq.

3. Activities authorized under Title II of the Trade Act of 2002, as amended, 19 U.S.C. ss. 2272 et seq., and the Trade Adjustment Assistance Program.

4. Activities authorized under 38 U.S.C. chapter 41, including job counseling, training, and placement for veterans.

5. Employment and training activities carried out under funds awarded to this state by the United States Department of Housing and Urban Development.

6. Welfare transition services funded by the Temporary Assistance for Needy Families Program, created under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, Pub. L. No. 104-193, and Title IV, s. 403, of the Social Security Act, as amended.

7. The Florida Bonding Program, provided under Pub. L. No. 97-300, s. 164(a)(1).

8. The Food Assistance Employment and Training Program, provided under the Food and Nutrition Act of 2008, 7 U.S.C. ss.

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2011-2032; the Food Security Act of 1988, Pub. L. No. 99-198; and the Hunger Prevention Act, Pub. L. No. 100-435.

9. The Quick-Response Training Program, provided under ss. 288.046-288.047. Matching funds and in-kind contributions that are provided by clients of the Quick-Response Training Program shall count toward the requirements of s. 288.904, pertaining to the return on investment from activities of Enterprise Florida, Inc.

10. The Work Opportunity Tax Credit, provided under the Tax and Trade Relief Extension Act of 1998, Pub. L. No. 105-277, and the Taxpayer Relief Act of 1997, Pub. L. No. 105-34.

11. Offender placement services, provided under ss. 944.707-944.708.

(c) The department may adopt rules necessary to administer this chapter which relate to implementing and administering the programs listed in paragraph (b) as well as rules related to eligible training providers and auditing and monitoring subrecipients of the workforce system grant funds. The department may consult with the state board to issue technical assistance letters on the operation of federal programs and the expenditure of federal funds by the state board or any local workforce development board. A technical assistance letter must be in writing, must be posted on the department's website, and remains in effect until superseded or terminated. A technical assistance letter is not a declaratory statement issued pursuant to s. 120.565, an order issued pursuant to s. 120.569, or a rule of general applicability under s. 120.54. Section 120.53 does not apply to technical assistance letters.

(d) Contracting with public and private entities as

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necessary to further the directives of this section. All contracts executed by CareerSource Florida, Inc., must include specific performance expectations and deliverables. All CareerSource Florida, Inc., contracts, including those solicited, managed, or paid by the department pursuant to s. 20.60(5)(c) are exempt from s. 112.061, but shall be governed by subsection (1).

(e) Notifying the Governor and the department of statewide or local workforce development and training needs that may require policy changes or an update to the state plan required under s. 445.003, and notifying the Governor, the President of the Senate, and the Speaker of the House of Representatives of noncompliance by the department or other agencies or obstruction of the state board's efforts by such agencies. Upon such notification, the Executive Office of the Governor shall assist agencies to bring them into compliance with board objectives.

(f) Ensuring that the state does not waste valuable training resources. The state board's policy shall be ~~board shall direct~~ that all resources, including equipment purchased for training Workforce Innovation and Opportunity Act clients, be available for use at all times by eligible populations as first priority users. At times when eligible populations are not available, such resources shall be used for any other state-authorized education and training purpose. The state board ~~CareerSource Florida, Inc.,~~ may authorize expenditures to award suitable framed certificates, pins, or other tokens of recognition for performance by a local workforce development board, its committees and subdivisions, and other units of the workforce system. The state board ~~CareerSource Florida, Inc.,~~

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may also authorize expenditures for promotional items, such as t-shirts, hats, or pens printed with messages promoting the state's workforce system to employers, job seekers, and program participants. However, such expenditures are subject to federal regulations applicable to the expenditure of federal funds.

(g) Establishing a dispute resolution process for all memoranda of understanding or other contracts or agreements entered into between the department and local workforce development boards.

(h) Archiving records with the Bureau of Archives and Records Management of the Division of Library and Information Services of the Department of State.

(6) The state board ~~CareerSource Florida, Inc.,~~ may take action that it deems necessary to achieve the purposes of this section, including, but not limited to:

(a) Creating a state employment, education, and training policy that ensures that programs to prepare workers are responsive to present and future business and industry needs and complement the initiatives of Enterprise Florida, Inc.

(b) Establishing policy direction for a funding system that provides incentives to improve the outcomes of career education, registered apprenticeship, and work-based learning programs and that focuses resources on occupations related to new or emerging industries that add greatly to the value of the state's economy.

(c) Establishing a comprehensive policy related to the education and training of target populations such as those who have disabilities, are economically disadvantaged, receive public assistance, are not proficient in English, or are dislocated workers. This approach should ensure the effective

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523 use of federal, state, local, and private resources in reducing
524 the need for public assistance.

525 (d) Designating Institutes of Applied Technology composed
526 of public and private postsecondary institutions working
527 together with business and industry to ensure that career
528 education programs use the most advanced technology and
529 instructional methods available and respond to the changing
530 needs of business and industry.

531 (e) Providing policy direction for a system to project and
532 evaluate labor market supply and demand using the results of the
533 Workforce Estimating Conference created in s. 216.136 and the
534 career education performance standards identified under s.
535 1008.43.

536 (f) Reviewing the performance of public programs that are
537 responsible for economic development, education, employment, and
538 training. The review must include an analysis of the return on
539 investment of these programs.

540 (g) Expanding the occupations identified by the Workforce
541 Estimating Conference to meet needs created by local emergencies
542 or plant closings or to capture occupations within emerging
543 industries.

544 (7) By December 1 of each year, the state board
545 ~~CareerSource Florida, Inc.~~, shall submit to the Governor, the
546 President of the Senate, the Speaker of the House of
547 Representatives, the Senate Minority Leader, and the House
548 Minority Leader a complete and detailed annual report setting
549 forth:

550 (a) All audits, including any audit conducted under
551 subsection (8).

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552 (b) The operations and accomplishments of the board,
553 including the programs or entities specified in subsection (6).

554 (8) Pursuant to his or her own authority or at the
555 direction of the Legislative Auditing Committee, the Auditor
556 General may conduct an audit of the state board and CareerSource
557 Florida, Inc., or the programs or entities created by the state
558 board ~~CareerSource Florida, Inc.~~. The Office of Program Policy
559 Analysis and Government Accountability, pursuant to its
560 authority or at the direction of the Legislative Auditing
561 Committee, may review the systems and controls related to
562 performance outcomes and quality of services of CareerSource
563 Florida, Inc.

564 (9) The state board ~~CareerSource Florida, Inc.~~, in
565 collaboration with the local workforce development boards and
566 appropriate state agencies and local public and private service
567 providers, shall establish uniform performance accountability
568 measures that apply across the core programs to gauge the
569 performance of the state and local workforce development boards
570 in achieving the workforce development strategy.

571 (a) The performance accountability measures for the core
572 programs consist of the primary indicators of performance, any
573 additional indicators of performance, and a state-adjusted level
574 of performance for each indicator pursuant to Pub. L. No. 113-
575 128, Title I, s. 116(b).

576 (b) The performance accountability measures for each local
577 area consist of the primary indicators of performance, any
578 additional indicators of performance, and a local level of
579 performance for each indicator pursuant to Pub. L. No. 113-128.
580 The local level of performance is determined by the local board,

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581 the chief elected official, and the Governor pursuant to Pub. L.
582 No. 113-128, Title I, s. 116(c).

583 (c) Performance accountability measures shall be used to
584 generate performance reports pursuant to Pub. L. No. 113-128,
585 Title I, s. 116(d).

586 (d) The performance accountability measures of success that
587 are adopted by the state board ~~CareerSource Florida, Inc.,~~ or
588 the local workforce development boards must be developed in a
589 manner that provides for an equitable comparison of the relative
590 success or failure of any service provider in terms of positive
591 outcomes.

592 (10) The workforce development strategy for the state shall
593 be designed by the state board, in consultation with the
594 department, and approved by the Governor ~~CareerSource Florida,~~
595 ~~Inc.~~ The strategy must include efforts that enlist business,
596 education, and community support for students to achieve long-
597 term career goals, ensuring that young people have the academic
598 and occupational skills required to succeed in the workplace.
599 The strategy must also assist employers in upgrading or updating
600 the skills of their employees and assisting workers to acquire
601 the education or training needed to secure a better job with
602 better wages. The strategy must assist the state's efforts to
603 attract and expand job-creating businesses offering high-paying,
604 high-demand occupations.

605 (11) The workforce development system must encourage use a
606 ~~charter-process approach aimed at encouraging~~ local design and
607 control of service delivery and targeted activities. The state
608 board, in consultation with the department ~~CareerSource Florida,~~
609 ~~Inc.,~~ shall be responsible for ensuring that ~~granting charters~~

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610 ~~te~~ local workforce development boards ~~that~~ have a membership
611 consistent with the requirements of federal and state law and
612 have developed a plan consistent with the state's workforce
613 development strategy. The plan must specify methods for
614 allocating the resources and programs in a manner that
615 eliminates unwarranted duplication, minimizes administrative
616 costs, meets the existing job market demands and the job market
617 demands resulting from successful economic development
618 activities, ensures access to quality workforce development
619 services for all Floridians, allows for pro rata or partial
620 distribution of benefits and services, prohibits the creation of
621 a waiting list or other indication of an unserved population,
622 serves as many individuals as possible within available
623 resources, and maximizes successful outcomes. The state board ~~As~~
624 ~~part of the charter process, CareerSource Florida, Inc.,~~ shall
625 establish incentives for effective coordination of federal and
626 state programs, outline rewards for successful job placements,
627 and institute collaborative approaches among local service
628 providers. ~~Local decisionmaking and control shall be important~~
629 ~~components for inclusion in this charter application.~~

630 (12) CareerSource Florida, Inc., under the direction of the
631 state board, shall enter into agreement with Space Florida and
632 collaborate with vocational institutes, community colleges,
633 colleges, and universities in this state to develop a workforce
634 development strategy to implement the workforce provisions of s.
635 331.3051.

636 Section 4. Section 445.006, Florida Statutes, is amended to
637 read:

638 445.006 State plan for workforce development.—

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(1) STATE PLAN.—~~The state board CareerSource Florida, Inc.,~~
in conjunction with state and local partners in the workforce
system, shall develop a state plan that produces an educated and
skilled workforce. The state plan must consist of strategic and
operational planning elements. The state plan shall be submitted
by the Governor to the United States Department of Labor
pursuant to the requirements of Pub. L. No. 113-128.

(2) STRATEGIC PLANNING ELEMENTS.—The state board
~~CareerSource Florida, Inc.,~~ in conjunction with state and local
partners in the workforce system, shall develop strategic
planning elements, pursuant to Pub. L. No. 113-128, Title I, s.
102, for the state plan.

(a) The strategic planning elements of the state plan must
include, but need not be limited to, strategies for:

1. Fulfilling the workforce system goals and strategies
prescribed in s. 445.004;

2. Aggregating, integrating, and leveraging workforce
system resources;

3. Coordinating the activities of federal, state, and local
workforce system partners;

4. Addressing the workforce needs of small businesses; and

5. Fostering the participation of rural communities and
distressed urban cores in the workforce system.

(b) The strategic planning elements must include criteria
for allocating workforce resources to local workforce
development boards. With respect to allocating funds to serve
customers of the welfare transition program, such criteria may
include weighting factors that indicate the relative degree of
difficulty associated with securing and retaining employment

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placements for specific subsets of the welfare transition
caseload.

(3) OPERATIONAL PLANNING ELEMENTS.—~~The state board~~
~~CareerSource Florida, Inc.,~~ in conjunction with state and local
partners in the workforce system, shall develop operational
planning elements, pursuant to Pub. L. No. 113-128, Title I, s.
102, for the state plan.

Section 5. Subsection (1), paragraph (b) of subsection (2),
and subsections (3) through (7) and (9) through (13) of section
445.007, Florida Statutes, are amended, and paragraph (c) is
added to subsection (2) of that section, to read:

445.007 Local workforce development boards.—

(1) One local workforce development board shall be
appointed in each designated service delivery area and shall
serve as the local workforce development board pursuant to Pub.
L. No. 113-128. The membership of the local board must be
consistent with Pub. L. No. 113-128, Title I, s. 107(b). If a
public education or training provider is represented on the
local board, a representative of a private education provider
must also be appointed to the local board. The state board
~~CareerSource Florida, Inc.,~~ may waive this requirement if
requested by a local workforce development board if it is
demonstrated that such representatives do not exist in the
region. The importance of minority and gender representation
shall be considered when making appointments to the local board.
The local board, its committees, subcommittees, and
subdivisions, and other units of the workforce system, including
units that may consist in whole or in part of local governmental
units, may use any method of telecommunications to conduct

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meetings, including establishing a quorum through telecommunications, provided that the public is given proper notice of the telecommunications meeting and reasonable access to observe and, when appropriate, participate. Local workforce development boards are subject to chapters 119 and 286 and s. 24, Art. I of the State Constitution. If the local workforce development board enters into a contract with an organization or individual represented on the local board ~~of directors~~, the contract must be approved by a two-thirds vote of the local board, a quorum having been established, and the local board member who could benefit financially from the transaction must abstain from voting on the contract. A local board member must disclose any such conflict in a manner that is consistent with the procedures outlined in s. 112.3143. Each member of a local workforce development board who is not otherwise required to file a full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution or s. 112.3144 shall file a statement of financial interests pursuant to s. 112.3145. The executive director or designated person responsible for the operational and administrative functions of the local workforce development board who is not otherwise required to file a full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution or s. 112.3144 shall file a statement of financial interests pursuant to s. 112.3145.

(2)

(b) The Governor may remove a member of the local board, the executive director of the local board, or the designated person responsible for the operational and administrative

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functions of the local board for cause. ~~As used in this paragraph, the term "cause" includes, but is not limited to, engaging in fraud or other criminal acts, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance.~~

(c) The chief elected official for the local workforce development board may remove a member of the local board, the executive director of the local board, or the designated person responsible for the operational and administrative functions of the local board for cause.

~~(3) The department of Economic Opportunity, under the direction of CareerSource Florida, Inc., shall assign staff to meet with each local workforce development board annually to review the local board's performance and to certify that the local board is in compliance with applicable state and federal law.~~

(4) In addition to the duties and functions specified by the state board ~~CareerSource Florida, Inc.,~~ and by the interlocal agreement approved by the local county or city governing bodies, the local workforce development board shall have the following responsibilities:

(a) Develop, submit, ratify, or amend the local plan pursuant to Pub. L. No. 113-128, Title I, s. 108 and this act.

(b) Conclude agreements necessary to designate the fiscal agent and administrative entity. A public or private entity, including an entity established pursuant to s. 163.01, which makes a majority of the appointments to a local workforce development board may serve as the local board's administrative entity if approved by ~~the department CareerSource Florida, Inc.,~~

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based upon a showing that a fair and competitive process was used to select the administrative entity.

(c) ~~Complete assurances required for the charter process of CareerSource Florida, Inc., and~~ Provide ongoing oversight related to administrative costs, duplicated services, career counseling, economic development, equal access, compliance and accountability, and performance outcomes.

(d) Oversee the one-stop delivery system in its local area.

(5) The department, in conjunction with the state board CareerSource Florida, Inc., shall implement a training program for the local workforce development boards to familiarize local board members with the state's workforce development goals and strategies.

(6) The local workforce development board shall designate all local service providers and may not transfer this authority to a third party. Consistent with the intent of the Workforce Innovation and Opportunity Act, local workforce development boards should provide the greatest possible choice of training providers to those who qualify for training services. A local workforce development board may not restrict the choice of training providers based upon cost, location, or historical training arrangements. However, a local board may restrict the amount of training resources available to any one client. Such restrictions may vary based upon the cost of training in the client's chosen occupational area. The local workforce development board may be designated as a one-stop operator and direct provider of intake, assessment, eligibility determinations, or other direct provider services except training services. Such designation may occur only with the

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agreement of the chief elected official and the Governor as specified in 29 U.S.C. s. 2832(f)(2). The state board CareerSource Florida, Inc., shall establish procedures by which a local workforce development board may request permission to operate under this section and the criteria under which such permission may be granted. The criteria shall include, but need not be limited to, a reduction in the cost of providing the permitted services. Such permission shall be granted for a period not to exceed 3 years for any single request submitted by the local workforce development board.

(7) Local workforce development boards shall adopt a committee structure consistent with applicable federal law and state policies established by the state board CareerSource Florida, Inc.

(9) For purposes of procurement, local workforce development boards and their administrative entities are not state agencies and are exempt from chapters 120 and 287. The local workforce development boards shall apply the procurement and expenditure procedures required by federal law and policies of the department ~~of Economic Opportunity~~ and the state board CareerSource Florida, Inc., for the expenditure of federal, state, and nonpass-through funds. The making or approval of smaller, multiple payments for a single purchase with the intent to avoid or evade the monetary thresholds and procedures established by federal law and policies of the department ~~of Economic Opportunity~~ and the state board CareerSource Florida, Inc., is grounds for removal for cause. Local workforce development boards, their administrative entities, committees, and subcommittees, and other workforce units may authorize

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expenditures to award suitable framed certificates, pins, or other tokens of recognition for performance by units of the workforce system. Local workforce development boards; their administrative entities, committees, and subcommittees; and other workforce units may authorize expenditures for promotional items, such as t-shirts, hats, or pens printed with messages promoting Florida's workforce system to employers, job seekers, and program participants. However, such expenditures are subject to federal regulations applicable to the expenditure of federal funds. All contracts executed by local workforce development boards must include specific performance expectations and deliverables.

(10) State and federal funds provided to the local workforce development boards may not be used directly or indirectly to pay for meals, food, or beverages for board members, staff, or employees of local workforce development boards, the state board CareerSource Florida, Inc., or the department of Economic Opportunity except as expressly authorized by state law. Preapproved, reasonable, and necessary per diem allowances and travel expenses may be reimbursed. Such reimbursement shall be at the standard travel reimbursement rates established in s. 112.061 and shall be in compliance with all applicable federal and state requirements. The department shall provide fiscal and programmatic guidance CareerSource Florida, Inc., shall develop a statewide fiscal policy applicable to the state board, CareerSource Florida, Inc., and all local workforce development boards, to hold both the state and local workforce development boards strictly accountable for adherence to the policy and subject to regular and periodic

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monitoring by the department ~~of Economic Opportunity, the administrative entity for CareerSource Florida, Inc.~~ Local boards are prohibited from expending state or federal funds for entertainment costs and recreational activities for local board members and employees as these terms are defined by 2 C.F.R. part ~~200~~ 230.

(11) To increase transparency and accountability, a local workforce development board must comply with the requirements of this section before contracting with a member of the local board or a relative, as defined in s. 112.3143(1)(c), of a local board member or of an employee of the local board. Such contracts may not be executed before or without the prior approval of the department CareerSource Florida, Inc. Such contracts, as well as documentation demonstrating adherence to this section as specified by the department CareerSource Florida, Inc., must be submitted to the department ~~of Economic Opportunity~~ for review and approval recommendation according to criteria to be determined by CareerSource Florida, Inc. Such a contract must be approved by a two-thirds vote of the local board, a quorum having been established; all conflicts of interest must be disclosed before the vote; and any member who may benefit from the contract, or whose relative may benefit from the contract, must abstain from the vote. A contract under \$25,000 between a local workforce development board and a member of that board or between a relative, as defined in s. 112.3143(1)(c), of a local board member or of an employee of the local board is not required to have the prior approval of the department CareerSource Florida, Inc., but must be approved by a two-thirds vote of the local board, a quorum having been established, and

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871 must be reported to the department ~~of Economic Opportunity~~ and
 872 ~~the state board CareerSource Florida, Inc.~~, within 30 days after
 873 approval. If a contract cannot be approved by the department
 874 ~~CareerSource Florida, Inc.~~, a review of the decision to
 875 disapprove the contract may be requested by the local workforce
 876 development board or other parties to the disapproved contract.

877 (12) Each local workforce development board shall develop a
 878 budget for the purpose of carrying out the duties of the local
 879 board under this section, subject to the approval of the chief
 880 elected official. Each local workforce development board shall
 881 submit its annual budget for review to the department
 882 ~~CareerSource Florida, Inc.~~, no later than 2 weeks after the
 883 chair approves the budget.

884 ~~(13) By March 1, 2018, CareerSource Florida, Inc., shall~~
 885 ~~establish regional planning areas in accordance with Pub. L. No.~~
 886 ~~113-128, Title I, s. 106(a)(2). Local workforce development~~
 887 ~~boards and chief elected officials within identified regional~~
 888 ~~planning areas shall prepare a regional workforce development~~
 889 ~~plan as required under Pub. L. No. 113-128, Title I, s.~~
 890 ~~106(e)(2).~~

891 Section 6. Subsections (1) and (4) of section 445.0071,
 892 Florida Statutes, are amended to read:

893 445.0071 Florida Youth Summer Jobs Pilot Program.—

894 (1) CREATION.—Contingent upon appropriations, there is
 895 created the Florida Youth Summer Jobs Pilot Program within
 896 workforce development district 22 served by the Broward
 897 Workforce Development Board. The board shall, in consultation
 898 with the state board ~~CareerSource Florida, Inc.~~, provide a
 899 program offering at-risk and disadvantaged children summer jobs

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900 in partnership with local communities and public employers.

901 (4) GOVERNANCE.—

902 (a) The pilot program shall be administered by the local
 903 workforce development board in consultation with the state board
 904 ~~CareerSource Florida, Inc.~~

905 (b) The local workforce development board shall report to
 906 the state board and the department ~~CareerSource Florida, Inc.~~,
 907 the number of at-risk and disadvantaged children who enter the
 908 program, the types of work activities they participate in, and
 909 the number of children who return to school, go on to
 910 postsecondary school, or enter the workforce full time at the
 911 end of the program. The state board ~~CareerSource Florida, Inc.~~,
 912 shall report to the Legislature by November 1 of each year on
 913 the performance of the program.

914 Section 7. Subsections (1) and (2) of section 445.008,
 915 Florida Statutes, are amended to read:

916 445.008 Workforce Training Institute.—

917 (1) The state board, through CareerSource Florida, Inc.,
 918 may create the Workforce Training Institute, which shall be a
 919 comprehensive program of workforce training courses designed to
 920 meet the unique needs of, and shall include Internet-based
 921 training modules suitable for and made available to,
 922 professionals integral to the workforce system, including
 923 advisors and counselors in educational institutions.

924 (2) The state board, through CareerSource Florida, Inc.,
 925 may enter into a contract for the provision of administrative
 926 support services for the institute and shall adopt policies for
 927 the administration and operation of the institute and establish
 928 admission fees in an amount which, in the aggregate, does not

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exceed the cost of the program. CareerSource Florida, Inc., may accept donations or grants of any type for any function or purpose of the institute. All donations and grants received by CareerSource Florida, Inc., must be reported to the state board and the department.

Section 8. Subsections (2), (3), and (4), paragraph (b) of subsection (6), subsection (7), paragraphs (a), (c), and (d) of subsection (8), and subsection (9) of section 445.009, Florida Statutes, are amended to read:

445.009 One-stop delivery system.—

(2) (a) Subject to a process designed by the state board CareerSource Florida, Inc., and in compliance with Pub. L. No. 113-128, local workforce development boards shall designate one-stop delivery system operators.

(b) A local workforce development board may designate as its one-stop delivery system operator any public or private entity that is eligible to provide services under any state or federal workforce program that is a mandatory or discretionary partner in the local workforce development area's one-stop delivery system if approved by the department CareerSource Florida, Inc., upon a showing by the local workforce development board that a fair and competitive process was used in the selection. As a condition of authorizing a local workforce development board to designate such an entity as its one-stop delivery system operator, the department CareerSource Florida, Inc., must require the local workforce development board to demonstrate that safeguards are in place to ensure that the one-stop delivery system operator will not exercise an unfair competitive advantage or unfairly refer or direct customers of

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the one-stop delivery system to services provided by that one-stop delivery system operator. A local workforce development board may retain its current one-stop career center operator without further procurement action if the board has an established one-stop career center that has complied with federal and state law.

(c) The local workforce development board must enter into a memorandum of understanding with each mandatory or optional partner participating in the one-stop delivery system which details the partner's required contribution to infrastructure costs, as required by Pub. L. No. 113-128, s. 121(h). ~~If the local workforce development board and the one-stop partner are unable to come to an agreement regarding infrastructure costs by July 1, 2017, the costs shall be allocated pursuant to a policy established by the Governor.~~

(3) Local workforce development boards shall enter into a memorandum of understanding with the department ~~of Economic Opportunity~~ for the delivery of employment services authorized by the federal Wagner-Peyser Act. This memorandum of understanding must be performance based.

(a) Unless otherwise required by federal law, at least 90 percent of the Wagner-Peyser funding must go into direct customer service costs.

(b) Employment services must be provided through the one-stop delivery system, under the guidance of one-stop delivery system operators. One-stop delivery system operators shall have overall authority for directing the staff of the workforce system. Personnel matters shall remain under the ultimate authority of the department. However, the one-stop delivery

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system operator shall submit to the department information concerning the job performance of employees of the department who deliver employment services. The department shall consider any such information submitted by the one-stop delivery system operator in conducting performance appraisals of the employees.

(c) The department shall retain fiscal responsibility and accountability for the administration of funds allocated to the state under the Wagner-Peyser Act. An employee of the department who is providing services authorized under the Wagner-Peyser Act shall be paid using Wagner-Peyser Act funds.

(4) One-stop delivery system partners shall enter into a memorandum of understanding pursuant to Pub. L. No. 113-128, Title I, s. 121, with the local workforce development board. Failure of a local partner to participate cannot unilaterally block the majority of partners from moving forward with their one-stop delivery system, and the state board, in conjunction with the department, may notify the Governor CareerSource Florida, Inc., pursuant to s. 445.004(5)(e), may make notification of a local partner that fails to participate.

(6)

(b) To expand electronic capabilities, the state board and the department CareerSource Florida, Inc., working with local workforce development boards, shall develop a centralized help center to assist local workforce development boards in fulfilling core services, minimizing the need for fixed-site one-stop delivery system centers.

(7) Intensive services and training provided pursuant to Pub. L. No. 113-128 shall be provided to individuals through Intensive Service Accounts and Individual Training Accounts. The

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state board CareerSource Florida, Inc., shall develop an implementation plan, including identification of initially eligible training providers, transition guidelines, and criteria for use of these accounts. Individual Training Accounts must be compatible with Individual Development Accounts for education allowed in federal and state welfare reform statutes.

(8) (a) Individual Training Accounts must be expended on programs that prepare people to enter high-wage occupations identified by the Workforce Estimating Conference created by s. 216.136, and on other programs recommended by the state board and approved by the department as approved by CareerSource Florida, Inc.

(c) The department CareerSource Florida, Inc., shall periodically review Individual Training Account pricing schedules developed by local workforce development boards and present findings and recommendations for process improvement to the President of the Senate and the Speaker of the House of Representatives.

(d) To the maximum extent possible, training providers shall use funding sources other than the funding provided under Pub. L. No. 113-128. The state board CareerSource Florida, Inc., shall develop a system to encourage the leveraging of appropriated resources for the workforce system and shall report on such efforts as part of the required annual report.

(9) (a) The state board CareerSource Florida, Inc., working with the department, shall coordinate among the agencies a plan for a One-Stop Electronic Network made up of one-stop delivery system centers and other partner agencies that are operated by authorized public or private for-profit or not-for-profit

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agents. The plan shall identify resources within existing revenues to establish and support this electronic network for service delivery that includes Government Services Direct. If necessary, the plan shall identify additional funding needed to achieve the provisions of this subsection.

(b) The network shall assure that a uniform method is used to determine eligibility for and management of services provided by agencies that conduct workforce development activities. The Department of Management Services shall develop strategies to allow access to the databases and information management systems of the following systems in order to link information in those databases with the one-stop delivery system:

1. The Reemployment Assistance Program under chapter 443.

2. The public employment service described in s. 443.181.

3. The public assistance information system used by the Department of Children and Families and the components related to temporary cash assistance, food assistance, and Medicaid eligibility.

4. The Student Financial Assistance System of the Department of Education.

5. Enrollment in the public postsecondary education system.

6. Other information systems determined appropriate by the state board in consultation with the department ~~CareerSource Florida, Inc.~~

Section 9. Section 445.011, Florida Statutes, is amended to read:

445.011 Workforce information systems.—

(1) The department, in consultation with the state board ~~CareerSource Florida, Inc.~~, shall implement, subject to

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legislative appropriation, automated information systems that are necessary for the efficient and effective operation and management of the workforce development system. These information systems shall include, but need not be limited to, the following:

(a) An integrated management system for the one-stop service delivery system, which includes, at a minimum, common registration and intake, screening for needs and benefits, case planning and tracking, training benefits management, service and training provider management, performance reporting, executive information and reporting, and customer-satisfaction tracking and reporting.

1. The system should report current budgeting, expenditure, and performance information for assessing performance related to outcomes, service delivery, and financial administration for workforce programs pursuant to s. 445.004(5) and (9).

2. The information system should include auditable systems and controls to ensure financial integrity and valid and reliable performance information.

3. The system should support service integration and case management by providing for case tracking for participants in welfare transition programs.

(b) An automated job-matching information system that is accessible to employers, job seekers, and other users via the Internet, and that includes, at a minimum:

1. Skill match information, including skill gap analysis; resume creation; job order creation; skill tests; job search by area, employer type, and employer name; and training provider linkage;

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2. Job market information based on surveys, including local, state, regional, national, and international occupational and job availability information; and

3. Service provider information, including education and training providers, child care facilities and related information, health and social service agencies, and other providers of services that would be useful to job seekers.

(2) ~~The department in procuring workforce information systems, CareerSource Florida, Inc., shall employ competitive processes, including requests for proposals, competitive negotiation, and other competitive processes to ensure that the procurement results in the most cost effective investment of state funds.~~

~~(3) CareerSource Florida, Inc.,~~ may procure independent verification and validation services associated with developing and implementing any workforce information system.

~~(3)(4) The department CareerSource Florida, Inc.,~~ shall coordinate development and implementation of workforce information systems with the state chief information officer to ensure compatibility with the state's information system strategy and enterprise architecture.

Section 10. Section 445.028, Florida Statutes, is amended to read:

445.028 Transitional benefits and services.—In cooperation with ~~the department CareerSource Florida, Inc.,~~ the Department of Children and Families shall develop procedures to ensure that families leaving the temporary cash assistance program receive transitional benefits and services that will assist the family in moving toward self-sufficiency. At a minimum, such procedures

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must include, but are not limited to, the following:

(1) Each recipient of cash assistance who is determined ineligible for cash assistance for a reason other than a work activity sanction shall be contacted by the workforce system case manager and provided information about the availability of transitional benefits and services. Such contact shall be attempted prior to closure of the case management file.

(2) Each recipient of temporary cash assistance who is determined ineligible for cash assistance due to noncompliance with the work activity requirements shall be contacted and provided information in accordance with s. 414.065(1).

(3) The department, in consultation with the board of directors of CareerSource Florida, Inc., shall develop informational material, including posters and brochures, to better inform families about the availability of transitional benefits and services.

(4) ~~The department CareerSource Florida, Inc.,~~ in cooperation with the Department of Children and Families shall, to the extent permitted by federal law, develop procedures to maximize the utilization of transitional Medicaid by families who leave the temporary cash assistance program.

Section 11. Subsections (6), (8), and (13) of section 445.051, Florida Statutes, are amended to read:

445.051 Individual development accounts.—

(6) ~~The state board CareerSource Florida, Inc.,~~ shall establish procedures for local workforce development boards to include in their annual program and financial plan an application to offer an individual development account program as part of their TANF allocation. These procedures must include,

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but need not be limited to, administrative costs permitted for the fiduciary organization and policies relative to identifying the match ratio and limits on the deposits for which the match will be provided in the application process. The state board ~~CareerSource Florida, Inc.~~, shall establish policies and procedures necessary to ensure that funds held in an individual development account are not withdrawn except for one or more of the qualified purposes described in this section.

(8) The state board ~~CareerSource Florida, Inc.~~, shall establish procedures for controlling the withdrawal of funds for uses other than qualified purposes, including specifying conditions under which an account must be closed.

(13) Pursuant to policy direction by the state board ~~CareerSource Florida, Inc.~~, the department of ~~Economic Opportunity~~ shall adopt such rules as are necessary to implement this act.

Section 12. Paragraph (p) of subsection (3) of section 11.45, Florida Statutes, is amended to read:

11.45 Definitions; duties; authorities; reports; rules.—

(3) **AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.**—The Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of:

(p) CareerSource Florida, Inc.; the state board, as that term is defined in s. 445.002; or the programs or entities created by the state board ~~CareerSource Florida, Inc.~~, created pursuant to s. 445.004.

Section 13. Subsection (1) of section 443.171, Florida

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Statutes, is amended to read:

443.171 Department of Economic Opportunity and commission; powers and duties; records and reports; proceedings; state-federal cooperation.—

(1) **POWERS AND DUTIES.**—The Department of Economic Opportunity shall administer this chapter. The department may employ persons, make expenditures, require reports, conduct investigations, and take other action necessary or suitable to administer this chapter. The department shall annually submit information to the state board, as defined in s. 445.002 ~~CareerSource Florida, Inc.~~, covering the administration and operation of this chapter during the preceding calendar year for inclusion in the strategic plan under s. 445.006 and may make recommendations for amendment to this chapter.

Section 14. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 10, 2020

I respectfully request that **Senate Bill #1244**, relating to State Workforce Development Board, be placed on the:

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

A handwritten signature in cursive script, reading "Ben Albritton".

Senator Ben Albritton
Florida Senate, District 26

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20

Meeting Date

1244

Bill Number (if applicable)

Topic Workforce Boards

Amendment Barcode (if applicable)

Name Nicholas Alvarez

Job Title Legislative Affairs Director

Address 107 E. Madison St

Phone 850 290 3053

Street

Tallahassee

FL

32399

City

State

Zip

Email nicholas.alvarez@dea.mfrc.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of Economic Opportunity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 826

INTRODUCER: Infrastructure and Security Committee; Environment and Natural Resources Committee;
and Senator Mayfield

SUBJECT: Marina Evacuations

DATE: February 28, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	Fav/CS
2.	Proctor	Miller	IS	Fav/CS
3.	Anderson	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 826 prohibits, upon the issuance of a hurricane watch that affects the waters of marinas located in a deepwater seaport, vessels under 500 gross tons from remaining in the waters of such marinas that have been deemed not suitable for refuge during a hurricane. The CS requires that vessel owners promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport.

If the Coast Guard Captain of the Port sets the port condition to “Yankee”¹ and a vessel owner has failed to remove his or her vessel from the waterway, a marina owner, operator, employee, or agent, is required to remove the vessel, if reasonable, from its slip. The marina owner may charge the vessel owner a reasonable fee for the service of removing the vessel.

The CS provides that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to the vessel from a hurricane and is held harmless from removing the vessel from the waterways. However, the CS does not provide immunity to the marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel.

¹ Gale force winds are predicted to arrive within 24 hours, and the port is closed to inbound traffic and vessel traffic control measures are in effect on vessel movements within the port.

The CS provides that after a watch has been issued, if an owner or operator has not removed the vessel pursuant to an order from the seaport, the owner or operator may be subject to a fine, in an amount not exceeding three times the cost associated with removing the vessel from the waterway.

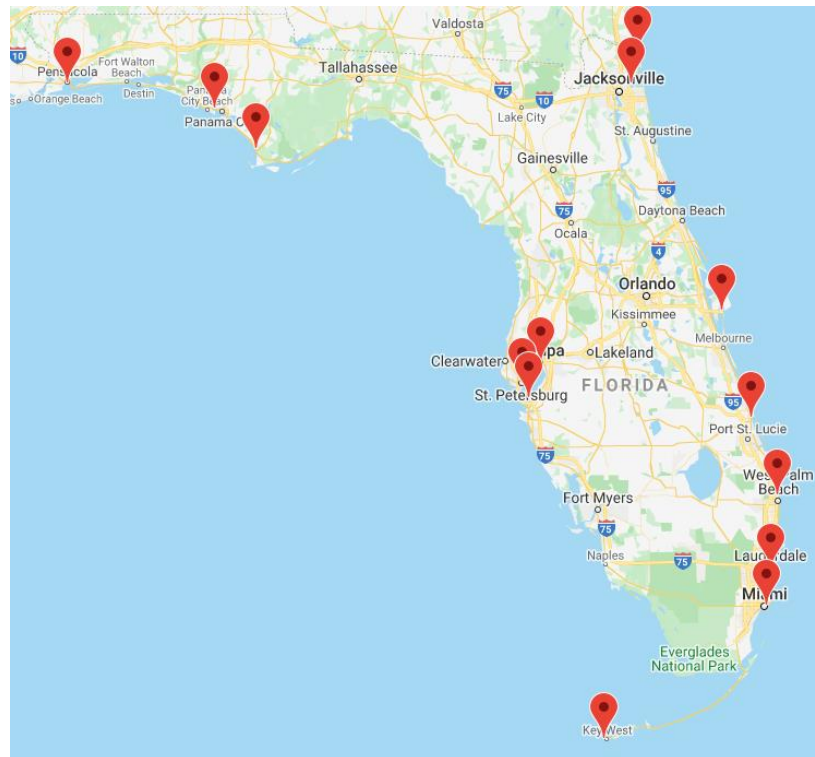
The CS has an effective date of July 1, 2020.

II. Present Situation:

Deepwater Ports in Florida

Under Florida law, a “port” means a port authority or district.² Ports are created by and given authority under general or special law. Each port, in agreement with the United States Coast Guard (Coast Guard), state pilots, and other ports in its operating port area, is required to adopt guidelines for minimum bottom clearance for each berth and channel, for the movement of vessels, and for radio communications of vessel traffic for all commercial vessels entering and leaving its harbor channels.³

There are 14 deepwater seaports in Florida, indicated in the map below:⁴



² Section 313.21, F.S.; see also s. 315.02, F.S. “Port authority” means a port authority in Florida created by or pursuant to the provisions of any general or special law or any district or board of county commissioners acting as a port authority under or pursuant to the provisions of any general or special law. “Port district” means any district created by or pursuant to the provisions of any general or special law and authorized to own or operate any port facilities.

³ Section 313.23, F.S.

⁴ Florida Ports Council, *Seaports*, <https://flaports.org/seaports/> (last visited February 12, 2020).

Port Canaveral

One example of a deepwater seaport impacted by the CS is Port Canaveral, which was dedicated on November 4, 1953.⁵ It is a gateway for Central Florida and the world's second busiest cruise port.⁶ Annually, Port Canaveral moves nearly 4 million tons of cargo and sees 4 million cruise passengers.⁷ It also houses United States Army, Navy, and Air Force facilities.⁸ Port Canaveral is a key part of Florida's gasoline supply system. Gasoline and other petroleum products are primarily delivered by marine tankers and barges to the state's ports, including Port Canaveral, where the products are offloaded and later stored and distributed around the state.⁹ Additionally, 200 small businesses ranging from marinas, restaurants, retail, and charter boats currently lease and operate at Port Canaveral.¹⁰

In fiscal year 2018, Port Canaveral reported \$103.8 million in revenues, the highest in its history.¹¹

Canaveral Port Authority

The Canaveral Port District (Port District) was created by the Legislature by special act in 1953, as amended in 2014.¹² It is an independent special taxing district and political subdivision of the state.¹³ The Canaveral Port Authority (Port Authority) has the power to make rules and regulations for the promotion and conduct of navigation, commerce, and industry in the Port District.¹⁴ The Port Authority also has the power to make rules and regulations governing the docking, storing, mooring, and anchoring of vessels within the Port District and to remove all obstacles to navigation, commerce, and industry in the waters of the port.¹⁵

The Port Canaveral Tariff No. 16 provides the current rates, rules, and regulations governing its marine and port services.¹⁶ Anyone who uses the waterways and facilities under the jurisdiction of the Port Authority consents to the terms and conditions of the tariff.¹⁷ According to the tariff, Port Canaveral is not a suitable refuge during hurricanes or tropical storms. All Port Canaveral

⁵ Port Canaveral, *History*, <https://www.portcanaveral.com/About/History> (last visited February 12, 2020).

⁶ Port Canaveral, *Port and Cruise Facts*, <https://www.portcanaveral.com/Cruise/Port-Cruise-Facts> (last visited February 12, 2020).

⁷ *Supra*, note 5.

⁸ Port Canaveral, *About Us*, <https://www.portcanaveral.com/About/> (last visited February 12, 2020).

⁹ Office of Program Policy Analysis and Government Accountability, Florida Legislature, *Feasibility Analysis for Petroleum Distribution Centers*, 11 (Nov. 29, 2018), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/18-PETRO.pdf>.

¹⁰ *Supra*, note 8.

¹¹ Florida Ports Council, *Port Canaveral*, <https://flaports.org/ports/port-canaveral/> (last visited February 12, 2020).

¹² Ch. 2014-241, Laws of Fla. Each special district in existence at the time was required to submit to the Legislature a draft codified charter so that its special acts could be codified into a single act for reenactment by the Legislature.

¹³ Section 189.403(1), F.S., defines a "special district" as a confined local government unit established for a special purpose. The public policy intent of special districts is to provide private and public sectors an alternative governing method to "manage, own, operate, construct and finance basic capital infrastructure, facilities and services."

¹⁴ Art. IV, s. 9 of the Canaveral Port Authority Charter, as amended by Ch. 2014-241, Laws of Fla.

¹⁵ Art. IV, s. 10 of the Canaveral Port Authority Charter, as amended by Ch. 2014-241, Laws of Fla.

¹⁶ Canaveral Port Authority, *Tariff No. 16 – Governing Rates, Rules, & Regulations of the Marine and Port Services*, Rule 520 (Oct. 1, 2019), available at [https://www.portcanaveral.com/getattachment/Tariffs/CPA-Tariff-16-FY20-\(2\).pdf.aspx?lang=en-US](https://www.portcanaveral.com/getattachment/Tariffs/CPA-Tariff-16-FY20-(2).pdf.aspx?lang=en-US).

¹⁷ *Id.*, Rule 100.

waterway tenants and users must comply with evacuation orders and storm preparation directives given by the Port Authority, the Coast Guard, the Brevard County Sheriff's Office, and Canaveral Fire Rescue.¹⁸

The tariff specifically states that recreational and commercial vessels under 500 gross tons are not eligible to remain in Port and must be removed from the waters of the Port, at the expense of the vessel owner or operator, before hurricane condition Zulu is set by the Coast Guard (see discussion below of Hurricane Season Port Conditions and Categories).¹⁹ The Port Authority is authorized to issue penalties to vessel owners or operators in accordance with statutory provisions (see discussion below of Vessel Movements and Penalties for Delay).²⁰

Vessel Movements and Penalties for Delay

Pursuant to Florida law, each port may regulate vessel movements within its jurisdiction, whether involving public or private facilities or areas, by:

- Scheduling vessels for use of berths, anchorages, or other facilities at the port.
- Ordering and enforcing a vessel, at its own expense and risk, to vacate or change position at a berth, anchorage, or facility, whether public or private, in order to facilitate navigation, commerce, protection of other vessels or property, or dredging of channels or berths.
- Designating port facilities for the loading or discharging of vessels.
- Assigning berths at wharves for arriving vessels.²¹

Ports are authorized to establish fees and compensation for the services regulating vessel movements provided by the port.²²

A port may impose and collect a penalty from a vessel that unnecessarily delays in moving under an order to vacate or change position. This penalty may not exceed \$1,000 per hour or fraction thereof, plus 150 percent of the demurrage costs incurred by a waiting vessel, until the order is complied with.²³

Marinas

A marina is a licensed commercial facility that provides secured public moorings or dry storage for vessels on a leased basis.²⁴ There are five marinas within Port Canaveral, with approximately 260 wet slips hosted on Port property for recreational vessels under 500 gross tons.²⁵ This

¹⁸ *Id.*, Rule 520.

¹⁹ *Id.*

²⁰ Section 313.22(3), F.S.

²¹ Section 313.22(1), F.S.

²² Section 313.22(2), F.S.

²³ *Supra*, note 20.

²⁴ Section 327.02(25), F.S.

²⁵ Email from Caitlin Lewis, Government Relations Manager, Canaveral Port Authority, to Senate Environment and Natural Resources Committee (Jan. 22, 2020), available at http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4857/8671_MeetingPacket_4857.03.20.pdf on page 218-219 (last visited February 12, 2020).

number does not include boats in marina storage within Port property. The map below shows Port Canaveral, including its marina district.²⁶



Marina Evacuations

Storm Condition Effects on Vessels and Marinas

Hurricanes and storm conditions can include high winds, storm surges, wave action, and heavy rainfall.²⁷ These conditions can cause catastrophic damage to marinas and vessels. Vessels that are left in a marina during hurricane and storm conditions can lead to problems in the port, including the inability to secure docks, causing potential damage to infrastructure such as piers, and other harm to persons or property. Weather during a storm event can force a vessel into an obstruction, propel objects into the vessel, or sink or damage a boat.²⁸ A moored vessel can repeatedly collide with a stationary dock, leading to damage to both the vessel and dock. Storm surges can even lift entire floating docks above their pilings or knock boats off their cradles.²⁹

Vessels left in the harbor can also pose navigational issues and cause problems and delays in clearing channels. However, boater preparedness education and preparation can reduce the loss of property for both the vessel owner and others.³⁰ To this end, marinas and ports have an interest in requiring vessel owners to secure their vessels during a storm to prevent damage to persons or property.

Safe Haven

Some marina docking contracts contain “safe haven” or “hurricane” clauses. These clauses provide that, when a hurricane watch is issued, boat owners shall immediately remove their vessels and all personal property from the marina and seek safe haven somewhere else. Failure to

²⁶ *Supra*, note 6.

²⁷ UF/IFAS, *Hurricane Manual for Marine Interest*, available at [https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-\(2\).pdf](https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-(2).pdf) (last visited February 12, 2020).

²⁸ *Id.*; Florida Keys National Marine Sanctuary, *Protect your Boat in a Hurricane: Making a Plan (Part I)*, <https://floridakeys.noaa.gov/whatsnew/around/2015/boathurricane1.html> (last visited February 12, 2020).

²⁹ *Id.*

³⁰ *Supra*, note 27.

comply with this requirement, according to the clauses, will result in the boat owner being liable for all damage to docks, piers, other vessels, or any other property damage directly caused by the owner's vessel or resulting from its presence in the marina.³¹

Marina Evacuation Statute

Florida enacted a law designed to prevent marinas from using safe haven clauses as a basis for recovering their property damage from vessel owners after a hurricane.³² Florida law emphasizes the protection of life over property by prohibiting marinas from requiring vessel owners to remove their vessels from a marina following the issuance of a hurricane watch or warning.³³

However, after a tropical storm or hurricane watch has been issued, a marina owner or operator, or their employee or agent, may take reasonable actions to further secure a vessel within the marina to minimize damage to the vessel and to protect marina property, private property, and the environment.³⁴ The owner or operator may charge a reasonable fee for such services.³⁵ A marina owner may include this in a contractual agreement with a vessel owner.³⁶ Marina owners are not able to be held liable for damage to a vessel from a storm or hurricane, but may be liable for damage due to intentional acts or negligence when removing or securing a vessel.³⁷

Burklow & Associates, Inc. v. Belcher is the only Florida state court decision that specifically mentions Florida's marina evacuation statute.³⁸ A marina owner sued owners of 16 stored vessels for damages allegedly caused by the vessel owners' failure to move their vessels after a hurricane warning was issued as was required by their marina contracts.³⁹ The court upheld the state statute and found that the vessel owners had no duty, contractually or otherwise, to move their vessels following the issuance of a hurricane watch or warning.⁴⁰ The court's analysis pointed to the clear legislative policy "to ensure that protecting lives and safety of vessel owners is placed before interests of protecting property" when a hurricane approaches.⁴¹

Hurricane Season Port Conditions and Categories

Port conditions are set by the Coast Guard Captain of the Port of a sector, or regulated area. Port conditions are explained in the table below.⁴² "Gale force winds" mean winds of 34 knots or 39 miles per hour.

³¹ Mercante, James, *Hurricanes and Act of God: When the Best Defense is a Good Offense*, 18 U.S.F. MAR. L.J. (2006).

³² Ch. 93-211, s. 22, Laws of Fla. (creating s. 327.59, F.S.).

³³ Section 327.59(1), F.S.

³⁴ Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(2), F.S., effective Jul. 1, 2006).

³⁵ *Id.*

³⁶ Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(3), F.S., effective Jul. 1, 2006).

³⁷ Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(4), F.S., effective Jul. 1, 2006).

³⁸ 719 So.2d 31 (Fla. Dist. Ct. App. 1998).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² 33 C.F.R. s. 165.720; 33 C.F.R. 165.781; see also Brazos Pilots Association, *Hurricane Season Port Conditions and Categories*, available at <http://www.brazospilots.com/Hurricane-Season.pdf> (last visited February 12, 2020).

Port Condition	Storm Status	Port Status
Whiskey	Gale force winds are predicted to arrive within 72 hours	Open to all commercial and recreational traffic
X-Ray	Gale force winds are predicted to arrive within 48 hours	Open to all commercial and recreational traffic
Yankee	Gale force winds are predicted to arrive within 24 hours	Closed to inbound traffic and vessel traffic control measures in effect on vessel movements within the port
Zulu	Gale force winds are predicted to arrive within 12 hours	Closed to all inbound and outbound traffic
Recovery	The storm is no longer a threat to the area, but response and recovery operations may be in progress to address damage.	Reopened to outbound traffic at completion of port survey; vessel traffic control measures remain in effect on vessel movements within the port

III. Effect of Proposed Changes:

The CS amends s. 327.59, F.S., to prohibit, upon the issuance of a hurricane watch that affects the waters of marinas located in a deepwater seaport, vessels under 500 gross tons from remaining in the waters of such marinas that have been deemed not suitable for refuge during a hurricane.

The CS requires that vessel owners promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport. If the Coast Guard Captain of the Port sets the port condition to “Yankee” and a vessel owner has failed to remove his or her vessel from the waterway, a marina owner, operator, employee, or agent, regardless of any existing contractual provisions between the marina owner and vessel owner, is required to remove the vessel, or cause the vessel to be removed, if reasonable, from its slip. The marina owner may charge the vessel owner a reasonable fee for the service of removing the vessel.

The CS provides that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to the vessel from a hurricane and is held harmless from removing the vessel from the waterways. However, the CS does not provide immunity to the marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel.

The CS provides that after a hurricane watch has been issued, if an owner or operator of a vessel has not removed the vessel pursuant to an order from the seaport, the owner or operator may be subject to a fine, which must be imposed and collected by the deepwater seaport that issued the evacuation order. The amount of the fine may not exceed three times the cost associated with removing the vessel from the waterway.

The CS provides the bill will take effect July 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.

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

None.

B. Private Sector Impact:

Vessel owners may incur increased costs from moving their vessel pursuant to a movement order, from fees charged by a marina owner for the service of moving a vessel, or due to penalties incurred from noncompliance with a movement order.

C. Government Sector Impact:

Ports may see a positive fiscal impact due to increased collection of penalties from vessel owners that do not comply with a movement order and cost savings associated with prevention of damage to port facilities and infrastructure.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This CS substantially amends the following section of the Florida Statutes: 327.59

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 Infrastructure and Security Committee on February 17, 2020:

- Provides that the fine imposed on the vessel owner is limited to three times the removal costs and must be imposed by the deepwater seaport issuing the evacuation order.

CS by Environment and Natural Resources Committee on February 3, 2020:

- Requires that owners of vessels under 500 gross tons remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport;
- Requires a marina owner, operator, employee, or agent to remove a vessel from its slip if the Coast Guard Captain of the Port sets the port condition to “Yankee” and the vessel owner has not removed the vessel from the waterway as required;
- Authorizes the marina owner, operator, employee, or agent to charge the vessel owner a reasonable fee for the service of moving the vessel; and
- Clarifies that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to the vessel from a hurricane or from removing the vessel as required under this section; however, the amendment does not provide immunity to the marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence.

- B. **Amendments:**

None.

By the Committees on Infrastructure and Security; and
Environment and Natural Resources; and Senator Mayfield

596-03774-20

2020826c2

A bill to be entitled

An act relating to marina evacuations; amending s. 327.59, F.S.; prohibiting vessels under a specified weight from remaining in certain marinas that have been deemed unsuitable for refuge during a hurricane after the issuance of a hurricane watch; requiring a marina owner, operator, employee, or agent to remove specified vessels under certain circumstances; providing that such owner, operator, employee, or agent may charge the vessel owner a reasonable fee for such removal and may not be held liable for any damages as a result of such removal; providing construction; providing that the owners or operators of certain vessels may be subject to a fine that the deepwater seaport issuing an evacuation order is required to impose and collect; providing an effective date.

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

Section 1. Subsection (1) of section 327.59, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

327.59 Marina evacuations.—

(1) Except as provided in this section After June 1, 1994, marinas may not adopt, maintain, or enforce policies pertaining to evacuation of vessels which require vessels to be removed from marinas following the issuance of a hurricane watch or warning, in order to ensure that protecting the lives and safety

Page 1 of 3

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596-03774-20

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of vessel owners is placed before interests of protecting property.

(5) Upon the issuance of a hurricane watch affecting the waters of marinas located in a deepwater seaport, vessels under 500 gross tons may not remain in the waters of such marinas that have been deemed not suitable for refuge during a hurricane. Vessel owners shall promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport. If the United States Coast Guard captain of the port sets the port condition to "Yankee" and a vessel owner has failed to remove a vessel from the waterway, the marina owner, operator, employee, or agent, regardless of any existing contractual provisions between the marina owner and the vessel owner, shall remove the vessel, or cause the vessel to be removed, if reasonable, from its slip and may charge the vessel owner a reasonable fee for any such services rendered. A marina owner, operator, employee, or agent may not be held liable for any damage incurred to a vessel from a hurricane and is held harmless as a result of such actions to remove the vessel from the waterways. Nothing in this section may be construed to provide immunity to a marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel pursuant to this section. After the hurricane watch has been issued, the owner or operator of any vessel that has not been removed from the waterway of the marina, pursuant to an order from the deepwater seaport, may be subject to a fine, which must be imposed and collected by the deepwater seaport that issued the evacuation order if assessed, in an amount not exceeding three times the cost associated with

Page 2 of 3

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596-03774-20

2020826c2

59 removing the vessel from the waterway.

60 Section 2. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Agriculture,
Environment, and General Government, *Chair*
Children, Families, and Elder Affairs, *Vice Chair*
Appropriations
Environment and Natural Resources
Health Policy

SENATOR DEBBIE MAYFIELD

17th District

February 18, 2020

The Honorable Lizbeth Benacquisto
Chairman, Rules
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

RE: SB 826

Dear Chairman Benacquisto,

I am respectfully requesting Senate Bill 826, a bill relating to Mariana Evacuations, be placed on the agenda for your Committee on Rules.

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,



Senator Debbie Mayfield
District 17

Cc; John B. Phelps and Cynthia Futch

REPLY TO:

- ☐ 900 East Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025 FAX: (888) 263-3815
- ☐ 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
- ☐ 322 Senate 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)

3/2/20

Meeting Date

SB 0826

Bill Number (if applicable)

Topic Marina Evacuations

Amendment Barcode (if applicable)

Name Robert Stuart

Job Title Senior Government Affairs Consultant

Address 301 E. Pine St. #1400

Street

Phone (407) - 843 - 8880

Orlando

City

FL

State

32801

Zip

Email Robert.Stuart@gray-robinson.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Port Canaveral

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 736

INTRODUCER: Rules Committee; Health Policy Committee; Banking and Insurance Committee; and Senator Diaz

SUBJECT: Coverage for Air Ambulance Services

DATE: March 4, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Kibbey</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
3.	<u>Johnson</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 736 requires health insurers and health maintenance organizations (HMOs) to provide reasonable reimbursement to air ambulances for covered services. The bill defines the term, “reasonable reimbursement” to mean reimbursement that considers the direct cost to provide air ambulance transportation service to an insured or subscriber, the operation of an air ambulance service by a county that operates entirely within a designated area of critical state concern, and in-network reimbursement established by the insurer or HMO for the specific policy or contract. Under the bill, reasonable reimbursement may be reduced only by applicable copayments, coinsurance, and deductibles.

The bill establishes that payment in full by the insured or subscriber of his or her applicable copayment, coinsurance, or deductible constitutes an accord and satisfaction of and a release of any claim for monies owed by the insured or subscriber in connection with the air ambulance service.

Air ambulances provide emergency services for critically ill patients, primarily in life-threatening situations, regardless of their insurance status or ability to pay. Privately-insured patients who are transported by air ambulance providers that are outside of provider networks of their respective insurer or HMO are at financial risk for balance billing, which is the difference between prices charged by providers and the payment rates established by insurers or HMOs.

Any balance billing incurred by a patient is in addition to copayments or other types of cost-sharing typically paid under the insurance policy or HMO contract.

While states can regulate the medical aspects of air ambulances, the federal Airline Deregulation Act of 1979 (ADA)¹ preempts states from economic regulation, i.e., regulating rates, routes, and services of air ambulances.

II. Present Situation:

Emergency medical transportation is a life-saving service that may affect any Floridian, including the uninsured, privately insured, and those covered by federal health care programs. According to the National Association of Insurance Commissioners, more than 550,000 patients in the U.S. use air ambulances each year.² The average air ambulance trip is 52 miles and costs \$12,000 to \$25,000 per flight.

Some of the services an air ambulance may provide include medical care, aircraft operation and maintenance, 24-hour communications and dispatch, and medical billing and collections. The price of a trip must account for the initial aircraft cost which can reach \$6 million, and the associated operating expenses³ (e.g., fuel, insurance, and maintenance costs), as well as medical equipment.⁴ Air ambulance services also have to factor in the cost of round-the-clock availability for medical personnel and pilots, including salaries and benefits. Contingent on the severity of the medical condition, the number and type of medical staff (paramedics, doctors, or nurses) on board can vary, further influencing the flight price. Further, air ambulances incur overhead expenses⁵ or indirect costs, such as executive management, legal, accounting and finance, billing and collections, information services, human resources, associated with providing their services.

Florida Insurance Consumer Advocate's Working Group

The Insurance Consumer Advocate of the Department of Financial Services⁶ created the Emergency Medical Transportation (EMT) Working Group in 2016 to assess the impact of EMT costs to Florida's privately-insured consumers, and to make recommendations to address concerns faced by ground and air ambulance services, the insurance industry, state and local governments, and consumers. In 2018, the Insurance Consumer Advocate released a report that

¹ Federal Airline Deregulation Act of 1978. Pub. L. No. 95-504, 92 STAT. 1705.

² National Association of Insurance Commissioners, *Understanding Air Ambulance Insurance Coverage* (May 2018) https://www.naic.org/documents/consumer_alert_understanding_air_ambulance_insurance.htm (last visited Feb. 7, 2020).

³ Form 10K filing, Air Methods Corporation (2014), Securities and Exchange Commission, at https://www.sec.gov/Archives/edgar/data/816159/000157104915001464/t81389_10k.htm (last viewed Feb. 28, 2020).

⁴ *Id.*

⁵ Direct costs are costs that a company can easily allocate to a specific cost object, which may be a product or service. Indirect costs go beyond the expenses associated with creating a particular product or service to include the price of maintaining the entire company. See <https://www.businessnewsdaily.com/5498-direct-costs-indirect-costs.html> (last viewed Feb. 28, 2020).

⁶ The Florida Insurance Commissioner created the Office of the Insurance Consumer Advocate in 1990. In 1992, the Legislature codified the office under s. 627.0613, F.S.

provided extensive background information about the EMT industry, ambulance costs, insurance coverage, and the impact on insureds.⁷

Regarding licensed air emergency medical services providers, the report noted that there are 37 companies. Typically, three types of business models exist for air ambulances providers, namely hospital-based, independent, and government operator. The air ambulances provide services using a fixed-wing airplane or a rotary-wing helicopter.

Average Bill for Air Emergency Transportation in Florida

FAIR Health⁸ provided extensive data to the Insurance Consumer Advocate's report regarding the average bills in Florida. FAIR Health data indicates that the average bill for a fixed-wing airplane transport in Florida was \$15,828, while the U.S. 80th percentile was at \$22,500. When comparing Florida to other states, Georgia's average charge was \$11,661, New York's was \$17,226, and Texas' was \$18,238. Comparatively speaking, Florida has a lower average charge than New York and Texas, but Florida's average charge was more than \$4,000 higher than Georgia's average charge for a fixed-wing transport.

In the report, FAIR Health noted that the average bill for a rotary-wing helicopter transport in Florida was \$21,221. As with fixed-wing, this is also below the U.S. 80th percentile of \$29,036. While Georgia had the lowest average charge for fixed-wing transport of the states analyzed, Florida holds the lowest average charge for rotary-wing transport. Georgia's average charge for rotary-wing transport was \$24,660, New York's was \$25,857, and Texas was \$22,652.

Recommendations of the Insurance Consumer Advocate

The report included the following recommendations:

1. Steps must be taken to deregulate the aeromedical industry from federal regulation so that states may regulate the market to address consumer concerns.
2. Consumers should have increased access to in-network EMT providers in order to decrease the likelihood of surprise medical bills.
3. The current billing model used for ground EMT should be revised to allow ambulance companies to charge for medical services and treatments without the requirement of transporting the patient to a medical facility.
4. Stakeholders should commit to improving transparency and consumer education.

Federal Laws Relating to Air Ambulance Billing

The authority of states to address issues related to air ambulance balance billing is affected by the following federal laws:

⁷ Insurance Consumer Advocate, *Emergency Medical Transportation Costs in Florida* (May 2018) at <https://www.myfloridacfo.com/Division/ICA/EMTWhitePaper.pdf> (last visited Feb. 7, 2020). The data is indicative of information for the period of October 1, 2015 through September 30, 2016.

⁸ FAIR Health is an independent nonprofit that collects data for and manages the nation's largest database of privately billed health insurance claims, including Medicare Parts A, B and D claims data for 2013 to the present. See <https://www.fairhealth.org/about-us> (last visited Feb. 7, 2020).

- **Airline Deregulation Act of 1978 (ADA).** A provision in this law preempts state-level economic regulation, i.e., regulating rates, routes, and services, of air carriers authorized by U.S. Department of Transportation (DOT) to provide air transportation.⁹ In general, courts have held that air ambulances are considered air carriers under the ADA’s preemption provision. The courts, the DOT, and state attorneys general have determined specific issues related to the air ambulance industry that cannot be regulated at the state level having a connection with or reference to a carrier’s rates, routes, or services.¹⁰
- **McCarran-Ferguson Act of 1945.** This act affirms that states have the authority to regulate the business of insurance.¹¹ For example, states may review insurers’ health insurance plans and premium rates. In instances of balance billing, states can determine whether the insurer paid a provider in accordance with its policy for paying for out-of-network services.
- **Employee Retirement Income Security Act of 1974 (ERISA).** The ERISA provides a federal framework for regulating employer-based pension and welfare benefit plans, including health plans.¹² Although states may regulate health insurers, the ERISA preemption generally prevents states from directly regulating self-insured employer-based health plans.
- **The Patient Protection and Affordable Care Act** provides limited balance billing protections¹³ for insureds or subscribers who receive ambulance services from an out-of-network provider.¹⁴ In the case of air ambulances, these protections are applied only when the service is affiliated with a hospital and thus considered an extension of the emergency department service.¹⁵

State Laws Relating to Emergency Services and Insurance Coverage

Access to Emergency Services and Care

In 1986, Congress enacted the Emergency Medical Treatment and Active Labor Act (EMTALA) to ensure public access to emergency services regardless of ability to pay. The EMTALA imposes specific obligations on hospitals participating in the Medicare program, which offer emergency services. Any patient who comes to the emergency department must be provided with a medical screening examination to determine if the patient has an emergency medical condition. If an emergency medical condition exists, the hospital must provide treatment within its service capability to stabilize the patient. If a hospital is unable to stabilize a patient or, if the patient

⁹ Pub. L. No. 95-504, s. 4, 92 Stat. 1705, 1707 (codified as revised and amended at 49 U.S.C. s. 41713(b)).

¹⁰ General Accounting Office, *Air Ambulances: Available Data Show Privately-Insured Patients Are at Financial Risk* (March 20, 2019) available at <https://www.gao.gov/products/GAO-19-292> (last visited Feb. 7, 2020).

¹¹ Act of Mar. 9, 1945, Ch. 20, s. 2, 59 Stat. 33, 34 (codified as amended at 15 U.S.C. s. 1012).

¹² See, Pub. L. No. 93-406, 88 Stat. 646 (codified as amended at 29 U.S.C. ss. 1001 et seq.).

¹³ The regulations establish minimum payment standards for insurers and HMOs. However, insurers or HMOs are not required to cover amounts that out-of-network providers may “balance bill.” See 80 FR 72192.

¹⁴ The Patient Protection and Affordable Care Act (Pub. L. 111–148), was enacted on March 23, 2010; the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) was enacted on March 30, 2010. These statutes are collectively referred to as “PPACA.”

¹⁵ National Association of Insurance Commissioners, *Air Ambulance Regulation*, (Jan. 2019) at https://www.naic.org/documents/government_relations_air_ambulance_regulation_issue_brief.pdf (last visited Feb 7, 2020).

requests, the hospital must transfer the patient to another appropriate facility.¹⁶ A hospital that violates EMTALA is subject to civil monetary penalty¹⁷ or civil suit by a patient who suffers personal harm.¹⁸

Florida law imposes a similar duty.¹⁹ The law requires the Agency for Health Care Administration to maintain an inventory of the service capability of all licensed hospitals that provide emergency care in order to assist emergency medical services (EMS or ambulance) providers and the public in locating appropriate medical care. Hospitals must provide all listed services when requested, whether by a patient, an emergency medical services provider, or another hospital, regardless of the patient's ability to pay. If the hospital is at capacity or does not provide the requested emergency service, the hospital may transfer the patient to the nearest facility with appropriate available services. Each hospital must ensure the services listed can be provided at all times either directly or through another hospital. A hospital is prohibited from basing emergency treatment and care on a patient's insurance status, economic status, or ability to pay. A hospital that violates Florida's access to care statute is subject to administrative penalties; denial, revocation, or suspension of its license; or civil action by another hospital or physician suffering financial loss. In addition, hospital administrative or medical staff are subject to civil suit by a patient who suffers personal harm and may be found guilty of a second-degree misdemeanor for a knowing or intentional violation. Physicians who violate the statute are also subject to disciplinary action against their license or civil action by another hospital or physician suffering financial loss.

Regulation of Emergency Medical Transportation

Part III of ch. 401, F.S., governs the provision of emergency medical transportation services in Florida and establishes the licensure and operational requirements for emergency medical services, including air ambulances.²⁰ Air ambulance service refers to a licensed publicly or privately owned service that operates air ambulances to transport persons requiring or likely to require medical attention during transport.²¹ An air ambulance is a fixed-wing or rotary-wing aircraft used for, or intended to be used for, the air transportation of sick or injured persons that require or are likely to require medical attention during transport.²²

Regulation of Insurance

The Office of Insurance Regulation (OIR) licenses and regulates insurers, HMOs, and other risk-bearing entities.²³ To operate in Florida, an insurer or HMO must obtain a certificate of authority from the OIR.²⁴ The Agency for Health Care Administration (AHCA) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Prior to receiving a certificate of authority

¹⁶ Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. §1395dd; *see also* CENTERS FOR MEDICARE & MEDICAID SERVICES, *Emergency Medical Treatment & Labor Act (EMTALA)*, <http://www.cms.gov/Regulations-and-Guidance/Legislation/EMTALA/index.html?redirect=/emtala/> (last visited Feb. 7, 2020).

¹⁷ 42 U.S.C. s. 1395dd(d)(1).

¹⁸ 42 U.S.C. s. 1395dd(d)(2).

¹⁹ *See* s. 395.1041, F.S.

²⁰ Section 401.251, F.S.

²¹ Section 401.23, F.S.

²² *Id.*

²³ Section 20.121(3)(a)1., F.S.

²⁴ Section 641.21(1), F.S.

from the OIR, an HMO must receive a Health Care Provider Certificate from the AHCA.²⁵ As part of the certification process used by the AHCA, an HMO must provide information to demonstrate that the HMO has the ability to provide quality of care consistent with the prevailing standards of care.²⁶

Federal Reports Relating to Air Ambulance Costs

A 2017 U.S. Government Accountability Office (GAO) report noted that, between 2010 and 2014, the national median prices providers charged for helicopter-air ambulance service approximately doubled, from around \$15,000 to about \$30,000 per transport.²⁷ In 2017, the median price charged nationally by air ambulance providers was about \$36,400 for helicopter transportation and \$40,600 for a fixed wing transport.²⁸ The total generally includes the costs for both the transportation and the medical care aboard the aircraft. Air ambulance providers may not turn away patients based on their ability to pay. The providers receive payments from many sources depending on the patient's coverage, often at rates lower than the price charged.

Selected providers reported that factors such as transport costs and volume, payer mix, and competition play a role in prices charged. Air ambulance providers' costs for air ambulance service are relatively fixed, meaning they do not increase significantly when they complete more transports. For example, personnel and the costs of helicopter ownership are the same regardless of how often the helicopter is used. Providers contacted by GAO noted that a small portion of their costs, such as fuel, are variable, meaning they increase with the number of transports completed.

To be profitable, and thus be in business and provide service, providers must earn sufficient revenues to cover their costs, including their fixed costs. To increase revenue, a provider must increase its number of transports or its prices charged. When a provider has a lower transport volume, then that provider must earn higher prices on average across transports in order to be profitable. Representatives from the eight selected providers GAO contacted reported average costs per transport, given current transport volumes, of \$6,000 to \$13,000 in 2016.²⁹ Factors such as a provider's proportion of transports provided by payer and competition may play a role in air ambulance prices charged, but data to assess these factors are not available.

Selected stakeholders the GAO contacted proposed actions to address air ambulance pricing issues, including: (1) raising Medicare rates; (2) allowing state-level regulation of air ambulance prices; and (3) improving data collection for the purposes of investigations and transparency regarding prices.

²⁵ Sections 624.401 and 641.49, F.S.

²⁶ Section 641.495, F.S.

²⁷ Government Accountability Office, *Data Collection and Transparency Needed to Enhance DOT Oversight* (GAO-17-637) (July 2017) available at <https://www.gao.gov/assets/690/686167.pdf> (last visited Feb. 7, 2020).

²⁸ Government Accountability Office, *Air Ambulances: Available Data Show Privately-Insured Patients Are at Financial Risk* (Mar. 20, 2019) available at <https://www.gao.gov/products/GAO-19-292> (last visited Feb. 7, 2020).

²⁹ *Id.*

Federal Air Ambulance and Patient Billing Advisory Committee

On October 5, 2018, President Donald Trump signed the FAA Reauthorization Act of 2018 (FAA Act).³⁰ The FAA Act requires the Secretary of Transportation, in consultation with the Secretary of Health and Human Services, to establish an advisory committee³¹ to review options to improve the disclosure of charges and fees for air medical services, inform consumers of insurance options for such services, and protect consumers from balance billing. The committee held its first meeting on January 15, 2020. The committee must submit a report containing recommendations to the Secretary of Transportation and others no later than 120 days after the first committee meeting.

Legislation and Litigation Relating to State Regulation of Air Ambulance Rates

A number of states have attempted to enact laws to protect consumers from balance billings by out-of-network air ambulances through the enactment of laws addressing reimbursement of air ambulance providers, but the Airline Deregulation Act of 1978 has preempted the laws.

Florida

*Bailey v. Rocky Mountain Holdings, LLC*³², concerns whether the ADA preempts a cause of action against an air ambulance provider based on a statutory medical fee schedule for personal injury protection (PIP)³³ reimbursement under the Florida Motor Vehicle No-Fault Law.³⁴ Under PIP, a medical provider may not bill the insured for any amount in excess of such limits, except for amounts that are not covered by the insured's PIP coverage due to the coinsurance amount or maximum policy limits.³⁵

In this case, an air ambulance provider submitted a bill for covered emergency transportation to the insurer; however, the policy limited reimbursement of the services under the fee schedule to less than the invoiced amount. The provider sought payment from the insured for the unpaid portion of its bill. The insured brought a class action suit against the provider seeking a declaration that the balance billing provision limited its reimbursement to the amount fixed in the fee schedule. In response, the provider moved to dismiss the action on grounds that the ADA preempted the enforcement of the balance billing provision. The insured contended that the McCarron-Ferguson Act, which provides that federal laws cannot preempt "any law enacted by any state for the purpose of regulating the business of insurance," precluded the ADA's preemption of the insured's action. The U.S. District Court concurred with the provider and held that the ADA preempted the insured's action because it related to the prices of the air carrier.³⁶

³⁰ See Pub. L. No. 115-254, 132 Stat. 3186 (2018).

³¹ U.S. Department of Transportation, *Air Ambulance and Patient Billing Advisory Committee (AAPB Advisory Committee)* (updated February 7, 2020) available at <https://www.transportation.gov/airconsumer/AAPB> (last visited Feb. 7, 2020).

³² *Bailey v. Rocky Mountain Holdings, LLC*, 889 Fed 1259 (11th Cir. 2018).

³³ Florida drivers are required to purchase both PIP insurance. The personal injury protection must provide a minimum benefit of \$10,000 for bodily injury to any one person who sustains an emergency medical condition and includes emergency transport. See ss. 324.022, and 627.736, F.S.

³⁴ Florida's Motor Vehicle No-Fault Law, ss. 627.730-627.7405, F.S.

³⁵ Section 627.736(5), F.S.

³⁶ *Bailey v. Rocky Mountain Holdings, LLC*, 136F.Supp.3d 1376.

The McCarron-Ferguson Act, the Court determined, prevents only inadvertent intrusion from federal legislation, not express preemption such as that of the ADA.

The insured appealed the decision to the U.S. Eleventh Circuit Court of Appeals. The panel concurred with the District Court that the (PIP) statute improperly restricted an air ambulance operator's rates by first limiting the reimbursement for such services to a schedule of charges based on Medicare rates, and then prohibiting the operator from billing the insured for the balance of the unpaid invoices.³⁷

Montana

In 2017, Montana enacted a state law that imposes a hold-harmless requirement on insurers or HMOs for charges pertaining to out-of-network air ambulance transports. Insurers or HMOs assume responsibility for amounts charged to a covered person in excess of both allowed amounts and applicable cost-sharing amounts. It also requires the use of a nonbinding dispute resolution process, including a determination of the fair market price of the services provided, before an aggrieved party may pursue any remedy in court.³⁸

North Dakota

In 2017, legislation was enacted that provides, effective January 1, 2018, insurers are required to pay for out-of-network air ambulance transports at the average of the insurer's in-network rates for air ambulance providers in the state. The law also provides that this payment is deemed full and final payment by the covered person for the transport.³⁹ The air ambulances subsequently challenged the law in January 2018. In January 2019, the federal court concluded that this payment provision is preempted by the ADA.⁴⁰ In February 2019, the state Insurance Commissioner announced plans for North Dakota to appeal this ruling to the U.S. Circuit Court of Appeals.

Texas

Legislation was enacted, relating to the Texas workers' compensation program, which provided if payments for patients were made pursuant to applicable rate guidelines, the payment must be accepted as payment in full.⁴¹ The Division of Workers' Compensation of the Texas Department of Insurance began applying this requirement to air ambulance services in 2016. The air ambulances challenged the law in federal district court, and the court recently decided that the ADA preempts enforcement of workers' compensation rate restrictions on air ambulance services.⁴²

³⁷ *Bailey v. Rocky Mountain Holdings*, 889 F. 3d 1259 (11th Cir. 2018).

³⁸ Mont. Code Ann. ss. 33-2-2302 and 33-2-2305 (as added by S.B. 44 (2017)).

³⁹ N.D. Cent. Code s. 26.1-47-09 (as added by S.B. 2231 (2017)).

⁴⁰ See *Guardian Flight LLC v. Godfread*, No. 1:18-cv-007 (D.N.D. order filed Jan. 14, 2019).

⁴¹ Tex. Lab. Code s. 413.011 (2017); 28 Tex. Admin. Code ss. 134.1(a), 134.203(d) (2017).

⁴² *Air Evac EMS, Inc. v. Sullivan*, 331 F. Supp. 3d 650 (W.D. Tex., 2018) (U.S. District Ct. granted injunctive relief, prohibiting state from enforcing rate restrictions).

Areas of Critical State Concern

Florida's Administration Commission, which is composed of the Governor and Cabinet, designates areas of critical state concern.⁴³ Areas that qualify for designation include only:

An area containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance, including, but not limited to, state or federal parks, forests, wildlife refuges, wilderness areas, aquatic preserves, major rivers and estuaries, state environmentally endangered lands, Outstanding Florida Waters, and aquifer recharge areas, the uncontrolled private or public development of which would cause substantial deterioration of such resources.⁴⁴

Once designated, the area's land planning regulations must comply with the principles guiding development specified by the Administration Commission, which must be approved by the Department of Economic Development.⁴⁵ Several areas have been designated as an area of critical state concern or have had their designations ratified by statute, and include the Big Cypress Area,⁴⁶ the Green Swamp Area,⁴⁷ the Apalachicola Bay Area,⁴⁸ and the Florida Keys Area.⁴⁹

III. Effect of Proposed Changes:

Section 1 creates s. 627.42397, F.S., to require each health insurer to provide reasonable reimbursement to air ambulance services for covered nonemergency and emergency services provided to an insured or subscriber in accordance with the coverage terms of the policy or contract. Such reimbursement may be reduced only by copayments, coinsurance, and deductibles. Payment in full by the insured or subscriber of his or her applicable copayment, coinsurance, or deductible constitutes an accord and satisfaction of and a release of any claim for monies owed by the insured or subscriber to the health insurer or to any person or entity in connection with the air ambulance service.

The bill defines the following terms: "air ambulance service," "health insurer," "health maintenance organization," and "reasonable reimbursement." The term, "reasonable reimbursement," means reimbursement that considers the direct cost to provide air ambulance transportation service to an insured; the operation of air ambulance service by a county, which operates entirely within a designated area of critical state concern as determined by the Department of Economic Opportunity; and in-network reimbursement established by the insurer for the specific policy.

Section 2 creates s. 641.514, F.S., to apply the provisions of Section 1 to HMOs.

⁴³ Section 380.05, F.S.

⁴⁴ Section 380.05(2), F.S.

⁴⁵ Section 380.05(6), F.S.

⁴⁶ Section 380.055, F.S.

⁴⁷ Section 380.0551, F.S.

⁴⁸ Section 380.0555, F.S.

⁴⁹ Section 380.0552, F.S.

Section 3 provides that if any provision of s. 627.42397, F.S., (Section 1 of the bill) or s. 641.514, F.S., (Section 2 of the bill) is determined to be invalid or inoperative, the remaining provisions are deemed void and of no effect. Under the bill, the Legislature finds that the two provisions are not severable.

Section 4 provides that nothing in this act shall be construed to give retroactive application or to impair any contract existing on or before the effective date of the act, or to otherwise restrict the ability of the air ambulance service to contract for emergency and nonemergency services.

Section 5 provides the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenues. Except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2019-2020 is approximately \$2.1 million or less.

Cities or counties that provide such services directly or indirectly may incur an indeterminate fiscal impact due to the implementation of the reasonable reimbursement prescribed in the bill. If the reimbursement by an insurer or health maintenance organization to a county or city providing air ambulance services is decreased as a result, an indeterminate amount of additional funding sources may be necessary to fund these local services.

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:

Since the bill effectively prohibits balance billing by air ambulance providers, the bill will hold privately-insured patients harmless in the event they incur medical bills from an out-of-network provider.

The provisions of the bill would not apply to coverage offered by self-insured plans⁵⁰ via employers, which are governed by federal law, or federal programs such as Medicare, Medicaid, or State Children's Health Insurance Program.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Sections 1 and 2 of the bill define "reasonable reimbursement" to require that the amount "considers" the direct cost to provide air ambulances service to an insured or subscriber, the operation of an air ambulance service, by a county that operates entirely within a designated area of critical state concern, and in-network reimbursement by the insurer or HMO, respectively. It is unclear how an insurer or HMO would demonstrate that consideration when making a rate filing with the Office of Insurance Regulation and whether that consideration should be reflected as an upward or downward deviation in reimbursement.

Given the generally broad interpretation given to the Airline Deregulation Act of 1978's prohibition on state regulation of airline rates (including air ambulance services), it is unclear whether this would serve as a prohibition on balance billing or would be struck down upon challenge.⁵¹

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates sections 627.42397 and 641.514 of the Florida Statutes.

⁵⁰ The Employee Retirement Income Security Act of 1974 (ERISA).

⁵¹ The Florida Office of Insurance Regulation, *Agency Legislative Analysis of SB 736* (Nov. 19, 2019).

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 March 2, 2020:**

The CS/CS/CS:

- Provides that nothing in this bill shall be construed to give retroactive application or to impair any contract existing on or before the effective date of the act, or to otherwise restrict the ability of the air ambulance service to contract for emergency and nonemergency services.
- Clarifies that payment by the insured or subscriber of his or her applicable cost-sharing obligation constitutes an accord and satisfaction of, and constitutes release of, any claim for additional moneys owed by the insured or subscriber to the health insurer, or to any person or entity in connection with the air ambulance service.

CS/CS by Health Policy on February 11, 2020:

The CS/CS:

- Defines “reasonable reimbursement” to require that the amount considers the “direct cost to provide air ambulance transportation service to an insured,” rather than the “actual cost of services rendered,” as in the underlying bill. This excludes consideration of all indirect costs, which may include, but are not limited, to costs accrued from: staffing, accounting and billing, pilot training, health care practitioner training, operations command centers, aviation maintenance, and helipad maintenance.
- Establishes that payment in full by the insured or subscriber of his or her applicable copayment, coinsurance, or deductible constitutes an accord and satisfaction of and a release of any claim for monies owed by the insured or subscriber in connection with the air ambulance service.
- Removes a provision from the underlying bill that established that the reasonable reimbursement paid by the health insurer or health maintenance organization to the air ambulance service constitutes full and final payment to the air ambulance service.

CS by Banking and Insurance on January 21, 2020:

The CS clarifies the application of the bills’ provisions to health maintenance organizations and provides other technical changes.

B. Amendments:

None.



313996

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2020	.	
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	.	
	.	

The Committee on Rules (Diaz) recommended the following:

Senate Amendment (with title amendment)

Delete lines 40 - 83
and insert:
insured of his or her applicable copayment, coinsurance, or
deductible constitutes an accord and satisfaction of, and
constitutes a release of, any claim for additional moneys owed
by the insured to the health insurer or to any person or entity
in connection with the air ambulance service.

Section 2. Section 641.514, Florida Statutes, is created to
read:



313996

641.514 Coverage for air ambulance services.—

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

(a) "Air ambulance service" has the same meaning as provided in s. 401.23.

(b) "Reasonable reimbursement" means reimbursement that considers the direct cost to provide air ambulance transportation service to a subscriber, the operation of an air ambulance service by a county which operates entirely within a designated area of critical state concern as determined by the Department of Economic Opportunity, and in-network reimbursement established by the health maintenance organization for the specific health maintenance contract. The term does not include the amount of billed charges for the cost of services rendered.

(2) A health maintenance contract must require a health maintenance organization to provide reasonable reimbursement to an air ambulance service for covered nonemergency and emergency services provided to a subscriber in accordance with the coverage terms of the policy. Such reasonable reimbursement may be reduced only by applicable copayments, coinsurance, and deductibles. Payment in full by the subscriber of his or her applicable copayment, coinsurance, or deductible constitutes an accord and satisfaction of, and constitutes a release of, any claim for additional moneys owed by the subscriber to the health maintenance organization or to any person or entity in connection with the air ambulance service.

Section 3. If any provision of s. 627.42397 or s. 641.514, Florida Statutes, as created by this act is determined to be invalid or inoperative for any reason, the remaining provisions thereof shall be deemed to be void and of no effect. To this



313996

end, the Legislature declares that it would not have enacted any of the provisions of s. 627.42397 or s. 641.514, Florida Statutes, individually, and expressly finds them not to be severable.

Section 4. Nothing in this act shall be construed to give retroactive application or to impair any contract existing before or on the effective date of this act, or to otherwise restrict the ability of an air ambulance service, as defined in s. 401.23, Florida Statutes, to contract to provide nonemergency and emergency services.

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

And the title is amended as follows:

Delete line 13

and insert:

severable; providing construction; providing an effective date.

By the Committees on Health Policy; and Banking and Insurance;
and Senator Diaz

588-03458-20

2020736c2

A bill to be entitled

An act relating to coverage for air ambulance services; creating ss. 627.42397 and 641.514, F.S.; defining terms; requiring health insurers and health maintenance organizations, respectively, to provide reasonable reimbursement to air ambulance services for certain covered services; providing that such reimbursement may be reduced only by certain amounts; providing that full payment of an applicable copayment, coinsurance, or deductible constitutes an accord, satisfaction, and release of certain claims; providing that provisions of this act are not severable; providing an effective date.

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

Section 1. Section 627.42397, Florida Statutes, is created to read:

627.42397 Coverage for air ambulance services.—

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

(a) "Air ambulance service" has the same meaning as provided in s. 401.23.

(b) "Health insurer" means an authorized insurer offering health insurance as defined in s. 624.603.

(c) "Reasonable reimbursement" means reimbursement that considers the direct cost to provide air ambulance transportation service to an insured, the operation of an air ambulance service by a county which operates entirely within a designated area of critical state concern as determined by the

588-03458-20

2020736c2

Department of Economic Opportunity, and in-network reimbursement established by the insurer for the specific policy. The term does not include the amount of billed charges for the cost of services rendered.

(2) A health insurance policy must require a health insurer to provide reasonable reimbursement to an air ambulance service for covered nonemergency and emergency services provided to an insured in accordance with the coverage terms of the policy. Such reasonable reimbursement may be reduced only by applicable copayments, coinsurance, and deductibles. Payment in full by the insured of their applicable copayment, coinsurance, or deductible shall constitute an accord and satisfaction of, and otherwise constitute a release of any claim for additional monies owed by the insured in connection with the air ambulance service to the insurer or to any person or entity to whom such payment, or the right to receive such payment, is transferred or assigned.

Section 2. Section 641.514, Florida Statutes, is created to read:

641.514 Coverage for air ambulance services.—

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

(a) "Air ambulance service" has the same meaning as provided in s. 401.23.

(b) "Reasonable reimbursement" means reimbursement that considers the direct cost to provide air ambulance transportation service to a subscriber, the operation of an air ambulance service by a county which operates entirely within a designated area of critical state concern as determined by the Department of Economic Opportunity, and in-network reimbursement

588-03458-20

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59 established by the health maintenance organization for the
60 specific health maintenance contract. The term does not include
61 the amount of billed charges for the cost of services rendered.

62 (2) A health maintenance contract must require a health
63 maintenance organization to provide reasonable reimbursement to
64 an air ambulance service for covered nonemergency and emergency
65 services provided to a subscriber in accordance with the
66 coverage terms of the policy. Such reasonable reimbursement may
67 be reduced only by applicable copayments, coinsurance, and
68 deductibles. Payment in full by the subscriber of their
69 applicable copayment, coinsurance, or deductible shall
70 constitute an accord and satisfaction of, and otherwise
71 constitute a release of any claim for additional monies owed by
72 the subscriber in connection with the air ambulance service to
73 the health maintenance organization or to any person or entity
74 to whom such payment, or the right to receive such payment, is
75 transferred or assigned.

76 Section 3. If any provision of s. 627.42397 or s. 641.514,
77 Florida Statutes, as created by this act is determined to be
78 invalid or inoperative for any reason, the remaining provisions
79 thereof shall be deemed to be void and of no effect. To this
80 end, the Legislature declares that it would not have enacted any
81 of the provisions of s. 627.42397 or s. 641.514, Florida
82 Statutes, individually, and expressly finds them not to be
83 severable.

84 Section 4. 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: February 14, 2020

I respectfully request that **Senate Bill # 736**, relating to Coverage for Air Ambulance Services, be placed on the:

- ☐ Committee agenda at your earliest possible convenience.
- ☒ Next committee agenda.

A handwritten signature in cursive script, appearing to read "M. Diaz", is written over a horizontal line.

Senator Manny Diaz, Jr.
Florida Senate, District 36

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2

Meeting Date

SB736

Bill Number (if applicable)

Topic COVERAGE FOR AIR AMBULANCE

Amendment Barcode (if applicable)

Name JEFF SEE

Job Title SENIOR VP

Address 210 LESUEY LANE

Phone 727 631 1055

OLD SMAR FL 34677
City State Zip

Email JEFF@AIRMETHODS.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing AIR METHODS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

March 2, 2020
Meeting Date

SB 736
Bill Number (if applicable)

Topic Coverage for Air Ambulance services

Amendment Barcode (if applicable)

Name Chief Ray Colburn

Job Title Executive Director

Address 5289 Palm Dr

Phone 407-468-6622

Street

Melbourne Beach, FL
City State

32951
Zip

Email ray@ffca.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Fire Chiefs' Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

03/02/2020

Meeting Date

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

736

Bill Number (if applicable)

Topic Air Ambulance

Amendment Barcode (if applicable)

Name Audrey Brown

Job Title President/CEO

Address 200 W. College Ave.

Phone 850-386-2904

Street

Tallahassee

FL

32301

Email audrey@fahp.net

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Association of Health Plans

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 1128

INTRODUCER: Commerce and Tourism Committee and Senator Diaz

SUBJECT: Vacation Rentals

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Oxamendi	Imhof	IT	Favorable
2. Harmsen	McKay	CM	Fav/CS
3. Oxamendi	Phelps	RC	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1128 preempts all regulation of vacation rentals to the state, including, but not limited to, the inspection and licensing of vacation rentals. A vacation rental is a unit in a condominium or cooperative, or a single, two, three, or four family house that is rented to guests more than three times a year for periods of less than 30 days or 1 calendar month, whichever is shorter. Vacation rentals are licensed by the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department).

Under the bill, a local government may regulate activities that arise when a property is used as a vacation rental, provided the regulation applies uniformly to all residential properties. Under current law, local governments may not prohibit vacation rentals or regulate the duration or frequency of vacation rentals. A local law, ordinance, or regulation adopted on or before June 1, 2011, is exempt from this prohibition, and a local government may maintain this exemption if their future amendment to a grandfathered regulation results in a less restrictive regulation of the prohibition, duration, or frequency of vacation rentals.

The bill also preempts the regulation of advertising platforms to the state. An advertising platform is a person who electronically advertises a vacation rental for rent for transient occupancy, maintains a marketplace, and a reservation or payment system.

The bill requires the owner or operator of a vacation rental offered for transient occupancy through an advertising platform to state the property's vacation rental license number and the

applicable Florida sales tax registration and tourist development tax account numbers on the vacation rental's advertisement, and attest that, to the best of their knowledge, those numbers are current, valid, and accurate. The vacation rental property owner or operator must display this tax and licensure information inside the vacation rental property.

The bill requires an advertising platform to display the vacation rental license number and the Florida sales tax registration and tourist development tax account numbers of each property that advertises on its platform. The advertising platform must verify the validity of the vacation rental's license number before it can publish the advertisement and must perform ongoing checks every calendar quarter thereafter. To facilitate this verification, the division must maintain vacation rental license information in a readily accessible electronic format. The advertising platform must remove from public view any advertisement or listing that fails to display a valid vacation rental license number.

Under the bill, advertising platforms must provide to the division on a quarterly basis information that assists the division with identification and verification of the vacation rental property's compliance with the bill's requirements.

Advertising platforms are required by the bill to collect and remit any taxes imposed under chs. 212 and 125, F.S., that result from payment for the rental of a vacation rental property on its platform. The bill allows platforms to exclude service fees from the taxable basis.

Additionally, advertising platforms must adopt anti-discrimination policies and inform users of the public lodging discrimination prohibition found in s. 509.092, F.S.

The bill provides that its terms do not supersede any current or future declaration or covenant for condominium, cooperative, or homeowners' association.

The bill takes effect upon becoming law. However, the provisions relating to advertising platforms take effect January 1, 2021.

II. Present Situation:

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) is the state agency charged with enforcing the provisions of ch. 509, F.S., relating to the regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare.

The term "public lodging establishments" includes transient and nontransient public lodging establishments.¹ The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are rented in a calendar year and the duration of the rentals.

A "transient public lodging establishment" is defined in s. 509.013(4)(a)1., F.S., as:

¹ Section 509.013(4)(a), F.S.

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month*, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

A “nontransient public lodging establishment” is defined in s. 509.013(4)(a)2., F.S., as:

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests for periods of at least 30 days or 1 calendar month*, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

Section 509.013(4)(b), F.S., exempts the following types of establishments from the definition of “public lodging establishment”:

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.
2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. 381.0072, F.S.;
3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients;
4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent;
5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895, F.S.;
6. Any establishment inspected by the Department of Health and regulated by ch. 513 F.S.;
7. Any nonprofit organization that operates a facility providing housing only to patients, patients’ families, and patients’ caregivers and not to the general public.
8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department’s behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement; and
9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental,

nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242, F.S.

Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project.²

A “vacation rental” is defined in s. 509.242(1)(c), F.S., as:

any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but is not a timeshare project.

The department licenses vacation rentals as condominiums, dwellings, or timeshare projects.³ The division may issue a vacation rental license for “a single-family house, a townhouse, or a unit or group of units in a duplex, triplex, quadruplex, or other dwelling unit that has four or less units collectively.”⁴ The division does not license or regulate the rental of individual rooms within a dwelling unit under the roominghouse and boardinghouse exclusion from the definition of public lodging establishment under s. 509.013(4)(b)9., F.S.⁵

The 48,226 public lodging establishments licensed by the division are distributed as follows:⁶

- Hotels – 2,104 licenses;
- Motels – 2,509 licenses;
- Nontransient apartments – 18,505 licenses;
- Transient apartments – 935 licenses;
- Bed and Breakfast Inns – 267 licenses;
- Vacation rental condominiums – 8,066 licenses;
- Vacation rental dwellings – 15,815 licenses; and
- Vacation rental timeshare projects – 20 licenses.

Inspections of Vacation Rentals

The division must inspect each licensed public lodging establishment at least biannually, but must inspect transient and nontransient apartments at least annually. However, the division is not required to inspect vacation rentals, but vacation rentals must be available for inspection upon a

² Section 509.242(1), F.S.

³ Rule 61C-1.002(4)(a)1, F.A.C.

⁴ The division further classifies a vacation rental license as a single, group, or collective license. *See* Rule 61C-1.002(4)(a)1, F.A.C. A single license may include one single-family house or townhouse, or a unit or group of units within a single building that are owned and operated by the same individual person or entity. A group license is a license issued by the division to a licensed agent to cover all units within a building or group of buildings in a single complex. A collective license is a license issued by the division to a licensed agent who represents a collective group of houses or units found on separate locations not to exceed 75 houses or units per license.

⁵ Department of Business and Professional Regulation, *2020 Agency Legislative Bill Analysis for SB 1128* at page 2 (January 7, 2020) (on file with the Senate Committee on Innovation, Industry, and Technology).

⁶ Department of Business and Professional Regulation, *HR400A-Sum Public Food and Lodging Statewide Account Summary*, (Jan. 1, 2020) available at <http://www.myfloridalicense.com/dbpr/hr/reports/statistics/documents/licensecount1.pdf> (last visited Feb. 11, 2020).

request by the division.⁷ The division conducts inspections of vacation rentals in response to a consumer complaint. In Fiscal Year 2018-2019, the division received 228 consumer complaints regarding vacation rentals. In response to the complaints, the division confirmed a violation for 14 of the complaints.⁸

The division's inspection of vacation rentals includes matters of safety (for example, fire hazards, smoke detectors, and boiler safety), sanitation (for example, safe water sources, bedding, and vermin control), consumer protection (for example, unethical business practices, compliance with the Florida Clean Air Act, and maintenance of a guest register), and other general safety and regulatory matters.⁹ The division must notify the local firesafety authority or the State Fire Marshal of any readily observable violation of a rule adopted under ch. 633, F.S.,¹⁰ which relates to a public lodging establishment.¹¹

Additionally, an applicant for a vacation rental license is required to submit with the license application a signed certificate evidencing the inspection of all balconies, platforms, stairways, railings, and railways, from a person competent to conduct such inspections.¹²

Preemption

Section 509.032(7)(a), F.S., provides that “the regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state.”

Current law does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206, F.S.¹³

Section 509.032(7)(b), F.S., prohibits local laws, ordinances, or regulations that prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. However, this prohibition does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

⁷ Section 509.032(2)(a), F.S.

⁸ Department of Business and Professional Regulation, *Division of Hotels and Restaurants Annual Report for FY 2018-2019* at page 8-12, available at http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2018_19.pdf (last visited Feb. 11, 2020).

⁹ See ss. 509.211 and 509.221, F.S., for the safety and sanitary regulations, respectively. See also Rule 61C-1.002, F.A.C.; *Lodging Inspection Report, DBPR Form HR 5022-014*, which details the safety and sanitation matters addressed in the course of an inspection. A copy of the Lodging Inspection Report is available at: <https://www.flrules.org/Gateway/reference.asp?No=Ref-07062> (last visited Feb. 11, 2020).

¹⁰ Chapter 633, F.S., relates to fire prevention and control, including the duties of the State Fire Marshal and the adoption of the Florida Fire Prevention Code.

¹¹ Section 509.032(2)(d), F.S.

¹² See ss. 509.211(3) and 509.2112, F.S., and form *DBPR HR-7020, Division of Hotels and Restaurants Certificate of Balcony Inspection*, available at https://www.myfloridalicense.com/CheckListDetail.asp?SID=&xactCode=1030&clientCode=2007&XACT_DEFN_ID=7694 (last visited Feb. 11, 2020).

¹³ Section 509.032(7)(a), F.S.

Section 509.032(7)(c), F.S., provides that the prohibition in s. 509.032(7)(b), F.S., does not apply to local laws, ordinances, or regulations exclusively relating to property valuation as a criterion for vacation rental if the law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.¹⁴

Legislative History

In 2011, the Legislature preempted certain vacation rental regulation to the state. The preemption prevented local governments from enacting any law, ordinance, or regulation that:

- Restricted the use of vacation rentals;
- Prohibited vacation rentals; or
- Regulated vacation rentals based solely on their classification, use, or occupancy.¹⁵

This legislation grandfathered any local law, ordinance, or regulation that was enacted by a local government on or before June 1, 2011.¹⁶

In 2014, the Legislature revised the preemption to its current form with an effective date of July 1, 2014.¹⁷ Chapter 2014-71, Laws of Fla., amended s. 509.032(7)(b), F.S., and repealed the portions of the preemption of local laws, ordinances, and regulations which prohibited “restrict[ing] the use of vacation rentals” and which prohibited regulating vacation rentals “based solely on their classification, use or occupancy.”¹⁸

Attorney General Opinions

The office of the Attorney General issued an Informal Legal Opinion on October 22, 2013, regarding whether Flagler County could intercede and stop vacation rental operations in private homes that were zoned, prior to June 1, 2011, for single-family residential use.¹⁹ According to the opinion, “due to an increase in the number of homes being used as vacation rentals in Flagler County, many permanent residents in neighborhoods with vacation rentals have raised concerns about the negative effects such rentals have on their quality of life and the character of their neighborhood.” Flagler County had no regulation governing vacation rentals before the grandfather date of June 1, 2011, in s. 509.032(7)(b), F.S. The Attorney General concluded that the county’s local zoning ordinance for single-family homes that predated June 1, 2011, did not restrict the rental of such property as a vacation rental and that the zoning ordinances could not now be interpreted to restrict vacation rentals.

The Attorney General also issued an opinion on November 13, 2014, to the City of Wilton Manors, concluding that s. 509.032(7)(b), F.S., does not permit the city to regulate the location of vacation rentals through zoning, and the city may not prohibit vacation rentals that fail to

¹⁴ See s. 163.3164(43), F.S., which provides that the state land planning agency is the Department of Economic Opportunity.

¹⁵ Chapter 2011-119, Laws of Fla.

¹⁶ *Id.*

¹⁷ Chapter 2014-71, Laws of Fla. (codified in s. 509.032(7)(b), F.S.)

¹⁸ *Id.*

¹⁹ Florida Attorney General, *Informal Legal Opinion to Mr. Albert Hadeed, Flagler County Attorney, regarding “Vacation Rental Operation-Local Ordinances”* (October 22, 2013), (on file with the Senate Committee on Innovation, Industry, and Technology).

comply with the registration and licensing requirements in s. 509.241, F.S., which requires public lodging establishments to obtain a license from the division.²⁰

In addition, the Attorney General issued an advisory opinion on October 5, 2016, addressing whether a municipality could limit the spacing and concentration of vacation rentals through a proposed ordinance regarding vacation rentals.²¹ The Attorney General concluded that the preemption in s. 509.032, F.S., allows local governments some regulation of vacation rentals, but prevents local governments from prohibiting vacation rentals. Consequently, the Attorney General noted that a municipality may not impose spacing or proportional regulations that would have the effect of preventing eligible housing from being used as a vacation rental.²²

The Attorney General also opined that amending an ordinance that was enacted prior to June 1, 2011 will not invalidate the grandfather protection for the parts of the ordinance that are reenacted.²³ The new provisions would be preempted by state law if they revise an ordinance in a manner that would regulate the duration or frequency of rental of vacation rentals, even when the new regulation would be considered “less restrictive” than the prior local law.

Public Lodging Non-Discrimination Law

Section 509.092, F.S., prohibits an operator of a public lodging establishment from denying service or offering lesser quality accommodations to a person based upon his or her race, creed, color, sex, pregnancy, physical disability, or national origin. An aggrieved person may file a complaint pursuant to s. 760.11, F.S., of the Florida Civil Rights Act. Such complaints are mediated, investigated, and determined by the Florida Commission on Human Relations.²⁴

III. Effect of Proposed Changes:

Preemptions

The bill amends s. 509.032(7), F.S., to preempt all regulation of vacation rentals and advertising platforms to the state, and specifically prohibits local laws, ordinances, or regulations that require the inspection or licensure of public lodging establishments, including vacation rentals.

The bill allows a local government to regulate activities that arise when a property is used as a vacation rental if the regulation applies uniformly to all residential properties without regard to whether the property is used as a vacation rental or as a long-term rental under ch. 83, F.S. Any local law, ordinance, or regulation adopted on or before June 1, 2011, is not affected by this preemption, and any such regulation may be amended without affecting its grandfathered status

²⁰ Op. Att’y Gen. Fla. 2014-09, *Vacation Rentals - Municipalities - Land Use* (November 13, 2014), available at <http://www.myfloridalegal.com/ago.nsf/printview/5DFB7F27FB483C4685257D900050D65E> (last visited Feb. 11, 2020).

²¹ Op. Att’y Gen. Fla. 2016-12, *Municipalities - Vacation Rentals - Zoning* (October 5, 2016) (on file with the Senate Committee on Innovation, Industry, and Technology).

²² *Id.*

²³ Op. Att’y Gen. Fla. 2019-07, *Vacation rentals, municipalities, grandfather provisions* (August 16, 2019) available at <http://www.myfloridalegal.com/ago.nsf/Opinions/933B3706FADB00CA85258458006F4CFA> (last visited Feb. 11, 2020).

²⁴ See Florida Commission on Human Relations, *Public Accommodations*, <https://fchr.myflorida.com/public-accommodations> (last visited Feb. 11, 2020).

if the amendment makes the local law, ordinance, or regulation less restrictive with regard to its prohibition of, or duration or frequency regulation of, vacation rentals.

Definition of the term “Advertising Platform”

The bill creates s. 509.013(17), F.S., to define the term “advertising platform.” Under the bill, an advertising platform:

- Provides an online application, software, website, or system through which a vacation rental located in this state is advertised or held out to the public as available to rent for transient occupancy;
- Provides or maintains a marketplace for the renting by transient occupancy of a vacation rental; and
- Provides a reservation or payment system that facilitates a transaction for the renting by transient occupancy of a vacation rental and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for such transaction.

Requirements for Operators of Vacation Rentals

The bill amends s. 509.241, F.S., to require the owner or operator of a vacation rental offered for transient occupancy through an advertising platform to display the vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers within the vacation rental property.

Requirements for Advertising Platforms

Effective January 1, 2021, the bill creates s. 509.243, F.S., to provide requirements, including a reporting requirement, for an advertising platform. Under the bill, an advertising platform must:

- Require that a person who places an advertisement for the rental of a vacation rental to:
 - Include the vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers in the vacation rental’s advertisement; and
 - Attest to the best of their knowledge that the license number for the vacation rental property and the applicable tax numbers are current, valid, and accurately stated in the advertisement.
- Verify and display the vacation rental property’s license number; the verification must occur before the platform publishes the rental property’s advertisement, and re-occur on a quarterly basis.
- Display the vacation rental property’s applicable tax numbers.
- Provide to the division on a quarterly basis, by file transfer protocol or electronic data exchange file, a list of all vacation rental listings in this state on its platform specified information, including the Internet address of the listing, the physical address of the listing, the vacation rental license number, and applicable tax numbers.
- Remove from public view an advertisement or listing from its online application, software, website, or system within 15 business days after being notified by the division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the division.

- Collect and remit taxes due under chs. 212 and 125, F.S., that result from the reservation of a vacation rental property and payment therefor through an advertising platform; service fees assessed by the advertising platform are not subject to these taxes.
- Adopt an anti-discrimination plan and inform its users of the public lodging discrimination prohibition found in s. 509.092, F.S.

The division must maintain vacation rental license information in a readily accessible electronic format.

The bill provides processes for the division to issue a cease and desist order for any person who violates ch. 509, F.S. The bill authorizes the division to seek an injunction or a writ of mandamus to enforce a cease and desist order. If the department is required to seek enforcement of the notice for a penalty pursuant to s. 120.569, F.S.,²⁵ it is entitled to collect its attorney fees and costs, together with any cost of collection.

Community Associations

The bill provides that the application of vacation rental provisions created by the bill do not supersede any current or future declaration or declaration of condominium, cooperative documents, or declaration of covenants or declaration in a homeowners' association.

Effective Date

The bill takes effect upon becoming law. However, the provisions of s. 509.243, F.S., relating to advertising platforms, take effect January 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

²⁵ Section 120.569, F.S., provides the administrative procedures for resolution of agency decisions which affect substantial interests before the Division of Administrative Hearings.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Local governments may see an increase in local tourist development taxes.²⁶

State government may see an increase in sales taxes and an indeterminate amount of licensing revenue due to the new definition of vacation rentals.²⁷

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

A local government may have an indeterminate decrease of revenue if the local government currently requires a vacation rental license or registration fee. Under the bill, a local government may not require a vacation rental to register or obtain such a license.

The department estimates a cost of \$448,926 (\$412,005 recurring) for six full-time employees and indeterminate possible additional costs.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 509.013, 509.032, and 509.241.

This bill creates section 509.243 of the Florida Statutes.

²⁶ See note 5, *supra* at page 7.

²⁷ *Id.*

²⁸ *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 by Commerce and Tourism on February 11, 2020:**

- Clarifies the definition of an advertising platform and narrows it by removing print advertisements from its scope;
- Permits a local government to amend a grandfathered vacation rental regulation, while preserving its exemption from preemption, if the amendment makes the regulation less restrictive;
- Deletes a provision amending the definition of the term “vacation rental;”
- Requires the department to maintain vacation rental property license information in an accessible electronic format;
- Requires advertising platforms to verify a property’s license number prior to publishing its advertisement on its platform, and every quarter thereafter;
- Requires advertising platforms to quarterly provide the department with the physical address of the vacation rental properties that advertise on their platforms;
- Imposes a duty on advertising platforms to collect and remit taxes in relation to the rental of a vacation rental property through its platform;
- Establishes requirements that advertising platforms adopt an anti-discrimination policy and inform their users of the public lodging discrimination prohibition found in s. 509.092, F.S.; and
- Clarifies that the bill shall not supersede any current or future community association governing document.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Diaz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Effective January 1, 2021, subsection (2) of
section 212.03, Florida Statutes is amended to read:

212.03 Transient rentals tax; rate, procedure, enforcement,
exemptions.—

(2)(a) The tax provided for herein shall be in addition to
the total amount of the rental, shall be charged by the lessor
or person receiving the rent in and by said rental arrangement



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to the lessee or person paying the rental, and shall be due and payable at the time of the receipt of such rental payment by the lessor or person, as defined in this chapter, who receives said rental or payment. The owner, lessor, or person receiving the rent shall remit the tax to the department at the times and in the manner hereinafter provided for dealers to remit taxes under this chapter. The same duties imposed by this chapter upon dealers in tangible personal property respecting the collection and remission of the tax; the making of returns; the keeping of books, records, and accounts; and the compliance with the rules and regulations of the department in the administration of this chapter shall apply to and be binding upon all persons who manage or operate hotels, apartment houses, roominghouses, tourist and trailer camps, and the rental of condominium units, and to all persons who collect or receive such rents on behalf of such owner or lessor taxable under this chapter.

(b) If a guest uses a payment system on or through an advertising platform, as defined in s. 509.013, to pay for the rental of a vacation rental located in this state, the advertising platform must collect and remit all taxes imposed under s. 205.044 and chapters 125 and 212 on the total rental amount charged by the owner or operator for the use of the vacation rental under ss. 125.0104 and 205.044 and this section. In order to facilitate the remittance of such taxes, the department and jurisdictions that require such taxes to be remitted must allow advertising platforms to register, collect, and remit such taxes.

Section 2. Section 509.013, Florida Statutes, is reordered and amended to read:



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

(1) "Advertising platform" means a person who:

(a) Provides an online application, software, website, or system through which a vacation rental located in this state is advertised or held out to the public as available to rent for transient occupancy;

(b) Provides or maintains a marketplace for the renting by transient occupancy of a vacation rental; and

(c) Provides a reservation or payment system that facilitates a transaction for the renting by transient occupancy of a vacation rental and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for such transaction.

(2)~~(6)~~ "Director" means the Director of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(3)~~(1)~~ "Division" means the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(4)~~(3)~~ "Guest" means any patron, customer, tenant, lodger, boarder, or occupant of a public lodging establishment or public food service establishment.

(5)~~(16)~~ "Nontransient" means a guest in nontransient occupancy.

(6)~~(14)~~ "Nontransient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that the dwelling unit occupied will be the sole residence of the guest.

(7)~~(15)~~ "Nontransient occupancy" means occupancy when it is



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the intention of the parties that the occupancy will not be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient.

(8)~~(2)~~ "Operator" means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a public lodging establishment or public food service establishment.

(9) (a)~~(5) (a)~~ "Public food service establishment" means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared before ~~prior to~~ being delivered to another location for consumption. The term includes a culinary education program, as defined in s. 381.0072(2), which offers, prepares, serves, or sells food to the general public, regardless of whether it is inspected by another state agency for compliance with sanitation standards.

(b) The following are excluded from the definition in paragraph (a):

1. Any place maintained and operated by a public or private school, college, or university:

a. For the use of students and faculty; or
b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, and athletic contests.

2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:



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99 a. For the use of members and associates; or
100 b. Temporarily to serve such events as fairs, carnivals,
101 food contests, cook-offs, or athletic contests.

102
103 Upon request by the division, a church or a religious, nonprofit
104 fraternal, or nonprofit civic organization claiming an exclusion
105 under this subparagraph must provide the division documentation
106 of its status as a church or a religious, nonprofit fraternal,
107 or nonprofit civic organization.

108 3. Any eating place maintained and operated by an
109 individual or entity at a food contest, cook-off, or a temporary
110 event lasting from 1 to 3 days which is hosted by a church or a
111 religious, nonprofit fraternal, or nonprofit civic organization.
112 Upon request by the division, the event host must provide the
113 division documentation of its status as a church or a religious,
114 nonprofit fraternal, or nonprofit civic organization.

115 4. Any eating place located on an airplane, train, bus, or
116 watercraft which is a common carrier.

117 5. Any eating place maintained by a facility certified or
118 licensed and regulated by the Agency for Health Care
119 Administration or the Department of Children and Families or
120 other similar place that is regulated under s. 381.0072.

121 6. Any place of business issued a permit or inspected by
122 the Department of Agriculture and Consumer Services under s.
123 500.12.

124 7. Any place of business where the food available for
125 consumption is limited to ice, beverages with or without
126 garnishment, popcorn, or prepackaged items sold without
127 additions or preparation.



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8. Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.

9. Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.

10. Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.

11. Any research and development test kitchen limited to the use of employees and which is not open to the general public.

(10) (a) ~~(4) (a)~~ "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.

1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

2. "Nontransient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days



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or 1 calendar month.

License classifications of public lodging establishments, and the definitions therefor, are set out in s. 509.242. For the purpose of licensure, the term does not include condominium common elements as defined in s. 718.103.

(b) The following are excluded from the definitions in paragraph (a):

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.

2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. 381.0072.

3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.

4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent.

5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-



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381.00895.

6. Any establishment inspected by the Department of Health and regulated by chapter 513.

7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.

8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.

9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242.

(11)~~(7)~~ "Single complex of buildings" means all buildings or structures that are owned, managed, controlled, or operated under one business name and are situated on the same tract or plot of land that is not separated by a public street or highway.

(12)~~(8)~~ "Temporary food service event" means any event of 30 days or less in duration where food is prepared, served, or sold to the general public.

(13)~~(9)~~ "Theme park or entertainment complex" means a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains



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permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually.

~~(14)(10)~~ "Third-party provider" means, for purposes of s. 509.049, any provider of an approved food safety training program that provides training or such a training program to a public food service establishment that is not under common ownership or control with the provider.

~~(15)(13)~~ "Transient" means a guest in transient occupancy.

~~(16)(11)~~ "Transient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that such guests' occupancy will be temporary.

~~(17)(12)~~ "Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient.

Section 3. Paragraph (c) of subsection (3) and subsection (7) of section 509.032, Florida Statutes, are amended to read:

509.032 Duties.—

(3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE EVENTS.—The division shall:

(c) Administer a public notification process for temporary food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division not less than 3 days before the scheduled event of the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in



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the event, the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licensee. Notification may be completed orally, by telephone, in person, or in writing. A public food service establishment or food service vendor may not use this notification process to circumvent the license requirements of this chapter.

2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors and notify the event sponsors of the availability of the food-recovery brochure developed under s. 595.420.

3.a. Unless excluded under s. 509.013 ~~s. 509.013(5)(b)~~, a public food service establishment or other food service vendor must obtain one of the following classes of license from the division: an individual license, for a fee of no more than \$105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than \$1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of such a license at temporary food service events.

(7) PREEMPTION AUTHORITY.—

(a) The regulation of public lodging establishments,



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including vacation rentals, and public food service establishments, including, but not limited to, sanitation standards, licensing, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is expressly preempted to the state. A local law, ordinance, or regulation may not allow or require the local inspection or licensing of public lodging establishments, including vacation rentals, or public food service establishments. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

(b) A local law, ordinance, or regulation may regulate activities that arise when a property is used as a vacation rental if the law, ordinance, or regulation applies uniformly to all residential properties without regard to whether the property is used as a vacation rental as defined in s. 509.242, the property is used as a long-term rental subject to chapter 83, or the property owner chooses not to rent the property. However, a local law, ordinance, or regulation may not prohibit ~~vacation rentals~~ or regulate the duration or frequency of ~~rental of vacation rentals~~. The prohibitions set forth in this paragraph do ~~This paragraph does~~ not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011, including when such law, ordinance, or regulation is being amended to be less restrictive with regard to a prohibition, duration, or frequency regulation.



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(c) Paragraph (b) and the provisions of paragraph (a)
relating to the licensing of vacation rentals do does not apply
to any local law, ordinance, or regulation adopted on or before
June 1, 2011, in any jurisdiction within exclusively relating to
property valuation as a criterion for vacation rental if the
local law, ordinance, or regulation is required to be approved
by the state land planning agency pursuant to an area of
critical state concern, as designated by s. 380.0552 or chapter
28-36, Florida Administrative Code. Any such local law,
ordinance, or regulation may be amended so long as the amendment
is not more restrictive than the existing law, ordinance, or
regulation.

(d) The regulation of advertising platforms is preempted to
the state and advertising platforms shall be regulated under
this chapter designation.

Section 4. Effective January 1, 2021, subsection (3) of
section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(3) DISPLAY OF LICENSE.—Any license issued by the division
must shall be conspicuously displayed to the public inside in
the office or lobby of the licensed establishment. Public food
service establishments that which offer catering services must
shall display their license number on all advertising for
catering services. The owner or operator of a vacation rental
offered for transient occupancy through an advertising platform
must also display the vacation rental license number and the
applicable Florida sales tax registration and tourist
development tax account numbers under which such taxes must be
paid for each rental of the property as a vacation rental.



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Section 5. Effective January 1, 2021, section 509.243, Florida Statutes, is created to read:

509.243 Advertising platforms.—

(1)(a) An advertising platform must require that a person who places an advertisement for the rental of a vacation rental:

1. Include in the advertisement the vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers under which such taxes must be paid before the advertisement may be listed; and

2. Attest to the best of their knowledge that the license number for the vacation rental property and the applicable tax numbers are current, valid, and accurately stated in the advertisement.

(b) An advertising platform must display the vacation rental license number and applicable Florida sales tax registration and tourist development tax numbers. The advertising platform must verify that the vacation rental license number provided by the owner or operator is valid and applies to the subject vacation rental before publishing the advertisement on its platform and again at the end of each calendar quarter that the advertisement remains on its platform.

(c) The division shall maintain vacation rental license information in a readily accessible electronic format that is sufficient to facilitate prompt compliance with the requirements of this subsection by an advertising platform or a person placing an advertisement on an advertising platform for transient rental of a vacation rental.

(2) An advertising platform must provide to the division on a quarterly basis, by file transfer protocol or electronic data



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exchange file, a list of all vacation rentals located in this
state that are advertised on its platform, along with the
following information for each vacation rental:

(a) The uniform resource locator for the Internet address
of the vacation rental advertisement.

(b) Unless otherwise stated in the vacation rental
advertisement at the Internet address provided pursuant to
paragraph (a), the physical address of the vacation rental,
including any unit designation, the vacation rental license
number provided by the owner or operator, and the applicable
Florida sales tax registration and tourist development tax
account numbers under which taxes will be remitted for the
rentals commenced through the advertisement.

(3) An advertising platform must remove from public view an
advertisement or listing from its online application, software,
website, or system within 15 business days after being notified
by the division in writing that the subject advertisement or
listing for the rental of a vacation rental located in this
state fails to display a valid license number issued by the
division.

(4) If the division has probable cause to believe that a
person not licensed by the division has violated this chapter or
any rule adopted pursuant thereto, the division may issue and
deliver to such person a notice to cease and desist from the
violation. The issuance of a notice to cease and desist does not
constitute agency action for which a hearing under ss. 120.569
and 120.57 may be sought. For the purpose of enforcing a cease
and desist notice, the division may file a proceeding in the
name of the state seeking the issuance of an injunction or a



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writ of mandamus against any person who violates any provision of the notice. If the department is required to seek enforcement of the notice for a penalty pursuant to s. 120.569, it is entitled to collect its attorney fees and costs, together with any cost of collection.

(5) Advertising platforms must adopt an antidiscrimination policy to help prevent discrimination among their users and must inform all users of their services that it is illegal to refuse accommodation to an individual based on race, creed, color, sex, pregnancy, physical disability, or national origin pursuant to s. 509.092.

Section 6. Paragraphs (n) and (o) of subsection (2) and paragraph (e) of subsection (6) of section 775.21, Florida Statutes, are amended to read:

775.21 The Florida Sexual Predators Act.—

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

(n) "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 3 or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state. Temporary residence also includes a place where a person lodges in a vacation rental, as defined in s. 509.242, for 24 hours or more.

(o) "Transient residence" means a county where a person lives, remains, or is located for a period of 3 or more days in



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the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address. Transient residence also includes a county where a person lodges in a vacation rental, as defined in s. 509.242, for 24 hours or more.

(6) REGISTRATION.—

(e)1. If the sexual predator is not in the custody or control of, or under the supervision of, the Department of Corrections or is not in the custody of a private correctional facility, the sexual predator shall register in person:

a. At the sheriff's office in the county where he or she establishes or maintains a residence by no later than 5 p.m. on the next business day after establishing or maintaining a temporary or transient residence in a vacation rental or within 48 hours after establishing or maintaining any other a residence in this state; and

b. At the sheriff's office in the county where he or she was designated a sexual predator by the court within 48 hours after such finding is made.

2. Any change that occurs after the sexual predator registers in person at the sheriff's office as provided in subparagraph 1. in any of the following information related to the sexual predator must be reported as provided in paragraphs (g), (i), and (j): permanent, temporary, or transient residence; name; vehicles owned; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; home and cellular



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telephone numbers; employment information; and change in status at an institution of higher education. When a sexual predator registers with the sheriff's office, the sheriff shall take a photograph, a set of fingerprints, and palm prints of the predator and forward the photographs, palm prints, and fingerprints to the department, along with the information that the predator is required to provide pursuant to this section.

Section 7. Paragraph (a) of subsection (2) of section 943.0435, Florida Statutes, is amended to read:

943.0435 Sexual offenders required to register with the department; penalty.—

(2) Upon initial registration, a sexual offender shall:

(a) Report in person at the sheriff's office:

1. In the county in which the offender establishes or maintains a permanent, temporary, or transient residence within 48 hours after:

a. Establishing permanent, temporary, or transient residence in this state; or

b. Being released from the custody, control, or supervision of the Department of Corrections or from the custody of a private correctional facility; ~~or~~

2. In the county where he or she was convicted within 48 hours after being convicted for a qualifying offense for registration under this section if the offender is not in the custody or control of, or under the supervision of, the Department of Corrections, or is not in the custody of a private correctional facility; or

3. In the county in which the offender establishes or maintains a temporary or transient residence in a vacation



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rental by no later than 5 p.m. of the next business day after
establishing or maintaining a temporary or transient residence
in a vacation rental in this state.

Any change in the information required to be provided pursuant to paragraph (b), including, but not limited to, any change in the sexual offender's permanent, temporary, or transient residence; name; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; home telephone numbers and cellular telephone numbers; employment information; and any change in status at an institution of higher education after the sexual offender reports in person at the sheriff's office must be reported in the manner provided in subsections (4), (7), and (8).

When a sexual offender reports at the sheriff's office, the sheriff shall take a photograph, a set of fingerprints, and palm prints of the offender and forward the photographs, palm prints, and fingerprints to the department, along with the information provided by the sexual offender. The sheriff shall promptly provide to the department the information received from the sexual offender.

Section 8. Subsection (12) of section 159.27, Florida Statutes, is amended to read:

159.27 Definitions.—The following words and terms, unless the context clearly indicates a different meaning, shall have the following meanings:

(12) "Public lodging or restaurant facility" means property



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used for any public lodging establishment as defined in s.
509.242 or public food service establishment as defined in s.
509.013 ~~s. 509.013(5)~~ if it is part of the complex of, or
necessary to, another facility qualifying under this part.

Section 9. Paragraph (jj) of subsection (7) of section
212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and
storage tax; specified exemptions.—The sale at retail, the
rental, the use, the consumption, the distribution, and the
storage to be used or consumed in this state of the following
are hereby specifically exempt from the tax imposed by this
chapter.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
entity by this chapter do not inure to any transaction that is
otherwise taxable under this chapter when payment is made by a
representative or employee of the entity by any means,
including, but not limited to, cash, check, or credit card, even
when that representative or employee is subsequently reimbursed
by the entity. In addition, exemptions provided to any entity by
this subsection do not inure to any transaction that is
otherwise taxable under this chapter unless the entity has
obtained a sales tax exemption certificate from the department
or the entity obtains or provides other documentation as
required by the department. Eligible purchases or leases made
with such a certificate must be in strict compliance with this
subsection and departmental rules, and any person who makes an
exempt purchase with a certificate that is not in strict
compliance with this subsection and the rules is liable for and
shall pay the tax. The department may adopt rules to administer



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this subsection.

(jj) *Complimentary meals.*—Also exempt from the tax imposed by this chapter are food or drinks that are furnished as part of a packaged room rate by any person offering for rent or lease any transient living accommodations as described in s. 509.013 ~~s. 509.013(4)(a)~~ which are licensed under part I of chapter 509 and which are subject to the tax under s. 212.03, if a separate charge or specific amount for the food or drinks is not shown. Such food or drinks are considered to be sold at retail as part of the total charge for the transient living accommodations. Moreover, the person offering the accommodations is not considered to be the consumer of items purchased in furnishing such food or drinks and may purchase those items under conditions of a sale for resale.

Section 10. Paragraph (b) of subsection (4) of section 316.1955, Florida Statutes, is amended to read:

316.1955 Enforcement of parking requirements for persons who have disabilities.—

(4)

(b) Notwithstanding paragraph (a), a theme park or an entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~ which provides parking in designated areas for persons who have disabilities may allow any vehicle that is transporting a person who has a disability to remain parked in a space reserved for persons who have disabilities throughout the period the theme park is open to the public for that day.

Section 11. Subsection (5) of section 404.056, Florida Statutes, is amended to read:

404.056 Environmental radiation standards and projects;



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certification of persons performing measurement or mitigation services; mandatory testing; notification on real estate documents; rules.—

(5) NOTIFICATION ON REAL ESTATE DOCUMENTS.—Notification shall be provided on at least one document, form, or application executed at the time of, or prior to, contract for sale and purchase of any building or execution of a rental agreement for any building. Such notification shall contain the following language:

“RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.”

The requirements of this subsection do not apply to any residential transient occupancy, as described in s. 509.013 ~~s. 509.013(12)~~, provided that such occupancy is 45 days or less in duration.

Section 12. Subsection (6) of section 477.0135, Florida Statutes, is amended to read:

477.0135 Exemptions.—

(6) A license is not required of any individual providing makeup or special effects services in a theme park or entertainment complex to an actor, stunt person, musician, extra, or other talent, or providing makeup or special effects services to the general public. The term “theme park or entertainment complex” has the same meaning as in s. 509.013 ~~s.~~



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~~509.013(9).~~

Section 13. Paragraph (b) of subsection (2) of section 509.221, Florida Statutes, is amended to read:

509.221 Sanitary regulations.—

(2)

(b) Within a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~, the bathrooms are not required to be in the same building as the public food service establishment, so long as they are reasonably accessible.

Section 14. Paragraph (b) of subsection (5) of section 553.5041, Florida Statutes, is amended to read:

553.5041 Parking spaces for persons who have disabilities.—

(5) Accessible perpendicular and diagonal accessible parking spaces and loading zones must be designed and located to conform to ss. 502 and 503 of the standards.

(b) If there are multiple entrances or multiple retail stores, the parking spaces must be dispersed to provide parking at the nearest accessible entrance. If a theme park or an entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~ provides parking in several lots or areas from which access to the theme park or entertainment complex is provided, a single lot or area may be designated for parking by persons who have disabilities, if the lot or area is located on the shortest accessible route to an accessible entrance to the theme park or entertainment complex or to transportation to such an accessible entrance.

Section 15. Subsection (2) of section 705.17, Florida Statutes, is amended to read:

705.17 Exceptions.—



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(2) Sections 705.1015-705.106 do not apply to any personal property lost or abandoned on premises located within a theme park or entertainment complex, as defined in s. 509.013 ~~s. 509.013(9)~~, or operated as a zoo, a museum, or an aquarium, or on the premises of a public food service establishment or a public lodging establishment licensed under part I of chapter 509, if the owner or operator of such premises elects to comply with s. 705.185.

Section 16. Section 705.185, Florida Statutes, is amended to read:

705.185 Disposal of personal property lost or abandoned on the premises of certain facilities.—When any lost or abandoned personal property is found on premises located within a theme park or entertainment complex, as defined in s. 509.013 ~~s. 509.013(9)~~, or operated as a zoo, a museum, or an aquarium, or on the premises of a public food service establishment or a public lodging establishment licensed under part I of chapter 509, if the owner or operator of such premises elects to comply with this section, any lost or abandoned property must be delivered to such owner or operator, who must take charge of the property and make a record of the date such property was found. If the property is not claimed by its owner within 30 days after it is found, or a longer period of time as may be deemed appropriate by the owner or operator of the premises, the owner or operator of the premises may not sell and must dispose of the property or donate it to a charitable institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code for sale or other disposal as the charitable institution deems appropriate. The rightful owner of the



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property may reclaim the property from the owner or operator of the premises at any time before the disposal or donation of the property in accordance with this section and the established policies and procedures of the owner or operator of the premises. A charitable institution that accepts an electronic device, as defined in s. 815.03(9), access to which is not secured by a password or other personal identification technology, shall make a reasonable effort to delete all personal data from the electronic device before its sale or disposal.

Section 17. Section 717.1355, Florida Statutes, is amended to read:

717.1355 Theme park and entertainment complex tickets.—This chapter does not apply to any tickets for admission to a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~, or to any tickets to a permanent exhibition or recreational activity within such theme park or entertainment complex.

Section 18. Subsection (8) of section 877.24, Florida Statutes, is amended to read:

877.24 Nonapplication of s. 877.22.—Section 877.22 does not apply to a minor who is:

(8) Attending an organized event held at and sponsored by a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~.

Section 19. The application of this act shall not supersede any current or future declaration or declaration of condominium adopted pursuant to chapter 718, Florida Statutes, cooperative document adopted pursuant to chapter 719, Florida Statutes, or



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declaration or declaration of covenant adopted pursuant to
chapter 720, Florida Statutes.

Section 20. (1) The Department of Revenue is authorized,
and all conditions are deemed to be met, to adopt emergency
rules pursuant to s. 120.54(4), Florida Statutes, for the
purpose of implementing s. 212.03, Florida Statutes, including
establishing procedures to facilitate the remittance of taxes.

(2) Notwithstanding any other provision of law, emergency
rules adopted pursuant to subsection (1) are effective for 6
months after adoption and may be renewed during the pendency of
procedures to adopt permanent rules addressing the subject of
the emergency rules.

(3) This section expires January 1, 2023.

Section 21. Except as otherwise expressly provided in this
act, 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 vacation rentals; amending s.
212.03, F.S.; requiring advertising platforms to
collect and remit taxes imposed under chs. 125 and
212, F.S., for certain transactions; reordering and
amending s. 509.013, F.S.; defining the term
"advertising platform"; amending s. 509.032, F.S.;
conforming a cross-reference; preempting the
regulation of vacation rentals and advertising



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platforms to the state; prohibiting a local law,
ordinance, or regulation from allowing or requiring
inspections or licensing of public lodging
establishments, including vacation rentals, or public
food service establishments; authorizing a local law,
ordinance, or regulation to regulate certain
activities under certain circumstances; expanding an
exemption to allow certain ordinances adopted on or
before a specified date to be amended to be less
restrictive; preempting the regulation of advertising
platforms to the state; amending s. 509.241, F.S.;
requiring licenses issued by the Division of Hotels
and Restaurants of the Department of Business and
Professional Regulation to be displayed conspicuously
to the public inside the licensed establishment;
requiring the operator of certain vacation rentals to
also display its vacation rental license number and
applicable tax account numbers; creating s. 509.243,
F.S.; requiring advertising platforms to require that
persons placing advertisements for vacation rentals
include certain information in the advertisements;
providing that advertising platforms are required to
verify such information; requiring advertising
platforms to quarterly provide the division with
certain information regarding vacation rentals in this
state listed on the platforms; requiring advertising
platforms to remove an advertisement or listing under
certain conditions and within a specified timeframe;
authorizing the division to issue and deliver a notice



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to cease and desist for certain violations; providing that such notice does not constitute agency action for which a certain hearing may be sought; authorizing the division to file certain proceedings; authorizing the collection of attorney fees and costs under certain circumstances; requiring advertising platforms to adopt an antidiscrimination policy and to inform their users of the policy's provisions; amending s. 775.21, F.S.; requiring sexual predators residing in vacation rentals to register with the local sheriff's office under certain circumstances; amending s. 943.0435, F.S.; requiring sexual offenders who establish or maintain a certain residence to register with the local sheriff's office under certain circumstances; amending ss. 159.27, 212.08, 316.1955, 404.056, 477.0135, 509.221, 553.5041, 705.17, 705.185, 717.1355, and 877.24, F.S.; conforming cross-references and provisions to changes made by the act; authorizing the department to adopt emergency rules; providing requirements and an expiration for such rules; providing effective dates.



155026

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Simmons) recommended the following:

Senate Amendment to Amendment (497386) (with title amendment)

Delete lines 272 - 297
and insert:

(a) The regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. This paragraph does not preempt the authority of a



155026

12 local government or local enforcement district to conduct
13 inspections of public lodging and public food service
14 establishments for compliance with the Florida Building Code and
15 the Florida Fire Prevention Code, pursuant to ss. 553.80 and
16 633.206.

17 (b) A local law, ordinance, or regulation may not prohibit
18 vacation rentals or regulate the duration or frequency of rental
19 of vacation rentals. This paragraph does not apply to any local
20 law,
21

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

23 And the title is amended as follows:

24 Delete lines 706 - 715

25 and insert:

26 conforming a cross-reference; expanding an exemption
27 to allow certain laws, ordinances, or regulations
28 adopted on or



954984

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Farmer) recommended the following:

Senate Amendment to Amendment (497386) (with title amendment)

Delete lines 272 - 297

and insert:

(a) The regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. This paragraph does not preempt the authority of a



954984

local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

(b) A local law, ordinance, or regulation may not ~~prohibit vacation rentals or~~ regulate the duration or frequency of rental of vacation rentals. A local law, ordinance, or regulation may regulate vacation rentals, but it may not be more restrictive than a local law, ordinance, or regulation regulating bed and breakfast inns. This paragraph does not apply to any local law,

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

And the title is amended as follows:

Delete lines 706 - 715

and insert:

conforming a cross-reference; removing a provision prohibiting a local law, ordinance, or regulation from prohibiting vacation rentals; providing that such laws, ordinances, or regulations may not be more restrictive than those regulating bed and breakfast inns; expanding an exemption to allow certain laws, ordinances, or regulations adopted on or



721704

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Farmer) recommended the following:

Senate Amendment to Amendment (497386)

Delete lines 298 - 305
and insert:
ordinance, or regulation adopted on or before January 1, 2016,
including when such law, ordinance, or regulation is being
amended to be less restrictive with regard to a prohibition,
duration, or frequency regulation ~~June 1, 2011.~~

(c) Paragraph (b) and the provisions of paragraph (a)
relating to the licensing of vacation rentals do ~~does~~ not apply
to any local law, ordinance, or regulation adopted on or before



721704

12 January 1, 2016, in any jurisdiction within ~~exclusively relating~~
13 ~~to~~



530420

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Flores) recommended the following:

Senate Amendment to Amendment (497386)

Delete lines 303 - 313
and insert:
relating to vacation rentals do ~~does~~ not apply to any local law,
ordinance, or regulation governing ~~exclusively relating to~~
~~property valuation as a criterion for~~ vacation rentals in any
jurisdiction within ~~rental if the local law, ordinance, or~~
~~regulation is required to be approved by the state land planning~~
~~agency pursuant to~~ an area of critical state concern, as
designated by s. 380.0552 or chapter 28-36, Florida



530420

12 Administrative Code.



874390

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 71 - 95

and insert:

(a) The regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. This paragraph does not preempt the authority of a local government or local enforcement district to conduct



874390

inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

(b) A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local

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

And the title is amended as follows:

Delete lines 4 - 13

and insert:

platform"; amending s. 509.032, F.S.; expanding an exemption to allow certain laws, ordinances, or regulations adopted on or before a specified date to be

By the Committee on Commerce and Tourism; and Senator Diaz

577-03483-20

20201128c1

1 A bill to be entitled
 2 An act relating to vacation rentals; amending s.
 3 509.013, F.S.; defining the term "advertising
 4 platform"; amending s. 509.032, F.S.; preempting the
 5 regulation of vacation rentals to the state;
 6 prohibiting a local law, ordinance, or regulation from
 7 allowing or requiring inspections or licensing of
 8 public lodging establishments, including vacation
 9 rentals, or public food service establishments;
 10 authorizing a local law, ordinance, or regulation to
 11 regulate certain activities under certain
 12 circumstances; expanding an exemption to allow certain
 13 ordinances adopted on or before June 1, 2011, to be
 14 amended to be less restrictive; preempting the
 15 regulation of advertising platforms to the state;
 16 amending s. 509.241, F.S.; requiring licenses issued
 17 by the Division of Hotels and Restaurants of the
 18 Department of Business and Professional Regulation to
 19 be displayed conspicuously to the public inside the
 20 licensed establishment; requiring the operator of
 21 certain vacation rentals to also display its vacation
 22 rental license number and applicable tax account
 23 numbers; creating s. 509.243, F.S.; requiring
 24 advertising platforms to require that persons placing
 25 advertisements for vacation rentals include certain
 26 information in the advertisements; providing that the
 27 advertising platform is required to verify such
 28 information; requiring each advertising platform to
 29 quarterly provide the division with certain

Page 1 of 8

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

577-03483-20

20201128c1

30 information regarding vacation rentals in this state
 31 listed on the platform; requiring an advertising
 32 platform to remove an advertisement or listing under
 33 certain conditions and within a specified timeframe;
 34 requiring an advertising platform to collect and remit
 35 taxes imposed under chs. 125 and 212, F.S., for
 36 certain transactions; authorizing the Department of
 37 Revenue to adopt rules; authorizing the division to
 38 issue and deliver a notice to cease and desist for
 39 certain violations; providing that such notice does
 40 not constitute agency action for which a certain
 41 hearing may be sought; authorizing the division to
 42 file certain proceedings; authorizing the collection
 43 of attorney fees and costs under certain
 44 circumstances; requiring an advertising platform to
 45 adopt an antidiscrimination plan and to give notice to
 46 users of its services; providing applicability;
 47 providing effective dates.
 48
 49

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

51
 52 Section 1. Subsection (17) is added to section 509.013,
 53 Florida Statutes, to read:
 54 509.013 Definitions.—As used in this chapter, the term:
 55 (17) "Advertising platform" means a person who:
 56 (a) Provides an online application, software, website, or
 57 system through which a vacation rental located in this state is
 58 advertised or held out to the public as available to rent for

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

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transient occupancy;

(b) Provides or maintains a marketplace for the renting by transient occupancy of a vacation rental; and

(c) Provides a reservation or payment system that facilitates a transaction for the renting by transient occupancy of a vacation rental and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for such transaction.

Section 2. Subsection (7) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(7) PREEMPTION AUTHORITY.—

(a) The regulation of public lodging establishments, including vacation rentals, and public food service establishments, including, but not limited to, sanitation standards, licensing, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is expressly preempted to the state. A local law, ordinance, or regulation, may not allow or require the local inspection or licensing of public lodging establishments, including vacation rentals, or public food service establishments. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

(b) A local law, ordinance, or regulation may regulate activities that arise when a property is used as a vacation

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rental if the law, ordinance, or regulation applies uniformly to all residential properties without regard to whether the property is used as a vacation rental as defined in s. 509.242, the property is used as a long-term rental subject to chapter 83, or the property owner chooses not to rent the property. However, a local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011, including when such law, ordinance, or regulation is being amended to be less restrictive with regard to a prohibition, or duration, or frequency regulation.

(c) Paragraph (b) does not apply to any local law, ordinance, or regulation exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.

(d) The regulation of advertising platforms is preempted to the state and shall be regulated under this chapter.

Section 3. Effective January 1, 2021, subsection (3) of section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(3) DISPLAY OF LICENSE.—Any license issued by the division must ~~shall~~ be conspicuously displayed to the public inside ~~in~~ the ~~office or lobby of the~~ licensed establishment. Public food service establishments that which offer catering services must ~~shall~~ display their license number on all advertising for catering services. The owner or operator of a vacation rental

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117 offered for transient occupancy through an advertising platform
 118 must also display the vacation rental license number and the
 119 applicable Florida sales tax registration and tourist
 120 development tax account numbers under which such taxes must be
 121 paid for each rental of the property as a vacation rental.

122 Section 4. Effective January 1, 2021, section 509.243,
 123 Florida Statutes, is created to read:

124 509.243 Advertising platforms.—

125 (1) (a) An advertising platform must require that a person
 126 who places an advertisement for the rental of a vacation rental:

127 1. Include in the advertisement the vacation rental license
 128 number and the applicable Florida sales tax registration and
 129 tourist development tax account numbers under which such taxes
 130 must be paid before the advertisement may be listed; and

131 2. Attest to the best of their knowledge that the license
 132 number for the vacation rental property and the applicable tax
 133 numbers are current, valid, and accurately stated in the
 134 advertisement.

135 (b) An advertising platform must display the vacation
 136 rental license number and applicable Florida sales tax
 137 registration and tourist development tax numbers. The
 138 advertising platform must verify that the vacation rental
 139 license number provided by the owner or operator is valid and
 140 applies to the subject vacation rental before publishing the
 141 advertisement on its platform and again at the end of each
 142 calendar quarter that the advertisement remains on its platform.

143 (c) The division shall maintain vacation rental license
 144 information in a readily accessible electronic format that is
 145 sufficient to facilitate prompt compliance with the requirements

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146 of this subsection by an advertising platform or a person
 147 placing an advertisement on an advertising platform for
 148 transient rental of a vacation rental.

149 (2) An advertising platform must provide to the division on
 150 a quarterly basis, by file transfer protocol or electronic data
 151 exchange file, a list of all vacation rentals located in this
 152 state that are advertised on its platform, along with the
 153 following information for each vacation rental:

154 (a) The uniform resource locator for the Internet address
 155 of the vacation rental advertisement.

156 (b) Unless otherwise stated in the vacation rental
 157 advertisement at the Internet address provided pursuant to
 158 paragraph (a), the physical address of the vacation rental,
 159 including any unit designation, the vacation rental license
 160 number provided by the owner or operator, and the applicable
 161 Florida sales tax registration and tourist development tax
 162 account numbers under which taxes will be remitted for the
 163 rentals commenced through the advertisement.

164 (3) An advertising platform must remove from public view an
 165 advertisement or listing from its online application, software,
 166 website, or system within 15 business days after being notified
 167 by the division in writing that the subject advertisement or
 168 listing for the rental of a vacation rental located in this
 169 state fails to display a valid license number issued by the
 170 division.

171 (4) If a guest uses a payment system on or through an
 172 advertising platform to pay for the rental of a vacation rental
 173 located in this state, the advertising platform shall collect
 174 and remit all taxes imposed under chapters 125 and 212 resulting

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175 from the rental. When calculating taxes imposed under chapters
176 125 and 212, an advertising platform may exclude the amount of
177 any fees directly attributable to the service provided by the
178 advertising platform. The Department of Revenue is authorized to
179 adopt rules to implement this subsection.

180 (5) If the division has probable cause to believe that a
181 person not licensed by the division has violated this chapter,
182 or any rule adopted pursuant thereto, the division may issue and
183 deliver to such person a notice to cease and desist from the
184 violation. The issuance of a notice to cease and desist does not
185 constitute agency action for which a hearing under ss. 120.569
186 and 120.57 may be sought. For the purpose of enforcing a cease
187 and desist notice, the division may file a proceeding in the
188 name of the state seeking the issuance of an injunction or a
189 writ of mandamus against any person who violates any provision
190 of the notice. If the department is required to seek enforcement
191 of the notice for a penalty pursuant to s. 120.569, it is
192 entitled to collect its attorney fees and costs, together with
193 any cost of collection.

194 (6) Advertising platforms must adopt an antidiscrimination
195 plan in order to help prevent discrimination among its users and
196 must inform all users of their services that it is illegal to
197 refuse accommodation to an individual based on race, creed,
198 color, sex, pregnancy, physical disability, or national origin,
199 pursuant to s. 509.092.

200 Section 5. The application of this act shall not supersede
201 any current or future declaration or declaration of condominium
202 adopted pursuant to chapter 718, Florida Statutes, cooperative
203 documents adopted pursuant to chapter 719, Florida Statutes, or

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204 declaration of covenants or declaration adopted pursuant to
205 chapter 720, Florida Statutes.

206 Section 6. Except as otherwise expressly provided in this
207 act, this act shall take effect upon becoming a law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 1258

INTRODUCER: Rules Committee; Community Affairs Committee; and Senators Diaz and Baxley

SUBJECT: Commercial Service Airports

DATE: March 3, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Price	Miller	IS	Favorable
2. Paglialonga	Ryon	CA	Fav/CS
3. Price	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1258 requires the Auditor General to conduct an operational and financial audit of each large-hub commercial service airport in the state. The bill additionally requires each member of the governing body of such airports to comply with the financial disclosure requirements of s. 112.3145(3), F.S., except for members required to comply with the full and public disclosure of financial interests set out in Article II, section 8 of the State Constitution.

The bill also requires the governing body of each commercial service airport to establish and maintain a website to post specified information relating to the operation of the airport, and subjects such airports to certain requirements of ch. 287, F.S., relating to procurement. After an opportunity for public comment, a governing body must approve, award, or ratify as a separate line item on its agenda each contract executed by or on behalf of a commercial service airport in amounts exceeding a threshold of \$325,000. Approval of such contracts as part of a consent agenda is prohibited. Contracts and contract amendments for the purchase of commodities or services in excess of \$100,000, must utilize a competitive sealed bid process (unless a certain exception applies) and must be posted (with confidential information redacted) on the airport website.

Members of a governing body and employees of a commercial service airport are subjected to part II of Ch. 112, F.S., relating to the Code of Ethics for Public Officers and Employees, and must comply with the requirements for full and public disclosure of financial interests set out in section 8, Article II of the State Constitution. The bill also imposes on each member of a

governing body certain annual ethics training requirements but exempts members that have completed the training for another public office.

Beginning November 1, 2021, and each November 1 thereafter, the bill requires each commercial service airport to submit specified information to the Florida Department of Transportation (FDOT). The FDOT is required to review the information submitted by such airports and posted on the required websites to determine the accuracy of the information. Beginning January 15, 2022, and each January 15 thereafter, the FDOT must submit to the Governor, the Senate President, and the Speaker of the House of Representatives a report summarizing commercial service airport compliance with the bill's provisions. The FDOT is prohibited from expending any funds allocated to a commercial service airport, unless pledged for debt service until such airport demonstrates its compliance.

The bill appears to have no impact on state or local revenues. The fiscal impact on state and local expenditures is indeterminate. See the Fiscal Impact Statement for details.

The bill takes effect on October 1, 2020.

II. Present Situation:

Twenty commercial service airports and 109 general aviation airports,¹ as well as hundreds of small private airports, currently operate in Florida. Commercial service airports are publicly-owned airports having at least 2,500 passenger boardings each year and receiving scheduled passenger service. General aviation airports are airports that do not have scheduled service or have less than 2,500 passenger boardings each year.²

Commercial service airports operating in this state vary in size from large-hub airports,³ with over 20 million annual passenger boardings, to small municipal airports with approximately 10,000 annual passenger boardings.⁴ Commercial service airports in Florida support approximately 1.1 million jobs have a total annual payroll of approximately \$47.3 billion, and a total annual economic impact of approximately \$144 billion.⁵

Airport Oversight

The Federal Aviation Administration (FAA) is responsible for planning and developing a safe and efficient national airport system, including all programs related to airport safety and inspections and standards for airport design, construction, and operation. Federal law requires each commercial service airport to operate under a federal certificate and comply with federal

¹ Florida Department of Transportation, *Florida Aviation System Plan Introduction*, available at: <https://www.fdot.gov/aviation/FASP2035> (last visited January 22, 2020).

² 49 U.S.C. s. 47102.

³ A subsection of commercial airports are large-hub airports. Large-hub airports are commercial service airports that have at least 1 percent of the passenger boardings in the United States.

⁴ See FAA, Commercial Service Airports, Rank Order based on calendar year 2018, December 20, 2019, available at: https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/cy18-commercial-service-enplanements.pdf (last visited January 22, 2020).

⁵ Florida Department of Transportation, *Florida Statewide Aviation Economic Impact Study*, March 2019, Executive Summary at p. 7, available at: <https://www.fdot.gov/aviation/economicimpact.shtm> (last visited January 22, 2020).

aviation requirements. The FAA is responsible for national airport planning and environmental and social requirements and establishes policies related to airport rates and charges, compliance with grant assurances, and airport privatization.⁶

In Florida, the FDOT is responsible for planning airport systems and overseeing the public airport system.⁷ The owner or lessee of a proposed public airport⁸ must receive FDOT approval before site acquisition, construction, or establishment of a public airport facility.⁹ The FDOT is also responsible for licensing public airport facilities before the operation of aircraft to or from the facility and must inspect such facilities prior to licensing or license renewal.¹⁰ Current law authorizes local governments to establish and operate airports¹¹ and governs airport zoning and land use issues.¹²

Neither state nor federal law establishes requirements for airport governance or ownership. As such, Florida airports operate under either a government department model (where the airport operates as a department of the local government) or an airport authority model (where the airport authority is created as either an independent or a dependent special district). Airport operation and administration is generally governed as part of the local government or special district that owns the airport.

Commercial Service Airports in Florida

As defined in 49 U.S.C. § 47102(7), a “commercial service airport means a public airport in a State that the Secretary determines has at least 2,500 passenger boardings each year and is receiving scheduled passenger aircraft service.” For the calendar year 2018, the FAA classified 519 airports as commercial service airports. Out of these airports, 19 are located in Florida.¹³ The locations of these airports include Orlando, Miami, Fort Lauderdale, Tampa, West Palm Beach, Jacksonville, Sanford, Clearwater, Pensacola, Punta Gorda, Sarasota, Valparaiso, Panama City, Key West, Tallahassee, Daytona Beach, Melbourne, Gainesville, and Vero Beach.¹⁴

Large-hub Airports in Florida

The FAA provides that large-hub commercial airports are airports that facilitate 1 percent or more of the total annual passenger boardings in the U.S.¹⁵ The Florida airports that currently

⁶ See the FAA website, *Airports*, available at: https://www.faa.gov/about/office_org/headquarters_offices/arp/ (last visited January 22, 2020).

⁷ Section 332.001, F.S.

⁸ Section 330.27(6), F.S. For purposes of FDOT approval and licensure, the term “public airport” means a publicly or privately owned airport for public use.

⁹ Section 330.30(1), F.S.

¹⁰ Section 330.30(2), F.S.

¹¹ See ch. 332, F.S.

¹² See ch. 333, F.S.

¹³ FAA Airport, Commercial Service Airport (Rank Order) based on Calendar Year 2018 (December 20, 2019), available at: https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/cy18-commercial-service-enplanements.pdf (last visited February 18, 2020).

¹⁴ *Id.*

¹⁵ See Federal Aviation Administration, *Airport Categories*, available at: https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/categories/ (last visited February 14, 2020).

meet the criteria to be a large-hub airport are Orlando, Miami, Fort Lauderdale, and Tampa.¹⁶ The table below portrays relevant information about these airports.

Airport	2018 Enplanements (passengers boarded) ¹⁷	2018 Total Revenue	2018 Total Expenditures	End of 2018 Net Position
Orlando ¹⁸	23,184,634	\$743,147,000	\$564,540,000	\$2,528,297,000
Miami ¹⁹	21,025,210	\$920,968,000	\$997,026,000	\$1,228,566,000
Fort Lauderdale ²⁰	17,613,957	\$374,997,000	\$262,886,000	\$1,516,000,000
Tampa ²¹	10,369,622	\$373,071,000	\$196,827,000	\$1,123,305,599

FDOT Airport Funding

The FDOT's work program identifies aviation development projects and discretionary capacity improvement projects. To the maximum extent possible, the FDOT's work program must remain consistent with the Florida Aviation System Plan and any approved and applicable local government comprehensive plans. The FDOT's work program also includes any project with funds administered by the FDOT but undertaken and implemented by the airport operator. The FDOT's aviation program assists airports in the areas of access, economic enhancement, development, improvement, and land acquisition in the way of matching funds. These matching funds assist local governments and airport authorities in planning, designing, purchasing, constructing, and maintaining public use aviation facilities.²²

For commercial service airports, FDOT may provide up to 50 percent of the non-federal share if federal funding is available and up to 50 percent of the total project costs if federal funding is not available.²³ For Fiscal Year 2019-2020, FDOT was appropriated \$266 million from the State Transportation Trust Fund for Aviation Development Grants,²⁴ available to both commercial service airports and general aviation airports.²⁵

¹⁶ See Federal Aviation Administration, Commercial Service (Rank Order) 2018, *available at*: https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/preliminary-cy18-commercial-service-enplanements.pdf (last visited February 14, 2020).

¹⁷ *Id.*

¹⁸ See Greater Orlando Aviation Authority, Comprehensive Annual Financial Report 2018, *available at*: https://flauditor.gov/pages/specialdistricts_efile%20rpts/2018%20greater%20orlando%20aviation%20authority.pdf (last visited February 14, 2020).

¹⁹ See Miami-Dade Aviation Department, Comprehensive Annual Financial Report 2018, *available at*: <http://www.miami-airport.com/library/pdfdoc/Finance/Miami-Dade%20Aviation%20Department%209-30-18%20ISSUED%20CAFR.pdf> (last visited February 14, 2020).

²⁰ See Broward County Aviation Department, Financial Statements 2018, *available at*: <https://www.broward.org/Airport/Business/about/Documents/FLLfy18financialstatements.pdf> (last visited February 14, 2020).

²¹ See Hillsborough County Aviation Authority, Financial Statements 2018, *available at*: https://flauditor.gov/pages/specialdistricts_efile%20rpts/2018%20hillsborough%20county%20aviation%20authority.pdf (last visited February 14, 2020).

²² Section 332.007(2), F.S.

²³ FDOT website available at <https://www.fdot.gov/aviation/workProgram.shtm> (last visited January 22, 2020).

²⁴ Chapter 2019-115, L.O.F., Specific Appropriation 1940.

²⁵ FDOT Fiscal Year 2020 Aviation Work Program available at <https://fdotwp1.dot.state.fl.us/fmsupportapps/workprogram/Support/WPItemRept.ASPX?RF=WP&CT=I&FY=TRUE|FALSE|FALSE|FALSE|FALSE&RP=ITEM> (last visited January 22, 2020).

FAA Airport Funding

Along with state funding, airports receive federal grants administered by the FAA. The main grant program for federal funds is the Airport Improvement Program (AIP). The AIP provides grants to public agencies — and, in some cases, to private owners and entities — for the planning and development of public-use airports.

Eligible AIP projects include airport improvements related to enhancing airport safety, capacity, security, and environmental concerns. In general, airports may receive AIP funds for most airfield capital improvements or rehabilitation projects and, in some specific situations, for terminals, hangars, and nonaviation development. Certain professional services that are necessary for eligible projects (such as planning, surveying, and design) can also be eligible. The FAA must be able to determine that the projects are justified based on civil aeronautical demand. The projects must also meet federal environmental and procurement requirements. Airports typically record grant funds for the acquisition or construction of capital assets as capital contributions in financial statements.²⁶

Airports accepting FAA grants are required to be audited following the provisions of the Single Audit Act of 1984 and certain requirements of the Title 2 U.S. Code of Federal Regulations Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements. Information related to the audit, including the schedule of expenditures of federal awards, schedule of findings, questioned costs, and the reports of an independent auditor, must be reported to the FAA under a separate cover to comply with grant conditions.²⁷

For fiscal year 2018, the total amount of federal FAA funding appropriated to Florida airports through the AIP amounted to \$203,472,903.²⁸ As for Florida's large-hub airports (excluding Miami-Dade, which is not indicated as receiving AIP funds) in 2019, the FAA denotes the following AIP fund amounts for the stated purposes:²⁹

- Fort Lauderdale/Hollywood International: \$24,716,313 to rehabilitate runway;
- Fort Lauderdale/Hollywood International: \$20,000,000 to extend runway;
- Orlando International: \$21,328,633 to rehabilitate runway;
- Tampa International: \$6,305,125 to install security equipment; and
- Tampa International: \$502,014 to conduct a noise compatibility plan study.

Auditor General

The position of the Auditor General is established by Article III, section 2 of the State Constitution.³⁰ The Auditor General is appointed to office to serve at the pleasure of the

²⁶ Federal Aviation Administration, *Overview: What is AIP?* available at: <https://www.faa.gov/airports/aip/overview/> (last visited February 19, 2020).

²⁷ Federal Aviation Administration, *Grant Assurances (Obligations)*, available at: https://www.faa.gov/airports/aip/grant_assurances/ (last visited February 18, 2020).

²⁸ Federal Aviation Administration, *FY 2018 Regular AIP and Supplemental Funding by State* (January 17, 2019), available at: https://www.faa.gov/airports/aip/aip_supplemental_appropriation/media/FY-2018-Regular-AIP-and-Supplemental-Funding-by-State.pdf (last visited February 18, 2020).

²⁹ Federal Aviation Administration, *Office of Airports, FY 2019 AIP Grants Awarded*, available at: https://www.faa.gov/airports/aip/grant_histories/media/FY2019-AIP-grants.pdf (last visited February 18, 2020).

³⁰ Art. III, s. 2, FLA. CONST.

Legislature, by a majority vote of the members of the Joint Legislative Auditing Committee, subject to confirmation by both houses of the Legislature.³¹ The Auditor General must conduct audits, examinations, or reviews of government programs as well as audit the accounts of state agencies, state universities, state colleges, district school boards, and others as directed by the Joint Legislative Auditing Committee.³² The Auditor General conducts operational and performance audits on public records and information technology systems and reviews all audit reports of local governmental entities, charter schools, and charter technical career centers.³³

A financial audit is an examination of financial statements to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted under legal and regulatory requirements.³⁴ The purpose of an operational audit is to evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities following applicable laws, administrative rules, contracts, grant agreements, and other guidelines.³⁵

In 2017, the Auditor General conducted an operational audit of the Hillsborough County Aviation Authority to review Tampa International Airport's 2012 Master Plan Capital Project.³⁶ Among the audit report findings, the Auditor General found that the Authority failed to meet several state laws, procurement policies, and budgeting requirements.³⁷

More recently, at its meeting on December 12, 2019, the Joint Legislative Auditing Committee directed the Auditor General to perform a targeted operational audit of the Greater Orlando Aviation Authority.³⁸ However, the Auditor General has not conducted financial and operational audits of an entire airport's operation.³⁹

Financial Disclosure

Florida ethics laws provide for two tiers of financial disclosure for public officers, candidates for public office, and certain public employees: full and public disclosure of financial interests (Form 6) and a statement of financial interests (Form 1).⁴⁰ The Florida Commission on Ethics oversees the financial disclosure filing process with the assistance of local qualifying officers.

³¹ Section 11.42(2), F.S.

³² Section 11.45(2)(d)-(f), F.S.

³³ Section 11.45(7)(b), F.S.

³⁴ Section 11.45(1)(d), F.S.

³⁵ Section 11.45(1)(i), F.S.

³⁶ Chapter 2017-70, L.O.F. This audit was provided for in proviso language to Specific Appropriation 1862 in the 2017 General Appropriations Act.

³⁷ Florida Auditor General Operational Audit, Hillsborough County Aviation Authority Report No. 2018-080 (December 2017), available at: https://flauditor.gov/pages/pdf_files/2018-080.pdf (last visited February 18, 2020).

³⁸ Joint Legislative Auditing Committee, Meeting Summary, December 12, 2019, available at: <http://www.leg.state.fl.us/Data/Committees/Joint/JCLA/Meetingsummaries/121219.pdf> (last visited January 22, 2020).

³⁹ E-mail from Bruce Jeroslow, General Counsel, Florida Auditor General, to House committee staff, relating to HB 915, January 6, 2020 (on file in the Senate Infrastructure and Security Committee).

⁴⁰ Sections 112.3144 and 112.3145, F.S.

Article 2, section 8(a) of the State Constitution requires all elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees to file a Form 6. Additionally, members of certain expressway authorities, transportation authorities, bridge authorities, toll authorities, or expressway agencies are required to comply with these financial disclosure requirements.⁴¹ Form 6 requires the filer to disclose his or her net worth and identify each asset and liability in excess of \$1,000 and its value together with either a copy of the person's most recent federal income tax return or a sworn statement identifying each separate source and amount of income exceeding \$1,000.

Form 1 requires less detail than Form 6 and is filed by certain state and local officers not subject to the full and public disclosure of financial interests, including local officers⁴² and specified state employees. Form 1 requires filers to disclose their primary sources of income (other than from their public position), secondary sources of income (in certain circumstances), real property in Florida (other than a residence or vacation home in Florida), intangible personal property, liabilities, and interests in specified businesses.⁴³

State Procurement

Chapter 287, F.S., provides statutory requirements for the procurement of goods and services by the state. The Legislature recognizes that fair and open competition is a basic tenet of public procurement. It is essential to the effective and ethical procurement of commodities and contractual services that there be a system of uniform procedures utilized by state agencies in managing and procuring commodities and contractual services, that detailed justification of agency decisions in the procurement of commodities and contractual services be maintained, and that adherence by the agency and the vendor to specific ethical considerations be required.⁴⁴

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:⁴⁵

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposal, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services.

⁴¹ Section 112.3144(1)(b), F.S.

⁴² Section 112.3145(1)(a), F.S., defines the term "local officer" to include every person who is elected to office in any political subdivision of the state, and every person who is appointed to fill a vacancy for an unexpired term in such an elective office and any appointed member of any of the following boards, councils, commissions, authorities, or other bodies of any county, municipality, school district, independent special district, or other political subdivision of the state.

⁴³ Section 112.3145(3), F.S.

⁴⁴ Section 287.001, F.S.

⁴⁵ See ss. 287.012(6) and 287.057, F.S.

Florida establishes five categories of purchase thresholds and requires entities to follow certain conditions when funds are expended in these amounts. The categories and amounts are:⁴⁶

- CATEGORY ONE: \$20,000.
- CATEGORY TWO: \$35,000.
- CATEGORY THREE: \$65,000.
- CATEGORY FOUR: \$195,000.
- CATEGORY FIVE: \$325,000.

For contracts for commodities or services in excess of \$35,000 (CATEGORY TWO), state agencies must utilize a competitive solicitation process;⁴⁷ however, certain contractual services and commodities are exempt from this requirement.⁴⁸

Federal Procurement

Similar to state procurement, the federal government requires entities expending public funds to abide by certain administrative, procedural, contractual conditions. Procurements made under the Airport Improvement Program must adhere to the provisions outlined in 2 C.F.R. § 200.317-200.326.⁴⁹ This federal regulation provides for uniform standards an airport must apply to their procurement actions to maintain eligibility for grant funding under the AIP. Federal regulations encompass procurements for construction development, equipment acquisition, and selection of professional services (e.g., engineering and planning consultants).

Code of Ethics for Public Officers and Employees

Part III of ch. 112, F.S., contains the Code of Ethics for Public Officers and Employees. The code intends to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law.⁵⁰ Included in the code are provisions relating to doing business with one's agency,⁵¹ conflicting employment or contractual relationships,⁵² post-employment restrictions,⁵³ and requirements for ethics training for specified constitutional officers and elected municipal officers and commissioners.⁵⁴

III. Effect of Proposed Changes:

The bill provides for additional transparency and accountability of commercial service airports.

⁴⁶ Section 287.017, F.S.

⁴⁷ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid.

⁴⁸ See s. 287.057(3), F.S.

⁴⁹ Federal Aviation Administration, *Procurement and Contracting Under AIP*, available at: <https://www.faa.gov/airports/aip/procurement/> (last visited February 18, 2020).

⁵⁰ Florida Commission on Ethics, *Guide to the Sunshine Amendment and the Code of Ethics for Public Employees*. 2019, p.1., available at: <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf?cp=20191213> (last visited January 22, 2020).

⁵¹ Section 112.313(3), F.S.

⁵² Section 112.313(7), F.S.

⁵³ Section 112.313(9), F.S.

⁵⁴ Section 112.313(9), F.S.

Section 1 amends s. 11.45(2)(m), F.S., requiring the Auditor General, at least once every 7 years, to conduct an operational and financial audit of each large-hub commercial service airport. The bill defines the term “large-hub commercial service airport” for purposes of paragraph (m) to mean a publicly owned airport that has at least one percent of the annual passenger boardings in the United States as reported by the FAA.

Section 2 amends s. 112.3144(1), F.S., requiring each member of the governing body of a large-hub commercial service airport, except for those required to comply with the financial disclosure requirements of Art. II, s. 8 of the State Constitution, to comply with the financial disclosure requirements of s. 112.3145(3), F.S. For purposes of paragraph (c), the bill defines the term “large-hub commercial service airport” to mean a publicly owned airport that has at least 1 percent of the annual passenger boardings in the United States as reported by the FAA.

Based on the definitions in the bill, there are 19 commercial service airports in Florida, four of which are large-hub commercial service airports (Orlando, Miami, Fort Lauderdale, and Tampa International). The Auditor General would be required to conduct a financial and operational audit of these four airports at least once every 7 years.

Each member of the governing body of a large-hub commercial service airport would be required to file the less-detailed Form 1 financial disclosure, except for members required to comply with the full and public disclosure of their financial interests set out in Art. II, s. 8 of the State Constitution (Form 6). Because the Miami and Fort Lauderdale airports are operated by Miami-Dade and Broward counties, respectively, in which county commissioners are already subject to the constitutional financial disclosure requirements (Form 6), this provision only impacts the governing bodies of the Orlando and Tampa airports, which are governed as independent special districts.

Section 3 creates s. 332.0075, F.S., entitled *Commercial service airports; transparency and accountability; penalty*, providing the following definitions for purposes of the new section:

- “Commercial service airport” means a primary airport, as defined in 49 U.S.C. s. 47102, that is classified as a large, medium, small – hub airport by the FAA.
- “Department” means the Department of Transportation.
- “Governing body” means the governing body of the municipality, county, or special district that operates a commercial service airport.

The bill requires the governing body of each commercial service airport to establish and maintain a website to post information relating to the operation of such airport, including:

- All published notices of meetings and published meeting agendas for the governing body.
- The official minutes of each meeting of the governing body, which must be posted within three business days after the date of the meeting in which the minutes are approved.
- The approved budget for the commercial service airport for the current fiscal year, which must be posted on the website, which must be posted within seven days after the date of adoption. Budgets must remain on the website for two years after the conclusion of the fiscal year in which they were adopted.
- All commercial service airport planning documents and all financial and statistical reports submitted to the FAA, which must be posted upon submission.

- The airport master plan for the commercial service airport on the FAA’s website.
- Any contract or contract amendment executed by or on behalf of the airport in excess of \$100,000, which must be posted on the website no later than 7 business days before the governing body votes to approve the contract or amendment.
- Position and rate information for each employee, including, at a minimum, the employee’s position title, position description, and annual or hourly salary.

The bill provides that commercial service airports are subject to the requirements of ch. 287, F.S., relating to the procurement of personal property and services, notwithstanding any other law. Under the bill, commodity and service contracts in excess of \$100,000 must be executed following a competitive sealed bid process. However, the bill states that commercial service airports are allowed to enact or adopt criteria, standards, preferences, or policies to promote small and locally owned businesses in the competitive bid solicitations process, and also provides that commercial service airports can impose contractual provisions necessary to address local economic conditions or local regulatory requirements. Furthermore, the bill state that the requirements of ch. 287, F.S., may be avoided when certain exemptions apply.

All contracts executed by or on behalf of the commercial service airport in excess of \$325,000⁵⁵ must be approved, awarded, or ratified by the governing body of the airport as a separate line item on the agenda after providing a reasonable opportunity for public comment. The bill prohibits approving such contracts as part of a consent agenda.

The bill reiterates that members of the governing body and employees of a commercial service airport are subject to the Code of Ethics for Public Officers and Employees.⁵⁶

Beginning January 1, 2021, each member of a governing body of a commercial service airport will be required to complete four hours of ethics training each calendar year, which addresses, at a minimum, Art. II, s. 8 of the State Constitution, relating to ethics in government; the Code of Ethics for Public Officers and Employees; and the public records and public meetings laws. This requirement may be satisfied by the completion of a continuing legal education class or other continuing professional education class, seminar, or presentation if the class covers the required subject material.⁵⁷ Airport governing body members that have completed this training for another public office are exempt from this requirement.

Beginning November 1, 2021, and each November 1 thereafter, the bill requires each commercial service airport to submit to the FDOT the following information:

- Its approved budget for the current fiscal year.
- Any financial reports submitted to the FAA during the previous calendar year.
- A link to the website for the commercial service airport.
- A statement that the commercial service airport has complied with part III of chapter 112, F.S., relating to the Code of Ethics for Public Officers and Employees; chapter 287, F.S.,

⁵⁵ This is the CATEGORY FIVE purchasing threshold in s. 287.017, F.S.

⁵⁶ Part III of chapter 112, F.S.

⁵⁷ This requirement is identical to the ethics training required for constitutional officers, elected municipal officers, and commissioners of community redevelopment agencies contained in s. 112.3142(2), F.S.

relating to procurement; and the statutory provisions created in the bill. This statement must be verified as provided in s. 92.525, F.S.

The FDOT is required to review the submitted and website-posted information to determine the information's accuracy. Beginning January 15, 2022, and each January 15 thereafter, the FDOT is required to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report summarizing commercial service airport compliance with these provisions. The bill prohibits the FDOT from expending any funds allocated to a commercial service airport as contained in the FDOT's adopted work program unless pledged for debt service until the airport demonstrates its compliance.

Section 4 provides that the bill takes effect on October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(a), Article VII, of the Florida Constitution, provides that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless certain exemptions or exceptions are met. Article VII, section 18(d) of the Florida Constitution provides laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, *laws having insignificant fiscal impact*,⁵⁸ and laws creating, modifying, or repealing noncriminal infractions, are exempt from the requirements of this section. For Fiscal Year 2020-2021, an insignificant impact is forecast at slightly over \$2.1 million.⁵⁹

The county/municipality mandate provision in Art. VII, s. 18 of the State Constitution may apply to the bill's requirements when the commercial service airport is a government department model (where the airport operates as a department of the local government) or possibly an airport authority model (for dependent special districts⁶⁰). The insignificant impact exemption may apply if the cost of compliance with the bill's provisions does not exceed \$2.1 million in the aggregate.

The fiscal impact of the bill to local governments is indeterminate.

⁵⁸ 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 January 22, 2020).

⁵⁹ Based on the Florida Demographic Estimating Conference's December 3, 2019, population forecast for 2020 of 21,555,986. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited January 22, 2020).

⁶⁰ For example, a "dependent special district" can mean a special district in which the membership of its governing body is identical to that of the governing body of a single county. See s. 189.012(2), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has no apparent fiscal impact on state or local government revenues.

Local government entities operating commercial service airports may incur expenditures associated with compliance with the provisions of the bill; however, the amount of these expenditures would vary from airport to airport based on how the bill's requirements exceed current operational and administrative practices. The total fiscal impact on local government is therefore indeterminate.

The FDOT may not expend any funds allocated to a commercial service airport as contained in the FDOT's adopted work program unless pledged for debt service until the airport demonstrates its compliance. However, the fiscal impact of any non-compliance, and the effect of such non-compliance on the FDOT's adopted work program, is indeterminate.

The FDOT will incur administrative expenses and use of resources associated with the bill's provisions. According to the FDOT, to fully administer such a program, the FDOT would need to establish rules and procedures to establish the processes for submission and review of the required information, thresholds for compliance, and timelines to reasonably accomplish tasks without impairing project production schedules. Other funding needs include but are not limited to technology costs for data storage, electronic

file exchange, and websites.⁶¹ However, the agency analysis assigns no estimated dollar value for such costs. The fiscal impact of the FDOT appears to be indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill allows commercial service airports to enact or adopt criteria, standards, preferences, or policies to promote small and locally-owned businesses in the competitive bid solicitation process; however, this authorization may have limited applicability for certain airport projects. For example, if a commercial service airport attempts to impose local procurement preferences on an airport project that involves federal funding, continued or future federal airport funding for the project may be jeopardized.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 11.45 and 112.3144.

This bill creates the following sections of the Florida Statutes: 332.0075.

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 March 2, 2020:

The committee substitute revises financial disclosure requirements by requiring each member of the governing body of large-hub commercial service airports to comply with the financial disclosure requirements of s. 112.3145(3), F.S. (Form 1), except for members required to comply with the full and public disclosure of financial interests set out in Article II, section 8 of the State Constitution (Form 6).

CS by Community Affairs on February 17, 2020:

The committee substitute makes the following changes to the bill:

- Requires the Auditor General to conduct operational audits once every 7 years, instead of every 5 years, and requires the audit to include, at a minimum, an assessment of compliance with s. 332.0075, ch. 287, F.S., and state public records and public meetings laws.
- Clarifies that persons already required to file a Form 6 financial disclosure are not required to file an additional disclosure for serving on governing body of a large-hub commercial service airport.
- Changes definition of “commercial service airport” to mean a primary airport as defined in 49 U.S.C. s. 47102, and uses FAA classifications for other smaller airports.

⁶¹ See the FDOT’s analysis of similar HB 915 (2020) available at <http://abar.laspbs.state.fl.us/ABAR/ABAR.aspx> (last visited January 22, 2019).

- Requires official minutes of governing body meetings to be posted online within 7 days, instead of 3.
- Requires commercial service airport websites to include a link to the airport master plan on the FAA website.
- Requires that purchases of commodities or contractual services that exceed \$100,000, instead of \$65,000 (CATEGORY THREE), need to be made using the competitive sealed bid process.
- Allows commercial service airports to enact or adopt criteria, standards, preferences, or policies to promote small and locally-owned businesses in the competitive bid solicitation process.
- Requires an airport governing board to approve, award, or ratify contracts that exceed \$325,000 (CATEGORY FIVE), instead of \$65,000 (CATEGORY THREE).
- Allows counties and municipalities to apply more stringent ethical standards to an airport governing body than provided in the bill.
- Clarifies that constitutional officers and elected officers who complete ethics training required for office are not obligated to complete such training for serving on an airport governing body.
- Changes the effective date of the bill from July 1, 2020, to October 1, 2020.

B. Amendments:

None.



230136

LEGISLATIVE ACTION

Senate	.	House
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03/03/2020	.	
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The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 64 - 70
and insert:

(c) Each member of the governing body of a large-hub
commercial service airport, except for members required to
comply with the financial disclosure requirements of s. 8, Art.
II of the State Constitution, shall comply with the financial
disclosure requirements of s. 112.3145(3). For purposes of this
paragraph,



230136

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

13 And the title is amended as follows:

14 Delete lines 9 - 11

15 and insert:

16 financial disclosure requirements; defining the term

17 "large-hub commercial

By the Committee on Community Affairs; and Senators Diaz and Baxley

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1 A bill to be entitled
 2 An act relating to commercial service airports;
 3 amending s. 11.45, F.S.; directing the Auditor General
 4 to conduct specified audits of certain airports;
 5 defining the term "large-hub commercial service
 6 airport"; amending s. 112.3144, F.S.; requiring
 7 members of the governing body of a large-hub
 8 commercial service airport to comply with certain
 9 financial disclosure requirements; providing that a
 10 separate filing is not required under specified
 11 circumstances; defining the term "large-hub commercial
 12 service airport"; creating s. 332.0075, F.S.;
 13 providing definitions; requiring the governing body of
 14 a municipality, county, or special district that
 15 operates a commercial service airport to establish and
 16 maintain a website; requiring the governing body to
 17 post or provide links to certain information on the
 18 website; requiring the posting of specified contracts;
 19 providing for the redaction of confidential and exempt
 20 information; requiring commercial service airports to
 21 comply with certain contracting requirements;
 22 providing exceptions; requiring the governing body to
 23 approve, award, or ratify certain contracts; requiring
 24 members of the governing body of a commercial service
 25 airport to comply with certain ethics requirements and
 26 complete annual ethics training; requiring governing
 27 bodies of commercial service airports to submit
 28 certain information annually to the Department of
 29 Transportation; requiring the department to review

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30 such information and submit an annual report to the
 31 Governor and the Legislature; prohibiting the
 32 department's expenditure of certain funds unless
 33 specified conditions are met; providing an effective
 34 date.
 35

36 Be It Enacted by the Legislature of the State of Florida:
 37

38 Section 1. Paragraph (m) is added to subsection (2) of
 39 section 11.45, Florida Statutes, to read:
 40 11.45 Definitions; duties; authorities; reports; rules.-
 41 (2) DUTIES.-The Auditor General shall:
 42 (m) At least once every 7 years, conduct an operational and
 43 financial audit of each large-hub commercial service airport.
 44 Each operational audit shall include, at a minimum, an
 45 assessment of compliance with s. 332.0075, including compliance
 46 with chapter 287, and compliance with the public records and
 47 public meetings laws of this state. For purposes of this
 48 paragraph, the term "large-hub commercial service airport" means
 49 a publicly owned airport that has at least 1 percent of the
 50 annual passenger boardings in the United States as reported by
 51 the Federal Aviation Administration.
 52

53 The Auditor General shall perform his or her duties
 54 independently but under the general policies established by the
 55 Legislative Auditing Committee. This subsection does not limit
 56 the Auditor General's discretionary authority to conduct other
 57 audits or engagements of governmental entities as authorized in
 58 subsection (3).

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Section 2. Paragraph (c) is added to subsection (1) of section 112.3144, Florida Statutes, to read:

112.3144 Full and public disclosure of financial interests.—

(1)

(c) Each member of the governing body of a large-hub commercial service airport shall comply with the applicable financial disclosure requirements of s. 8, Art. II of the State Constitution. Any person otherwise required under this subsection to file a full and public financial disclosure, is not required to separately file a full and public financial disclosure under this paragraph. For purposes of this paragraph, the term "large-hub commercial service airport" means a publicly owned airport that has at least 1 percent of the annual passenger boardings in the United States as reported by the Federal Aviation Administration.

Section 3. Section 332.0075, Florida Statutes, is created to read:

332.0075 Commercial service airports; transparency and accountability; penalty.—

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

(a) "Commercial service airport" means a primary airport, as defined in 49 U.S.C. s. 47102, that is classified as a large-, medium-, or small-hub airport by the Federal Aviation Administration.

(b) "Department" means the Department of Transportation.

(c) "Governing body" means the governing body of the county, municipality, or special district that operates a commercial service airport.

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(2) Each governing body shall establish and maintain a website to post information relating to the operation of a commercial service airport, including:

(a) All published notices of meetings and published meeting agendas of the governing body.

(b) The official minutes of each meeting of the governing body, which shall be posted within 7 business days after the date of the meeting in which the minutes were approved.

(c) The approved budget for the commercial service airport for the current fiscal year, which shall be posted within 7 business days after the date of adoption. Budgets must remain on the website for 2 years after the conclusion of the fiscal year for which they were adopted.

(d) A link to the airport master plan for the commercial service airport on the Federal Aviation Administration's website.

(e) A link to all financial and statistical reports for the commercial service airport on the Federal Aviation Administration's website.

(f) Any contract or contract amendment executed by or on behalf of the commercial service airport in excess of \$100,000, shall be posted no later than 7 business days after the commercial service airport executes the contract or contract amendment. However, a contract or contract amendment may not reveal information made confidential or exempt by law. Each commercial service airport must redact confidential or exempt information from each contract or contract amendment before posting a copy on its website.

(g) Position and rate information for each employee of the

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commercial service airport, including, at a minimum, the employee's position title, position description, and annual or hourly salary.

(3) (a) Notwithstanding any other provision of law to the contrary, commercial service airports are subject to the requirements of chapter 287 for purchases of commodities or contractual services that exceed \$100,000. If the purchase of commodities or contractual services exceeds \$100,000, the purchase of commodities or contractual services may not be made without receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies unless an exception applies as provided in s. 287.057(3) or an immediate danger to the public health, safety, or welfare, or other substantial loss to the commercial service airport requires emergency action. In making purchases or conducting a competitive solicitation pursuant to this section, a commercial service airport is authorized to enact or adopt criteria, standards, preferences, or policies for the promotion of small or locally owned businesses, or otherwise apply such criteria, standards, preferences, or policies otherwise generally applicable to competitive solicitations of the political subdivision owning and operating such commercial service airport, and may impose contract provisions necessary to address local economic conditions or local regulatory requirements.

(b) A governing body must approve, award, or ratify all contracts executed by or on behalf of a commercial service airport in excess of the threshold amount provided in s. 287.017 for CATEGORY FIVE as a separate line item on the agenda and must provide a reasonable opportunity for public comment. Such

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contracts may not be approved, awarded, or ratified as part of a consent agenda.

(4) (a) Members of a governing body and employees of a commercial service airport are subject to part III of chapter 112. However, this paragraph does not prohibit the application of more stringent ethical standards adopted by county or municipal charter, ordinance, or resolution of the governing body for its members and employees.

(b) Beginning January 1, 2021, each member of a governing body must complete 4 hours of ethics training each calendar year which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation if the required subject material is covered therein. Constitutional officers and elected municipal officers who are members of the governing body who complete the ethics training required in s. 112.3142 shall be considered in compliance with this paragraph.

(5) (a) Beginning November 1, 2021, and each November 1 thereafter, the governing body of each commercial service airport shall submit the following information to the department:

1. Its approved budget for the current fiscal year.
2. Any financial reports submitted to the Federal Aviation Administration during the previous calendar year.
3. A link to its website.
4. A statement, verified as provided in s. 92.525, that it

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175 has complied with part III of chapter 112, chapter 287, and this
176 section.

177 (b) The department shall review the information submitted
178 by the commercial service airport and posted on the airport's
179 website to determine the accuracy of such information. Beginning
180 January 15, 2022, and each January 15 thereafter, the department
181 shall submit to the Governor, the President of the Senate, and
182 the Speaker of the House of Representatives a report summarizing
183 commercial service airport compliance with this section.

184 (6) The department may not expend any funds allocated to a
185 commercial service airport as contained in the adopted work
186 program, unless pledged for debt service, until the commercial
187 service airport demonstrates its compliance with this section.

188 Section 4. This act shall take effect October 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-2-2020

Meeting Date

1258

Bill Number (if applicable)

230136

Amendment Barcode (if applicable)

Topic Commercial Service Airports

Name Chad Rosenstein

Job Title _____

Address 1801 N Meridian Rd #C
Street

Phone 239-590-4611

Tallahassee

FL

32302

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Airports Council

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/2020
Meeting Date

SB 1258
Bill Number (if applicable)

Topic Commercial Service Airports

Amendment Barcode (if applicable)

Name Starla Brown

Job Title Deputy State Director

Address

Phone

Street

Delray Beach

City

State

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Americans for Prosperity

Appearing at request of Chair: ☒ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-2-2020
Meeting Date

1258
Bill Number (if applicable)

Topic Commercial Service Airports

Amendment Barcode (if applicable)

Name Chad Rosenstein

Job Title Government Affairs & Grants

Address 1100 Terminal Access Rd.
Street

Phone 239-590-4611

Fort Myers FL 33913
City State Zip

Email crosenstein@flykpa.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Lee County Port Authority

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 1618

INTRODUCER: Senator Diaz

SUBJECT: Construction Materials Mining Activities

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Anderson	Rogers	EN	Favorable
2. Palecki	Knudson	BI	Favorable
3. Anderson	Phelps	RC	Favorable

I. Summary:

SB 1618 creates a pilot program in the Division of the State Fire Marshal (Division) within the Department of Financial Services for the monitoring and reporting of each blast resulting from the use of explosives for construction materials mining activities in Miami-Dade County. The bill requires the State Fire Marshal to hire or contract with seismologists to monitor and report, at minimum, the ground vibration, frequency, intensity, air blast, and time and date of the blast. The bill prohibits the seismologists from certain conflicts of interest or dishonest practices. The bill requires the State Fire Marshal to post the report on the Division's website and to adopt rules to implement and enforce the act.

The bill requires a person who engages in construction materials mining activities to provide written notice to the State Fire Marshal of the use of an explosive for such activities in Miami-Dade County before the detonation of the explosive.

The bill appropriates, for the fiscal year 2020-2021, \$600,000 in recurring funds and \$440,000 in nonrecurring funds from the General Revenue Fund to the Division for the purpose of implementing the monitoring and reporting pilot program created under the bill.

II. Present Situation:

State Fire Marshal

The Chief Financial Officer of Florida is designated as the State Fire Marshal.¹ The State Fire Marshal has the authority to set standards, limits, and regulations regarding the use of explosives for construction materials mining activities.² This authority includes, directly or indirectly, the operation, handling, licensure, or permitting of explosives, and setting standards or limits,

¹ Section 633.104, F.S.

² Section 552.30(1), F.S.

including, but not limited to, ground vibration, frequency, intensity, blast pattern, air blast, and time, date, occurrence, and notice restrictions.³

Construction Materials Mining Activities

It is common practice for mining companies to use explosives as they extract sand and limestone from Florida soil.⁴ These materials are used to make construction components such as aggregates, sand, cement, and roadbase materials.⁵ The use of explosives is governed by federal, state, and local government laws.⁶

At the federal level, Title 30 of the U.S. Code and its various implementing regulations establish basic safety, health, certification, reporting, and environmental requirements for the use of explosives in mining operations. At the state level, ch. 552, F.S., governs the requirements and enforcement for the manufacture, distribution, and use of explosives.

As of 2000, state law preempts local regulations imposing standards, limits, or other regulations regarding the use of explosives for construction materials mining activities.⁷ However, the State Fire Marshal may use his or her discretion to delegate the monitoring of and enforcement of regulations governing the use of explosives by construction materials mining activities, including the assessment and collection of reasonable fees, to the applicable municipality or county.⁸ This must be accomplished by a written agreement with the local government.⁹

Ground Vibration Limits

Pursuant to Florida law, the State Fire Marshal must establish statewide ground vibration limits for construction materials mining activities in conformance with federal limits.¹⁰ The legal limit in Florida is 0.5 inches per second peak particle velocity when using explosives within 2 miles of an urban development due to the potential damage to plaster-on-lath construction.¹¹

Permits

To use explosives, a company must have a permit issued by the Regulatory Licensing Section in the Division of State Fire Marshal (“Division”) under the Department of Financial Services (DFS).¹² All blasting activities must be monitored by a seismologist. There are restrictions on the use of explosives, including limiting activity to daylight hours between 8 a.m. and 5 p.m.,

³ *Id.*

⁴ DFS, Division of State Fire Marshal, *Mine Blasting Information*, https://www.myfloridacfo.com/Division/SFM/BFP/mine_blasting.htm (last visited Feb. 7, 2020).

⁵ Section 552.30(1), F.S.

⁶ Title 30, U.S.C.; s. 552.30(2), F.S.; Fla. Admin. Code R. 69A-2.024. For examples of local ordinances, see Miami-Dade County’s Code of Ordinances, §13-4; City of Miramar’s Code of Ordinances, §2-66.

⁷ Ch. 2000-266, Laws of Fla.

⁸ Section 552.30(2), F.S.

⁹ Fla. Admin. Code R. 69A-2.024(9)(a).

¹⁰ *Id.*; see United States Bureau of Mines, *Report of Investigations 8507, Appendix B - Alternative Blasting Level Criteria* (Figure B-1), available at <https://www.osmre.gov/resources/blasting/docs/USBM/RI8507BlastingVibration1989.pdf>.

¹¹ Fla. Admin. Code R. 69A-2.024(15).

¹² Fla. Admin. Code R. 69A-2.024(3).

Monday through Friday.¹³ Blasting is prohibited on weekends and official holidays unless consent is granted by the State Fire Marshal.¹⁴

A person who is permitted to engage in construction materials mining activity must submit written notification to the county or municipality where the activity is to be conducted after the issuance of a permit and at least 20 days prior to a blast. Such person must also submit subsequent notices following permit renewals and revisions.¹⁵

Reporting

Pursuant to DFS rules, each person engaged in construction materials mining activity shall submit to the State Fire Marshal, upon request, the results of ground vibration and air blast measurements, along with specific information including the date and time of the blast and amount of explosives.¹⁶

Seismologists

Seismology is the study of earthquakes and related phenomena. A seismologist studies the Earth's structure and other geological events for commercial and other purposes.¹⁷ Seismologists can conduct research, record and analyze data, or apply their knowledge to help detect and monitor explosions.

Ground vibration measurements made pursuant to DFS rule must be made by a seismologist that:

- Has 5 years of continuous experience measuring and evaluating levels of ground vibration and air overpressure produced by blasting;
- Has demonstrable expertise in the use, location, and operation of seismographic equipment and analysis of seismographic data;
- Has prior experience in monitoring side effects produced by blasting used in construction materials mining activity;
- Has not engaged in dishonest practices relating to the collection or analysis of data or information regarding the use of explosives in construction materials mining; and
- Is not an employee of the mining permit holder, blaster, or user.¹⁸

A seismologist may not be an employee of a mining permit holder, blaster, or user, or another entity regulated under ch. 552, F.S., to be considered independent.¹⁹ In addition, the seismologist may not have been an expert witness, investigator, or consultant for the mining permit holder, blaster, or user or for an aggrieved party in a legal action where the mining permit holder, blaster, or user is alleged to have caused damages.²⁰

¹³ Fla. Admin. Code R. 69A-2.024(6).

¹⁴ *Id.*

¹⁵ Fla. Admin. Code R. 69A-2.024(8).

¹⁶ For full list of requirements, see Fla. Admin. Code R. 69A-2.024(7).

¹⁷ U.S. Bureau of Labor Statistics, *You're a what? Seismologist*, Jan. 2015, <https://www.bls.gov/careeroutlook/2015/youre-a-what/seismologist.htm> (last visited Feb. 7, 2020).

¹⁸ Fla. Admin. Code R. 69A-2.024(4).

¹⁹ Fla. Admin. Code R. 69A-2.024(2).

²⁰ *Id.*

Complaints

The State Fire Marshal is required to investigate any alleged violation of ch. 552, F.S.²¹ A person who believes that a mining operation is in violation of state law or DFS rules, or that the operation's use of explosives is unsafe or causes damage to the property of others, may file a complaint with the Division.²² The Division suggests including the following information in a complaint:

- The date and time of the blast;
- Photographs;
- Written statements from witnesses;
- Reports by independent inspectors or experts who have inspected the affected property;
- Samples of damaged material; and
- Other material or information that will support the facts leading to the complaint.²³

If the Division determines, through investigation, that the complaint is justified and a violation occurred, it has the authority to impose administrative penalties against a mining company that exceeds established blasting limits or violates other laws or rules.²⁴ These penalties range from a monetary fine to the suspension or revocation of the company's permit.²⁵

Miami-Dade Blasting Concerns

The Lake Belt Region in Miami-Dade County provides over half of the limestone that Florida requires, which can only be extracted by blasting.²⁶ Several communities within Miami-Dade County have concerns about the blasting activities in their area and the effects on their residences. Miami-Dade County enacted an ordinance that requires persons who use explosives and blasting agents, generally, to obtain a county occupational license and/or user permit to perform blasting in the incorporated and unincorporated areas of the county in addition to operating pursuant to statutory requirements.²⁷

With regard to regulation of blasting activity, the Town of Miami Lakes has made unsuccessful attempts to limit blasting.²⁸ The City of Miramar banned all blasting in the city in 1999, but the city government reports that the effects of blasting performed outside of city limits are still felt by residents within the city.²⁹ The City of Miramar also created an advisory committee in 2017 as an information source and to facilitate communication between the city and its residents who

²¹ Fla. Admin. Code R. 69A-2.024(11).

²² DFS, Division of State Fire Marshal, *Blasting in Florida, A guide to filing complaints*, available at https://www.myfloridacfo.com/Division/SFM/BFP/Documents/Blasting_in_Florida_brochure.pdf.

²³ *Id.*

²⁴ Sections 552.151, 552.161, and 552.171, F.S.; Fla. Admin. Code R. 69A-2.024(11).

²⁵ *Id.*

²⁶ DEP, *Limestone, Shell, Dolomite*, <https://floridadep.gov/water/mining-mitigation/content/limestone-shell-dolomite> (last visited Feb. 7, 2020); see also South Florida Water Management District, *Lake Belt Mitigation Committee*, <https://www.sfwmd.gov/our-work/lake-belt-committee> (last visited Feb. 7, 2020).

²⁷ Miami-Dade County's Code of Ordinances, s. 13-4.

²⁸ Town of Miami Lakes, *Blasting Concerns*, https://www.miamilakes-fl.gov/index.php?option=com_content&view=article&id=1482&Itemid=866 (last visited Feb. 7, 2020).

²⁹ City of Miramar, *Blasting Concerns*, <https://www.miramarfl.gov/388/Blasting-Concerns> (last visited Feb. 7, 2020).

are impacted by mining.³⁰ The City of Doral monitors blasting activity and daily blasting records are kept by the quarries or an independent seismologist.³¹

2018 Mine Blasting Study

In 2017, the Florida Legislature appropriated funds to DFS to allow it to contract for a study to review whether the established statewide ground vibrations limits for construction material mining activities were still appropriate and to review any legitimate claims for damages caused by such mining activities. The study was required to include a review of measured amplitudes and frequencies, structure responses, theoretical analyses of material strengths and strains, and assessments of home damages.³² The SFM's selected vendor, RESPEC, Inc., delivered its final study to DFS at the end of July 2018.³³

The study concluded that limiting vibrations to 0.5 inches per second was overly restrictive and suggested changing the ruling to address plaster-on-lath and drywall construction. The study also concluded that the 2-mile urban development distance requirement from blasting had no scientific justification and recommended eliminating it or replacing it with a requirement with scientific support. Since the study, there have not been any revisions to state law or DFS rule.

III. Effect of Proposed Changes:

Legislative Findings

The bill revises s. 552.30, F.S. The bill provides legislative findings that:

- Construction materials mining activities require the use of explosives to fracture the material before excavation;
- The use of explosives results in physical ground vibrations and air blasts that may affect other property owners in the vicinity of the mining site;
- It is in the best interest of the public to ensure that blasts resulting from the use of explosives for construction materials mining activities are accurately monitored and reported to ensure the blasts do not exceed physical ground vibration and air blast limits; and
- More permits for construction materials mining activities have been issued to entities operating in Miami-Dade County than any other county in the state.

Monitoring and Reporting Pilot Program

The bill creates a pilot program in the Division of the State Fire Marshal (Division) within the Department of Financial Services (DFS) for the monitoring and reporting of each blast resulting from the use of explosives for construction materials mining activities in Miami-Dade County.

³⁰ City of Miramar's Code of Ordinances, s. 2-66.

³¹ City of Doral, *Blasting/Mining Information*, <https://www.cityofdoral.com/residents/blasting-mining-information/> (last visited Feb. 7, 2020).

³² Section 552.30(3), F.S.

³³ Respec, *Construction Materials Mining Activities Consultation and Study Preparation Services Final Report*, July 2018, available at <https://www.myfloridacfo.com/Division/SFM/BFP/documents/MineBlastingStudy.pdf>.

The bill requires the State Fire Marshal to hire or contract with seismologists to monitor and report each blast resulting from the use of explosives for construction materials mining activities in the county, including, at minimum, monitoring and reporting the ground vibration, frequency, intensity, air blast, and time and date of the blast. The State Fire Marshal must post the reports on the Division's website.

The bill prohibits a seismologist that is hired or contracted by the state to conduct the monitoring and reporting required from:

- Being employed by or under contract with a person who engages in or contracts for construction materials mining activities; or
- Engaging in dishonest practices relating to the collection or analysis of data or information regarding the use of explosives in construction materials mining activities.

Notice Requirements

The bill requires a person who engages in construction materials mining activities to provide written notice to the State Fire Marshal of the use of an explosive for such activities in Miami-Dade County before the detonation of the explosive.

Rulemaking

Requires the State Fire Marshal to adopt rules to implement and enforce the bill.

Appropriation

The bill appropriates, for the fiscal year 2020-2021, the recurring sum of \$600,000 and the nonrecurring sum of \$440,000 from the General Revenue Fund to the Division for the purpose of implementing the monitoring and reporting pilot program created under the bill.

Effective Date

This bill provides an effective date of October 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There will be a negative fiscal impact to the Division to create the monitoring and reporting pilot program, hire or contract with seismologists, and adopt rules. However, an appropriation has been provided under the bill so the impact may be offset if it covers the costs incurred by the Division.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 552.30 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Diaz

36-01876A-20

20201618__

A bill to be entitled

An act relating to construction materials mining activities; amending s. 552.30, F.S.; providing legislative findings; creating a pilot program within the Division of State Fire Marshal to monitor and report on the use of explosives in construction materials mining activities in Miami-Dade County; requiring the State Fire Marshal to hire or contract with seismologists to monitor and report blasts occurring in connection with construction materials mining activities in Miami-Dade County and to post the reports of the seismologists on the division's website; providing requirements for such seismologists; requiring a person who engages in construction materials mining activities in Miami-Dade County to submit certain written notice relating to the use of an explosive to the State Fire Marshal; requiring the State Fire Marshal to adopt rules; providing an appropriation; providing an effective date.

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

Section 1. Section 552.30, Florida Statutes, is amended to read:

552.30 Construction materials mining activities.—

(1) Notwithstanding the provisions of s. 552.25, the State Fire Marshal shall have the sole and exclusive authority to adopt ~~promulgate~~ standards, limits, and regulations regarding

Page 1 of 5

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

36-01876A-20

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the use of explosives used for in conjunction with construction materials mining activities. Such authority to regulate use shall include, directly or indirectly, the operation, handling, licensure, or permitting of explosives and setting standards or limits, including, but not limited to, ground vibration, frequency, intensity, blast pattern, air blast and time, date, occurrence, and notice restrictions. As used in this section, the term "construction materials mining activities" means the extraction of limestone and sand suitable for production of construction aggregates, sand, cement, and road base materials for shipment offsite by any person or company primarily engaged in the commercial mining of any such natural resources.

(2) The State Fire Marshal shall establish statewide ground vibration limits for construction materials mining activities which conform to those limits established in the United States Bureau of Mines, Report of Investigations 8507, Appendix B - Alternative Blasting Level Criteria (Figure B-1). The State Fire Marshal may, at his or her sole discretion, by rule or formal agreement, delegate to the applicable municipality or county, the monitoring and enforcement components of regulations governing the use of explosives, as recognized in this section, by construction materials mining activities. Such delegation may include the assessment and collection of reasonable fees by the municipality or county for the purpose of carrying out the delegated activities.

(3) The State Fire Marshal is directed to conduct or contract for a study to review whether the established statewide ground vibration limits for construction materials mining activities are still appropriate and to review any legitimate

Page 2 of 5

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20201618__

claims paid for damages caused by such mining activities. The study must include a review of measured vibration amplitudes and frequencies, structure responses, theoretical analyses of material strength and strains, and assessments of home damages.

(a) The study shall be funded using the specified portion of revenues received from the water treatment plant upgrade fee pursuant to s. 373.41492.

(b) The State Fire Marshal shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2016, which contains the findings of the study and any recommendations.

(4)(a) The Legislature finds that construction materials mining activities require the use of explosives to fracture the material before excavation. The use of explosives results in physical ground vibrations and air blasts that may affect other property owners in the vicinity of the mining site. It is in the best interest of the public to ensure that blasts resulting from the use of explosives for construction materials mining activities are accurately monitored and reported to ensure the blasts do not exceed physical ground vibration and air blast limits. The Legislature further finds that more permits for construction materials mining activities have been issued to entities operating in Miami-Dade County than any other county in the state.

(b) A monitoring and reporting pilot program for the use of explosives is created within the Division of the State Fire Marshal to monitor and report each blast resulting from the use of explosives for construction materials mining activities in Miami-Dade County.

36-01876A-20

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(c) The State Fire Marshal shall hire or contract with seismologists to monitor and report each blast resulting from the use of explosives for construction materials mining activities in Miami-Dade County, including, at a minimum, monitoring and reporting the ground vibration, frequency, intensity, air blast, and time and date of the blast. The State Fire Marshal shall post the reports on the division's website to be available to the public.

(d) A seismologist hired or contracted by the State Fire Marshal as required by this subsection may not:

1. Be an employee of or under contract with a person who engages in or contracts for construction materials mining activities.

2. Have engaged in dishonest practices relating to the collection or analysis of data or information regarding the use of explosives in construction materials mining activities.

(e) A person who engages in construction materials mining activities shall provide written notice to the State Fire Marshal of the use of an explosive for construction materials mining activities in Miami-Dade County before the detonation of the explosive.

(f) The State Fire Marshal shall adopt rules to implement and enforce this subsection.

Section 2. For fiscal year 2020-2021, the recurring sum of \$600,000 and the nonrecurring sum of \$440,000 are appropriated from the General Revenue Fund to the Division of State Fire Marshal within the Department of Financial Services for the purpose of implementing the monitoring and reporting pilot program for the use of explosives in Miami-Dade County pursuant

36-01876A-20

20201618__

117 to s. 552.30(4), Florida Statutes.

118 Section 3. This act shall take effect October 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 14, 2020

I respectfully request that **Senate Bill # 1618**, relating to Construction Materials Mining Activities, be placed on the:

- ☐ Committee agenda at your earliest possible convenience.
- ☒ Next committee agenda.

A handwritten signature in black ink, appearing to read "M. Diaz", is written over a horizontal line.

Senator Manny Diaz, Jr.
Florida Senate, District 36

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/20
Meeting Date

1618
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 10422 CREST ST
Street

Phone 941-323-2404

TLH FL 32301
City State Zip

Email cullengs@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SEARS 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 7008

INTRODUCER: Education Committee

SUBJECT: OGSR/Animal Medical Records/State College of Veterinary Medicine

DATE: February 28, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Brick	Sikes		ED Submitted as Committee Bill
1.	Ponder	McVane	GO	Favorable
2.	Brick	Phelps	RC	Favorable

I. Summary:

SB 7008 amends s. 474.2167, Florida Statutes, to save from repeal the current public records exemption for animal medical records held by or transferred to any state college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education, by removing the scheduled October 2, 2020, repeal date.

The bill continues to maintain certain medical records as confidential and exempt from public inspection and copying. The affected records include a medical record generated by or transferred to an accredited state college of veterinary medicine which relates to diagnosing the medical condition of an animal; prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal; or performing a manual procedure for the diagnosis of or treatment for pregnancy, fertility, or infertility of an animal. These confidential medical records may be disclosed to another governmental entity in the performance of its duties and responsibilities, or to others with consent of the client.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 1, 2020.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies

¹ FLA. CONST. art. I, s. 24(a).

to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

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

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Confidentiality of Animal Medical Records

Section 474.2165, F.S., prohibits the disclosure of records or information concerning the medical condition of a patient of veterinary medical services to any person other than the client or the client's legal representative or other veterinarians involved in the care or treatment of the patient, except upon written authorization of the client. However, such records may be furnished without written authorization under the following circumstances:²⁷

- To any person, firm, or corporation that has procured or furnished such examination or treatment with the client's consent.
- In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the client or the client's legal representative by the party seeking such records.
- For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient and the client, or provided written permission is received from the client or the client's legal representative.

Section 474.2167, F.S., provides an exemption from public record disclosure requirements for animal medical records held by or transferred to any state college of veterinary medicine

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 474.2165(4), F.S.

accredited by the American Veterinary Medical Association (AVMA) Council on Education.²⁸ Confidential and exempt animal medical records may be disclosed to another governmental entity in the performance of its duties and responsibilities and in accordance with the existing laws governing veterinary medical records at a private clinic.

Section 474.2167, F.S., provides for future review and repeal of the public records exemption on October 2, 2020.

Chapter 2015-62, L.O.F., which established the exemption from public record disclosure requirements for animal medical records, included a public necessity statement that provided the rationale for the exemption. This rationale recognized that the release of such animal medical records compromises the confidentiality protections otherwise afforded the owners of such animals treated by licensed veterinarians in this state. Furthermore, this exemption permits a state college of veterinary medicine accredited by the AVMA Council on Education to effectively and efficiently carry out its mission to educate students in veterinary medicine.²⁹

Open Government Sunset Review Findings and Recommendations

In June 2019, the Senate Education Committee and the House Oversight, Transparency & Public Management Subcommittee, in consultation with the Florida Board of Governors, sent an Open Government Sunset Review Questionnaire to the University of Florida (UF) College of Veterinary Medicine, which is the only state college of veterinary medicine accredited by the AVMA Council on Education.³⁰

The UF College of Veterinary Medicine responded that it achieves its core business of training the next generation of veterinarians through clinical teaching material provided by the animals that visit the UF Veterinary Hospital.³¹ If the exemption is repealed, the UF Veterinary Hospital would be the only veterinary medical practice in the State of Florida without confidentiality protections for records and information concerning veterinary medical services. The UF College of Veterinary Medicine recommended the exemption be reenacted to enable the continued training of the next generation of veterinarians who will meet the future needs of animal owners in Florida.

III. Effect of Proposed Changes:

SB 7008 saves from repeal the current public records exemption relating to animal medical records held by or transferred to any state college of veterinary medicine accredited by the

²⁸ The AVMA Council on Education is recognized by the Council for Higher Education Accreditation as the accrediting body for schools and programs that offer the professional Doctor of Veterinary Medicine degree (or its equivalent) in the US and Canada, and may also approve foreign veterinary colleges. See <https://www.avma.org/professionaldevelopment/education/accreditation/colleges/pages/coe-pp-overview-of-the-coe.aspx> (last visited Aug. 2, 2019).

²⁹ Ch. 2015-62, L.O.F.

³⁰ Email, Florida Board of Governors (June 27, 2019); and University of Florida College of Veterinary Medicine, *Open Government Sunset Review Questionnaire (Animal Medical Records)* (July 8, 2019).

³¹ University of Florida College of Veterinary Medicine, *Open Government Sunset Review Questionnaire (Animal Medical Records)* (July 8, 2019), on file with the Committee on Education.

AVMA Council on Education, by removing the scheduled repeal date. These records will continue to be confidential and exempt from public disclosure beyond October 2, 2020.

The bill takes effect October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the confidentiality of animal medical records held by or transferred to any state college of veterinary medicine accredited by the AMVA Council on Education. This bill exempts only animal medical records held by or transferred to any state college of veterinary medicine accredited by the AVMA Council on Education from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with a state college of veterinary medicine accredited by the AMVA Council on Education making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

State colleges of veterinary medicine accredited by the AMVA Council on Education will continue to incur costs related to the redaction of records and copying costs associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 474.2167 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By the Committee on Education

581-01405-20

20207008__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 474.2167, F.S., which provides an exemption from public records requirements for certain animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 474.2167, Florida Statutes, is amended to read:

474.2167 Confidentiality of animal medical records.—

(1) The following records held by any state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) A medical record generated which relates to diagnosing the medical condition of an animal; prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal; or performing a manual procedure for the diagnosis of or treatment for pregnancy, fertility, or infertility of an animal; and

(b) A medical record described in paragraph (a) which is transferred by a previous record owner in connection with the

Page 1 of 2

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581-01405-20

20207008__

transaction of official business by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education.

(2) A record made confidential and exempt under subsection (1) may be disclosed to another governmental entity in the performance of its duties and responsibilities and may be disclosed pursuant to s. 474.2165.

(3) The exemption from public records requirements under subsection (1) applies to animal medical records held before, on, or after the effective date of this exemption.

~~(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

Page 2 of 2

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The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 27, 2020

I respectfully request that **Senate Bill # 7008**, relating to OGSR/Animal Medical Records/State College of Veterinary Medicine, be placed on the:

- ☐ Committee agenda at your earliest possible convenience.
- ☒ Next committee agenda.

A handwritten signature in black ink, appearing to read "M. Diaz", is written over a horizontal line.

Senator Manny Diaz, Jr.
Florida Senate, District 36

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 946

INTRODUCER: Senator Baxley

SUBJECT: Moments of Silence in Public Schools

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Brick, Dew</u>	<u>Sikes</u>	<u>ED</u>	Favorable
2. <u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3. <u>Brick,Dew</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 946 requires a moment of silence to be set aside for students during each school day. The bill directs the principal of each public school to require teachers in first-period classrooms in all grades to set aside one to two minutes daily for a moment of silence, during which students may not interfere with other students' participation.

The bill has no impact on state revenues or expenditures.

The bill takes effect July 1, 2020.

II. Present Situation:

District school boards may set aside up to two minutes for silent prayer or meditation at the start of each school day or each school week in the public schools in the district.¹

Fifteen states require a moment of silence or a period for contemplation or prayer during each school day. An additional eighteen states authorize the school district, school, or classroom to observe a period of silence or prayer during each school day.²

¹ Section 1003.45, F.S., added in s. 1, ch. 80-336, L.O.F.

² AL s. 16-1-20; AZ s. 15-342; AK s. 6-10-115; CT s. 10-16a; DE 14 s. 4101a; FL s. 1003.45, F.S.; GA s. 20-2-1050; IL 105 s. 20/1; IN s. 20-30-5-4.5; KS s. 72-9929; KY s. 158.175; LA s. 17:2115; MD s. 7-104; MA 71 s. 1A; ME 20 s. 4805; MI s. 380.1565; MN s. 121A.10; MS s. 37-13.4; MT s. 20-7-112; NV s. 388.075; NH s. 189:1-b; NM s. 22-27-3; NY s. 3029-a; NC s. 115C-47; ND s. 15.1-19-03.1; OH s. 3313.601; OK 70 s. 11-101.1; PA s. 15-1516.1; RI s. 16-12-3.1; SC s. 59-1-443; TN s. 49-6-1004; TX s. 25.082; UT s. 536-7-207; VA s. 22.1-203.

III. Effect of Proposed Changes:

SB 946 amends s. 1003.45, F.S., to require a moment of silence be set aside for students during each school day and state legislative findings for the value of a moment of daily reflection.

The bill directs the principal of each public school to require teachers in first-period classrooms in all grades to set aside one to two minutes daily for a moment of silence, during which students may not interfere with other students' participation.

The bill provides that a teacher:

- May not make suggestions as to the nature of any reflection that a student may engage in during the moment of silence.
- Must encourage parents to discuss the moment of silence with their children and to make suggestions as to the best use of this time.

The bill takes effect July 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1003.45 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Baxley

12-00745B-20

2020946__

A bill to be entitled

An act relating to moments of silence in public schools; amending s. 1003.45, F.S.; providing legislative findings; requiring that public school principals require teachers to set aside time for a moment of silence at the beginning of each school day; specifying the duration of the required moment of silence; prohibiting teachers from making suggestions as to the nature of any reflection that a student may engage in during the moment of silence; deleting a provision authorizing district school boards to provide a brief period of silent prayer or meditation; requiring certain teachers to encourage parents to discuss the moment of silence with their children and to make suggestions as to the best use of this time; providing an effective date.

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

Section 1. Section 1003.45, Florida Statutes, is amended to read:

1003.45 Permitting study of the Bible and religion; requiring a moment of silence ~~permitting brief meditation period.~~

(1) The district school board may install in the public schools in the district a secular program of education including, but not limited to, an objective study of the Bible and of religion.

(2) The Legislature finds that in the hectic society of

Page 1 of 2

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12-00745B-20

2020946__

today, too few persons are able to experience even a moment of quiet reflection before plunging headlong into the activities of daily life. Young persons are particularly affected by the absence of an opportunity for a moment of quiet reflection. The Legislature finds that our youth, and society as a whole, would be well served if students in the public schools were afforded a moment of silence at the beginning of each school day.

(3) The principal of each public school shall require teachers in first-period classrooms in all grades to set aside at least 1 minute, but district school board may provide that a brief period, not more than to exceed 2 minutes, daily, for a moment the purpose of silence, during which students may not interfere with other students' participation. A teacher may not make suggestions as to the nature of any reflection that a student may engage in during the moment of silence silent prayer or meditation be set aside at the start of each school day or each school week in the public schools in the district.

(4) Each such teacher shall encourage parents to discuss the moment of silence with their children and to make suggestions as to the best use of this time.

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

Page 2 of 2

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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

February 4, 2020

The Honorable Chair Lizbeth Benacquisto
400 Senate Office Building
Tallahassee, Florida 32399

Dear Chair Benacquisto,

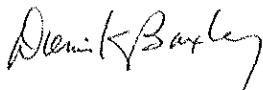
I would like to request that SB 946 Moment of Silence be heard in the next Rules Committee Meeting.

Today too few persons are able to experience even a moment of quiet reflection before plunging headlong into the activities of daily life. Maybe this will help students/teachers have a brief moment to reflect.

The bill directs the principal of each public school to require teachers in first-period classrooms in all grades to set aside at least 1 minute, but not more than 2 minutes daily for a moment of silence, during which students may not interfere with other students' participation. The teacher may not make suggestions as to the nature of any reflection that a student may engage in during the moment of silence.

Thank you for your favorable consideration.

Onward & Upward,



Senator Dennis K. 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

Bill Galvano
President of the Senate

David Simmons
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/2020

Meeting Date

SB 946

Bill Number (if applicable)

Topic MOMENT OF SILENCE

Amendment Barcode (if applicable)

Name JOHN BERRY

Job Title _____

Address 2622 NOBLE DRIVE

Street

Phone 850-766-552

TALLAHASSEE

City

FLA

State

32308

Zip

Email johnberry@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing MYSELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-02-20

Meeting Date

946

Bill Number (if applicable)

Topic Moment of Silence

Amendment Barcode (if applicable)

Name Vallie Osborne

Job Title ~~Vallie Osborne~~ Educator

Address E 1 Spencer Ct
Street

Phone _____

Ft. Walton Bch, FL 32547
City State Zip

Email vosborne@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/2020

Meeting Date

SB 946

Bill Number (if applicable)

Topic

MOMENT OF SILENCE

Amendment Barcode (if applicable)

Name

BARBARA PERRY

Job Title

Address

Street

2622 Noble Drive

Phone

(850)

728-3805

City

Tallahassee

State

32308

Zip

Email

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Myself as a Parent

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/20

Meeting Date

946

Bill Number (if applicable)

Topic Moments of Silence

Amendment Barcode (if applicable)

Name Steve Vernon

Job Title Board Member

Address 7631 Desert Spa Way

Phone 941-321-0616

Street

Lakewood Ranch, FL 34702

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 Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

03/02/20

Meeting Date

946

Bill Number (if applicable)

Topic MOMENT OF SILENCE

Amendment Barcode (if applicable)

Name BEV KILMER

Job Title PRESIDENT

Address 501 E. COLLEGE AVE.
Street

Phone 933-6976

TALLAHASSEE FL 32301
City State Zip

Email bfree@freedomSpeaks.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FREEDOM SPEAKS COALITION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

03/02/20

Meeting Date

946

Bill Number (if applicable)

Topic MOMENT OF SILENCE

Amendment Barcode (if applicable)

Name BEATRIZ MACIA

Job Title CITIZEN

Address 2632 BEDFORD WAY

Street

Phone 850-6888 914

TALLAHASSEE FL 32308-3804

City

State

Zip

Email maciab50@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2020

Meeting Date

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

SB 946

Bill Number (if applicable)

Topic Moments of Silence in Schools

Amendment Barcode (if applicable)

Name Isabel Ruano

Job Title

Address 2631 Yarmouth Lane

Street

Phone

Tallahassee FL 32309

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing N/A

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20

Meeting Date

946

Bill Number (if applicable)

Topic Religious Prayer in Schools

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director

Address 4343 West Flagler St.

Phone 786-363-4436

Street

Miami

FL

33134

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 American Civil Liberties Union 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)

3-2-20

Meeting Date

946

Bill Number (if applicable)

Topic

Moments of Silence

Amendment Barcode (if applicable)

Name

Barbara DeRose

Job Title

Ms

Address

625 E. Bernard St

Phone

251-4280

Street

Jallopassee

FL

32308

Email

barbara.derosa10@yahoo.com

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

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

Representing

FL NOW

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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)

2 March 2020
Meeting Date

946
Bill Number (if applicable)

Topic Moments of Silence

Amendment Barcode (if applicable)

Name Melina Rayna Svanhild Farley-Barratt

Job Title ~~Leg~~ Legislative Director

Address 8689 SE 69 Ter
Street

Phone 352-226-7477

Trenton
City

FL
State

32693
Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-2-20

Meeting Date

946

Bill Number (if applicable)

Topic Moment of Silence

Amendment Barcode (if applicable)

Name Devon Graham

Job Title Assistant State Director (American Atheists)

Address 2624 Malin Dr.

Phone _____

Street

Tallahassee

FL

State

32309

Zip

Email devon.graham@
atheists.org

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing American Atheists

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
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 1170

INTRODUCER: Governmental Oversight and Accountability Committee and Senators Baxley and Hutson

SUBJECT: Public Records and Meetings/Division of State Technology

DATE: February 28, 2020

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1170 expands two existing public records exemptions relating to information technology records. While the bill makes numerous changes, the net effect is to add “network schematics, hardware and software configurations, and encryption” records to an existing exemption; and streamline and simplify the exemptions by deleting duplicative provisions and restructuring the remaining provisions to maintain the same effect. The bill provides for retroactive application of the exemption.

The bill also creates a public meetings exemption for those portions of a public meeting which would reveal records that the above-discussed provisions make exempt. No exempt portion of an exempt meeting may be off the record, but must be recorded and transcribed. A recording and transcript is confidential and exempt from disclosure unless a court of competent jurisdiction, after an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt data and information may be disclosed to a third party.

Pursuant to the Open Government Sunset Review Act, this public records exemption is scheduled to repeal October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill is not expected to have an impact on state revenues and expenditures.

The bill takes effect upon becoming a law.

II. Present Situation:

Access to Public Records - Generally

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

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

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Meetings Law

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

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ FLA CONST., art. I, s. 24(b).

¹⁷ *Id.*

¹⁸ 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

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

The Legislature may create an exemption to public meetings requirements by passing a general law by at least a two-thirds vote of both the Senate and the House of Representatives.²⁷ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.²⁸ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁹

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
- Any portion of a team meeting at which negotiation strategies are discussed.³⁰

time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

¹⁹ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

²⁰ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

²¹ Section 286.011(1)-(2), F.S.

²² *Id.*

²³ Section 286.011(6), F.S.

²⁴ Section 286.011(2), F.S.

²⁵ Section 286.011(1), F.S.

²⁶ Section 286.011(3), F.S.

²⁷ FLA CONST., art. I, s. 24(c).

²⁸ *Id.*

²⁹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

³⁰ Section 286.0113, F.S.

Open Government Sunset Review Act

The Open Government Sunset Review Act³¹ (the act) prescribes a legislative review process for newly created or substantially amended³² public records or open meetings exemptions, with specified exceptions.³³ 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.³⁴

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.³⁵ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;³⁶
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³⁷ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.³⁸

The act also requires specified questions to be considered during the review process.³⁹ In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.⁴⁰ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote

³¹ Section 119.15, F.S.

³² An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

³³ 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.

³⁴ Section 119.15(3), F.S.

³⁵ Section 119.15(6)(b), F.S.

³⁶ Section 119.15(6)(b)1., F.S.

³⁷ Section 119.15(6)(b)2., F.S.

³⁸ Section 119.15(6)(b)3., F.S.

³⁹ 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?

⁴⁰ See generally s. 119.15, F.S.

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.⁴¹

Security of State Agency Data and Information Technology

Section 282.318, F.S., is the Information Technology Security Act. It makes the Department of Management Services (department) responsible for the security of data and information technology for all state agencies.⁴² The department's responsibilities include:

- Developing and annually updating a statewide information technology security strategic plan that includes security goals and objectives, risk management, incident management, and disaster recovery planning;
- Establishing asset management procedures;
- Completing comprehensive risk assessments;
- Identifying protection procedures;
- Establishing agency computer security incident response teams for responding to security incidents;
- Developing agency strategic and operational information technology security plans; and
- Establishing the safeguards for protecting data and information technology resources.

Each state agency is required to conduct, and update every three years, a risk assessment to determine the security threats to data, information, and information technology resources. The risk assessment is confidential and exempt from s. 119.07(1), F.S, except that it is available to the Auditor General, the Division of State Technology within the department, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.⁴³

Each state agency is required to develop, and periodically update, written internal policies and procedures, which include procedures for reporting information technology security incidents and breaches to the Cybercrime Office of the Department of Law Enforcement and the Division of State Technology within the department, and which must be consistent with the rules, guidelines, and processes established by the department to ensure the security of the data, information, and information technology resources of the agency. The internal policies and procedures that, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data or information technology resources are confidential information and exempt from s. 119.07(1), F.S., except that the information is available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Division of State Technology within the department, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.⁴⁴

⁴¹ Section 119.15(7), F.S.

⁴² For these purposes, the term state agencies includes any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government, including the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services; the Justice Administrative Commission; and the Public Service Commission,. The term does not include university boards of trustees or state universities. ss. 282.319(2) and 282.0041(27), F.S.

⁴³ Section 282.318(4)(d), F.S.

⁴⁴ Section 282.318(4)(e), F.S.

Each state agency is required to conduct periodic internal audits and evaluations of the agency's information technology security program for the data, information, and information technology resources of the agency. The results of these audits and evaluations are confidential information and exempt from s. 119.07(1), F.S., except that such information is available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Division of State Technology within the department, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General.⁴⁵

Each state agency is required to develop a process for detecting, reporting, and responding to threats, breaches, or information technology security incidents which is consistent with the security rules, guidelines, and processes established by the Agency for State Technology. All information technology security incidents and breaches must be reported to the Division of State Technology within the department and the Cybercrime Office of the Department of Law Enforcement. Records held by a state agency which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

- Data or information, whether physical or virtual; or
- Information technology resources, which includes:
 - Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
 - Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems.

These records are available to the Auditor General, the Division of State Technology within the department, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General. Such records may be made available to a local government, another state agency, or a federal agency for information technology security purposes or in furtherance of the state agency's official duties. This exemption applies to such records held by a state agency before, on, or after the effective date of this exemption. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and is repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.⁴⁶

Finally, the portions of risk assessments, evaluations, external audits, and other reports of a state agency's information technology security program for the data, information, and information technology resources of the state agency which are held by a state agency are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, if the disclosure of such portions of records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

- Data or information, whether physical or virtual; or
- Information technology resources, which include:

⁴⁵ Section 282.318(4)(g), F.S.

⁴⁶ Section 282.318(4)(j), F.S.

- Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
- Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems.⁴⁷

Such portions of records are available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Division of State Technology within the department, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General. Such portions of records may be made available to a local government, another state agency, or a federal agency for information technology security purposes or in furtherance of the state agency's official duties. This exemption applies to such records held by a state agency before, on, or after the effective date of this exemption. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and is repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.⁴⁸

III. Effect of Proposed Changes:

Section 1 amends s. 282.318, F.S., to make changes to the existing public records exemption in s. 282.318(4)(j)3., F.S.

Subparagraph (4)(j)3. currently exempts from public record law records held by a state agency which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of data or information or information technology, including specified types of information. The bill expands the exemption to exempt the portion of records containing network schematics, hardware and software configurations, and encryption. The bill also makes the records available to the Auditor General, the Division of State Technology within the department, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General. The expanded exemption is retroactive. The exemptions are subject to the Open Government Sunset Review Act (OGSR).

The bill also creates a public meetings exemption under s. 282.318(7), F.S., for those portions of a public meeting which would reveal records that the above provisions makes exempt. No exempt portion of an exempt meeting may be off the record but must be recorded and transcribed. A recording and transcript is confidential and exempt from disclosure unless a court of competent jurisdiction, after an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt data and information may be disclosed to a third party.

The OGSR process for the exemptions provides for an automatic repeal on October 2, 2025 unless reviewed and saved by the legislature before then.

⁴⁷ Section 282.318(5), F.S.

⁴⁸ *Id.*

The bill makes a legislative finding that both public records exemptions, as amended, are a public necessity for the following reasons.

- Network schematics, hardware and software configurations, encryption, and information technology detection, investigation, or response practices for suspected or confirmed information technology security incidents or breaches are likely to be used in the investigations of the incidents or breaches. The release of portions of records held by a state agency which contain such information could impede the investigation and impair the ability of reviewing entities to effectively and efficiently execute their investigative duties. In addition, the release of such information before an active investigation is completed could jeopardize the ongoing investigation.
- An investigation of an information technology security incident or breach is likely to result in the gathering of sensitive personal information, including identification numbers and personal financial and health information. Such information could be used to commit identity theft or other crimes. In addition, release of such information could subject possible victims of the security incident or breach to further harm.
- Disclosure of a record containing information that would reveal weaknesses in a state agency's data security, including a computer forensic analysis, could compromise that security in the future if such information were available upon conclusion of an investigation or once an investigation ceased to be active.
- Such records are likely to contain proprietary information about the security of the system at issue. The disclosure of such information could result in the identification of vulnerabilities and further breaches of that system. In addition, the release of such information could give business competitors an unfair advantage and weaken the security technology supplier supplying the proprietary information in the marketplace.
- The disclosure of such records could potentially compromise the confidentiality, integrity, and availability of state agency data and information technology resources, which would significantly impair the administration of vital state programs. It is necessary that this information be made confidential in order to protect the technology systems, resources, and data of state agencies.
- It is valuable, prudent, and critical to a state agency to have an independent entity conduct a risk assessment, an audit, or an evaluation or complete a report of the agency's information technology program or related systems. Such documents would likely include an analysis of the agency's current information technology program or systems which could clearly identify vulnerabilities or gaps in current systems or processes and propose recommendations to remedy identified vulnerabilities.

The bill makes a legislative finding of a public necessity to exempt those portions of a public meeting which would reveal data and information that the bill makes exempt from public records law, and of a public necessity to exempt the resulting recordings and transcripts, for the following reasons.

- Such meetings must be made exempt from open meetings requirements in order to protect agency information technology systems, resources, and data. This information would clearly identify a state agency's information technology systems and its vulnerabilities and disclosure of such information would jeopardize the information technology security of the state agency and compromise the integrity and availability of state agency data and

information technology resources. Such disclosure would significantly impair the administration of state programs.

- It is necessary that the resulting recordings and transcripts be made confidential and exempt from public record requirements in order to protect state information technology systems, resources, and data. The disclosure of such recordings and transcripts would clearly identify a state agency's information technology systems and its vulnerabilities. This disclosure would jeopardize the information technology security of the agency and compromise the integrity and availability of state data and information technology resources, which would significantly impair the administration of state programs.

The bill also makes a legislative finding that these public meeting and public records exemptions must be given retroactive application because they are remedial in nature.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records or public meetings requirements. This bill expands an existing public records exemption to include portions of records which contain network schematics, hardware and software configurations, or encryption and creates a new public meetings exemption for the portion of a meeting at which specified exempt records are discussed. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records or public meetings requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains statements 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 purpose of the law is to protect state agency data and information technology. This bill expands existing provisions to exempt only portions of records which contain

network schematics, hardware and software configurations, or encryption from the public records requirements and creates a public meetings exemption to exempt only those portions of meetings discussing the information relating to state agency data and information technology security which are already exempt or made exempt by the bill. The exemptions do not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding these exemptions should continue to be offset by authorized fees.⁴⁹ The government sector will experience a slight impact in recording and transcribing the closed portions of the meeting.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁴⁹ Section 119.07(2) and (4), F.S.

VIII. Statutes Affected:

This bill substantially amends section 282.318 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on February 3, 2020:

The CS moves the definition of “external audit” on lines 275-277 flush left after a hard return, as it applies to the entire subsection.

- B. **Amendments:**

None.

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

By the Committee on Governmental Oversight and Accountability;
and Senators Baxley and Hutson

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A bill to be entitled

An act relating to public records and meetings;
amending s. 282.318, F.S.; revising a provision to
reflect the abolishment of the Agency for State
Technology; providing an exemption from public records
requirements for portions of records held by a state
agency which contain network schematics, hardware and
software configurations, or encryption; removing the
scheduled repeal of a certain public records
exemption; providing an exemption from public meetings
requirements for portions of meetings which would
reveal certain records; requiring the recording and
transcription of exempt portions of such meetings;
providing an exemption from public records
requirements for such recordings and transcripts;
providing an exception; revising applicability of
provisions requiring and authorizing certain records
to be made available to certain entities; providing
for future legislative review and repeal under the
Open Government Sunset Review Act of the exemptions;
providing for retroactive application of the
exemptions; providing statements of public necessity;
providing an effective date.

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

Section 1. Section 282.318, Florida Statutes, is amended to
read:
282.318 Security of data and information technology.—

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(1) This section may be cited as the "Information
Technology Security Act."

(2) As used in this section, the term "state agency" has
the same meaning as provided in s. 282.0041, except that the
term includes the Department of Legal Affairs, the Department of
Agriculture and Consumer Services, and the Department of
Financial Services.

(3) The department is responsible for establishing
standards and processes consistent with generally accepted best
practices for information technology security, to include
cybersecurity, and adopting rules that safeguard an agency's
data, information, and information technology resources to
ensure availability, confidentiality, and integrity and to
mitigate risks. The department shall also:

(a) Designate a state chief information security officer
who must have experience and expertise in security and risk
management for communications and information technology
resources.

(b) Develop, and annually update by February 1, a statewide
information technology security strategic plan that includes
security goals and objectives for the strategic issues of
information technology security policy, risk management,
training, incident management, and disaster recovery planning.

(c) Develop and publish for use by state agencies an
information technology security framework that, at a minimum,
includes guidelines and processes for:

1. Establishing asset management procedures to ensure that
an agency's information technology resources are identified and
managed consistent with their relative importance to the

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agency's business objectives.

2. Using a standard risk assessment methodology that includes the identification of an agency's priorities, constraints, risk tolerances, and assumptions necessary to support operational risk decisions.

3. Completing comprehensive risk assessments and information technology security audits, which may be completed by a private sector vendor, and submitting completed assessments and audits to the department.

4. Identifying protection procedures to manage the protection of an agency's information, data, and information technology resources.

5. Establishing procedures for accessing information and data to ensure the confidentiality, integrity, and availability of such information and data.

6. Detecting threats through proactive monitoring of events, continuous security monitoring, and defined detection processes.

7. Establishing agency computer security incident response teams and describing their responsibilities for responding to information technology security incidents, including breaches of personal information containing confidential or exempt data.

8. Recovering information and data in response to an information technology security incident. The recovery may include recommended improvements to the agency processes, policies, or guidelines.

9. Establishing an information technology security incident reporting process that includes procedures and tiered reporting timeframes for notifying the department and the Department of

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Law Enforcement of information technology security incidents.

The tiered reporting timeframes shall be based upon the level of severity of the information technology security incidents being reported.

10. Incorporating information obtained through detection and response activities into the agency's information technology security incident response plans.

11. Developing agency strategic and operational information technology security plans required pursuant to this section.

12. Establishing the managerial, operational, and technical safeguards for protecting state government data and information technology resources that align with the state agency risk management strategy and that protect the confidentiality, integrity, and availability of information and data.

(d) Assist state agencies in complying with this section.

(e) In collaboration with the Cybercrime Office of the Department of Law Enforcement, annually provide training for state agency information security managers and computer security incident response team members that contains training on information technology security, including cybersecurity, threats, trends, and best practices.

(f) Annually review the strategic and operational information technology security plans of executive branch agencies.

(4) Each state agency head shall, at a minimum:

(a) Designate an information security manager to administer the information technology security program of the state agency. This designation must be provided annually in writing to the department by January 1. A state agency's information security

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manager, for purposes of these information security duties, shall report directly to the agency head.

(b) In consultation with the department and the Cybercrime Office of the Department of Law Enforcement, establish an agency computer security incident response team to respond to an information technology security incident. The agency computer security incident response team shall convene upon notification of an information technology security incident and must comply with all applicable guidelines and processes established pursuant to paragraph (3)(c).

(c) Submit to the department annually by July 31, the state agency's strategic and operational information technology security plans developed pursuant to rules and guidelines established by the department.

1. The state agency strategic information technology security plan must cover a 3-year period and, at a minimum, define security goals, intermediate objectives, and projected agency costs for the strategic issues of agency information security policy, risk management, security training, security incident response, and disaster recovery. The plan must be based on the statewide information technology security strategic plan created by the department and include performance metrics that can be objectively measured to reflect the status of the state agency's progress in meeting security goals and objectives identified in the agency's strategic information security plan.

2. The state agency operational information technology security plan must include a progress report that objectively measures progress made towards the prior operational information technology security plan and a project plan that includes

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activities, timelines, and deliverables for security objectives that the state agency will implement during the current fiscal year.

(d) Conduct, and update every 3 years, a comprehensive risk assessment, which may be completed by a private sector vendor, to determine the security threats to the data, information, and information technology resources, including mobile devices and print environments, of the agency. The risk assessment must comply with the risk assessment methodology developed by the department and is confidential and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Division of State Technology within the department, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.

(e) Develop, and periodically update, written internal policies and procedures, which include procedures for reporting information technology security incidents and breaches to the Cybercrime Office of the Department of Law Enforcement and the Division of State Technology within the department. Such policies and procedures must be consistent with the rules, guidelines, and processes established by the department to ensure the security of the data, information, and information technology resources of the agency. The internal policies and procedures that, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data or information technology resources are confidential information and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Cybercrime Office of the

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Department of Law Enforcement, the Division of State Technology within the department, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.

(f) Implement managerial, operational, and technical safeguards and risk assessment remediation plans recommended by the department to address identified risks to the data, information, and information technology resources of the agency.

(g) Ensure that periodic internal audits and evaluations of the agency's information technology security program for the data, information, and information technology resources of the agency are conducted. The results of such audits and evaluations are confidential information and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Division of State Technology within the department, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General.

(h) Ensure that the information technology security and cybersecurity requirements in both the written specifications for the solicitation and service-level agreement of information technology and information technology resources and services meet or exceed the applicable state and federal laws, regulations, and standards for information technology security and cybersecurity. Service-level agreements must identify service provider and state agency responsibilities for privacy and security, protection of government data, personnel background screening, and security deliverables with associated frequencies.

(i) Provide information technology security and

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cybersecurity awareness training to all state agency employees in the first 30 days after commencing employment concerning information technology security risks and the responsibility of employees to comply with policies, standards, guidelines, and operating procedures adopted by the state agency to reduce those risks. The training may be provided in collaboration with the Cybercrime Office of the Department of Law Enforcement.

(j) Develop a process for detecting, reporting, and responding to threats, breaches, or information technology security incidents which is consistent with the security rules, guidelines, and processes established by the Division of State Technology within the department ~~Agency for State Technology~~.

1. All information technology security incidents and breaches must be reported to the Division of State Technology within the department and the Cybercrime Office of the Department of Law Enforcement and must comply with the notification procedures and reporting timeframes established pursuant to paragraph (3)(c).

2. For information technology security breaches, state agencies shall provide notice in accordance with s. 501.171.

(5)3- Portions of records held by a state agency which contain network schematics, hardware and software configurations, or encryption, or which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction

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233 of:

234 (a)~~a-~~ Data or information, whether physical or virtual; or
 235 (b)~~b-~~ Information technology resources, which includes:
 236 1.~~(I)~~ Information relating to the security of the agency's
 237 technologies, processes, and practices designed to protect
 238 networks, computers, data processing software, and data from
 239 attack, damage, or unauthorized access; or
 240 2.~~(II)~~ Security information, whether physical or virtual,
 241 which relates to the agency's existing or proposed information
 242 technology systems.

243
 244 ~~Such records shall be available to the Auditor General, the~~
 245 ~~Division of State Technology within the department, the~~
 246 ~~Cybercrime Office of the Department of Law Enforcement, and, for~~
 247 ~~state agencies under the jurisdiction of the Governor, the Chief~~
 248 ~~Inspector General. Such records may be made available to a local~~
 249 ~~government, another state agency, or a federal agency for~~
 250 ~~information technology security purposes or in furtherance of~~
 251 ~~the state agency's official duties. This exemption applies to~~
 252 ~~such records held by a state agency before, on, or after the~~
 253 ~~effective date of this exemption. This subparagraph is subject~~
 254 ~~to the Open Government Sunset Review Act in accordance with s.~~
 255 ~~119.15 and shall stand repealed on October 2, 2021, unless~~
 256 ~~reviewed and saved from repeal through reenactment by the~~
 257 ~~Legislature.~~

258 (6)~~(5)~~ The portions of risk assessments, evaluations,
 259 external audits, and other reports of a state agency's
 260 information technology security program for the data,
 261 information, and information technology resources of the state

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262 agency which are held by a state agency are confidential and
 263 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 264 Constitution if the disclosure of such portions of records would
 265 facilitate unauthorized access to or the unauthorized
 266 modification, disclosure, or destruction of:

267 (a) Data or information, whether physical or virtual; or

268 (b) Information technology resources, which include:

269 1. Information relating to the security of the agency's
 270 technologies, processes, and practices designed to protect
 271 networks, computers, data processing software, and data from
 272 attack, damage, or unauthorized access; or
 273 2. Security information, whether physical or virtual, which
 274 relates to the agency's existing or proposed information
 275 technology systems.

276
 277 For purposes of this subsection, the term "external audit" means
 278 an audit that is conducted by an entity other than the state
 279 agency that is the subject of the audit.

280 (7) Those portions of a public meeting as specified in s.
 281 286.011 which would reveal records that are confidential and
 282 exempt under subsection (5) or subsection (6) are exempt from s.
 283 286.011 and s. 24(b), Art. I of the State Constitution. No
 284 exempt portion of an exempt meeting may be off the record. All
 285 exempt portions of such meeting shall be recorded and
 286 transcribed. Such recordings and transcripts are confidential
 287 and exempt from disclosure under s. 119.07(1) and s. 24(a), Art.
 288 I of the State Constitution unless a court of competent
 289 jurisdiction, after an in camera review, determines that the
 290 meeting was not restricted to the discussion of data and

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information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt data and information may be disclosed to a third party.

(8) ~~The~~ Such portions of records made confidential and exempt in subsections (5), (6), and (7) shall be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Division of State Technology within the department, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General. Such portions of records may be made available to a local government, another state agency, or a federal agency for information technology security purposes or in furtherance of the state agency's official duties. ~~For purposes of this subsection, "external audit" means an audit that is conducted by an entity other than the state agency that is the subject of the audit.~~

(9) The exemptions contained in subsections (5), (6), and (7) apply ~~This exemption applies to such~~ records held by a state agency before, on, or after the effective date of this exemption.

(10) Subsections (5), (6), and (7) are ~~This subsection is~~ subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025 ~~2024~~, unless reviewed and saved from repeal through reenactment by the Legislature.

~~(11)(6)~~ The department shall adopt rules relating to information technology security and to administer this section.

Section 2. (1)(a) The Legislature finds it is a public necessity that the following data or information held by a state

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agency be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

1. Portions of records held by a state agency which contain network schematics, hardware and software configurations, encryption, or which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

a. Data or information, whether physical or virtual; or

b. Information technology resources, which include:

(I) Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

(II) Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems.

2. Portions of risk assessments, evaluations, external audits, and other reports of a state agency's information technology security programs, if the disclosure of such portions of records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

a. Data or information, whether physical or virtual; or

b. Information technology resources, which include:

(I) Information relating to the security of the state agency's technologies, processes, and practices designed to

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protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

(II) Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems.

(b) Such records must be made confidential and exempt from public records requirements for the following reasons:

1. Portions of records held by a state agency which contain network schematics, hardware and software configurations, encryption, or which identify information technology detection, investigation, or response practices for suspected or confirmed information technology security incidents or breaches are likely to be used in the investigations of the incidents or breaches. The release of such information could impede the investigation and impair the ability of reviewing entities to effectively and efficiently execute their investigative duties. In addition, the release of such information before an active investigation is completed could jeopardize the ongoing investigation.

2. An investigation of an information technology security incident or breach is likely to result in the gathering of sensitive personal information, including identification numbers and personal financial and health information. Such information could be used to commit identity theft or other crimes. In addition, release of such information could subject possible victims of the security incident or breach to further harm.

3. Disclosure of a record, including a computer forensic analysis, or other information that would reveal weaknesses in a state agency's data security could compromise that security in the future if such information were available upon conclusion of

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an investigation or once an investigation ceased to be active.

4. Such records are likely to contain proprietary information about the security of the system at issue. The disclosure of such information could result in the identification of vulnerabilities and further breaches of that system. In addition, the release of such information could give business competitors an unfair advantage and weaken the security technology supplier supplying the proprietary information in the marketplace.

5. The disclosure of such records could potentially compromise the confidentiality, integrity, and availability of state agency data and information technology resources, which would significantly impair the administration of vital state programs. It is necessary that this information be made confidential in order to protect the technology systems, resources, and data of state agencies.

6. It is valuable, prudent, and critical to a state agency to have an independent entity conduct a risk assessment, an audit, or an evaluation or complete a report of the agency's information technology program or related systems. Such documents would likely include an analysis of the agency's current information technology program or systems which could clearly identify vulnerabilities or gaps in current systems or processes and propose recommendations to remedy identified vulnerabilities.

(2)(a)1. The Legislature also finds that it is a public necessity that those portions of a public meeting which would reveal data and information described in paragraph (1)(a) be made exempt from s. 286.011, Florida Statutes, and s. 24(b),

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Article I of the State Constitution.

2. Such meetings must be made exempt from open meetings requirements in order to protect agency information technology systems, resources, and data. This information would clearly identify a state agency's information technology systems and its vulnerabilities and disclosure of such information would jeopardize the information technology security of the state agency and compromise the integrity and availability of state agency data and information technology resources. Such disclosure would significantly impair the administration of state programs.

(b)1. The Legislature further finds that it is a public necessity that the recordings and transcripts of the portions of meetings specified in subparagraph (a)1. be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

2. It is necessary that the resulting recordings and transcripts be made confidential and exempt from public record requirements in order to protect state information technology systems, resources, and data. The disclosure of such recordings and transcripts would clearly identify a state agency's information technology systems and its vulnerabilities. This disclosure would jeopardize the information technology security of the agency and compromise the integrity and availability of state data and information technology resources, which would significantly impair the administration of state programs.

(3) The Legislature further finds that these public meeting and public records exemptions must be given retroactive application because they are remedial in nature.

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Section 3. This act shall take effect upon becoming a law.

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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

February 3, 2020

The Honorable Chair Lizbeth Benacquisto
400 Senate Office Building
Tallahassee, FL 32399

Dear Chair Benacquisto,

I would like to request that SB 1170, Public Records and Meetings/Division of State Technology be placed on the next Rules Committee agenda.

SB 1170 revises a provision to reflect the abolishment of the Agency for State Technology and provides an exemption from public records requirements for portions of records held by the state agency.

Your favorable consideration is appreciated, please do not hesitate to contact me if you have any questions or need additional information.

Onward & Upward,



Senator Dennis Baxley
Florida State 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

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)

20

SB 1170
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Cyber PR Exemption

Name Cody Farnill

Job Title Deputy Chief of Staff

Address 4050 Esplanade Way

Street

Tallahassee FL 32399

City

State

Zip

Phone 850 596 4085

Email Cody.Farnill@dms.

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of Management Services

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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 1466

INTRODUCER: Governmental Oversight and Accountability Committee and Senators Baxley and Broxson

SUBJECT: Government Accountability

DATE: February 28, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Ryon	CA	Favorable
2.	McVaney	McVaney	GO	Fav/CS
3.	Toman	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1466 excludes certain acts or omissions by board members or employees of special districts or community development districts from being considered abuse of public position under Article II, section 8(h)(2) of the Florida Constitution if such acts or omissions are authorized under specific provisions of the Florida Code of Ethics.

CS/SB 1466 alters current required reporting of information on a special district's official website. Specifically, the bill allows a special district to satisfy the required posting of its most recent final, complete audit report on its own website by providing a link to this report maintained on the Auditor General's website. In addition, the bill removes the requirement for online posting of a special district's public facilities report and any of a special district's meeting or workshop materials. Required postings of a special district meeting or workshop, and the agendas of such events, remain.

II. Present Situation:

Special Districts

A "special district" is "a unit of local government created for a special purpose... operat[ing] within a limited geographic boundary and is created by general law, special act, local ordinance,

or rule of the Governor and Cabinet.”¹ Special districts are created to provide a wide variety of services, such as mosquito control,² beach facilities,³ children’s services,⁴ fire control and rescue,⁵ and drainage and water control.⁶

Special districts can be classified as “dependent special districts” or “independent special districts.” For a special district to be classified as a “dependent special district,” the district must meet at least one of the following criteria:

- Membership of its governing body is identical to that of the governing body of a single county or a single municipality;
- All members of its governing body are appointed by the governing body of a single county or a single municipality;
- The members of its governing body are subject to removal at will by the governing body of a single county or single municipality, during their unexpired terms; or
- The district has a budget that requires approval or can be vetoed by the governing body of a single county or a single municipality.⁷

An “independent special district” is any special district that does not meet the definition of “dependent special district.”⁸ Additionally, any special district that includes territory in more than one county is an independent special district, unless the district lies entirely within the borders of a single municipality.⁹

According to the Department of Economic Opportunity (DEO) Special District Accountability Program Official List of Special Districts, the state currently has 1,756 active special districts. Specifically, there are:

- 633 dependent special districts; and
- 1,123 independent special districts.¹⁰

In 1989, the Legislature enacted the Uniform Special District Accountability Act (Act) which governs special districts and reformed and consolidated laws relating to special districts.¹¹ In 2014, the Legislature extensively revised and reorganized the Act into eight parts. The revision made significant changes to provisions concerning independent special districts and special district oversight and accountability.¹²

¹ Section 189.012(6), F.S.

² Section 388.021(1), F.S.

³ See s. 189.011, F.S.

⁴ Section 125.901(1), F.S.

⁵ Section 191.002, F.S.

⁶ Section 298.01, F.S.

⁷ Section 189.012(2), F.S.

⁸ Section 189.012(3), F.S.

⁹ *Id.*

¹⁰ See Department of Economic Opportunity, Division of Community Development, Special District Accountability Program, *Official List of Special Districts Online – Directory*, available at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Jan. 19, 2020).

¹¹ Section 189.06, F.S.

¹² Chapter 2014-22, L.O.F.

Reporting Requirements

Special districts are subject to oversight and review by state and local governments to better determine the need for the continued existence of a district, the appropriate future role and focus of a district, improvements to the function or service by a district, and the need for any transition, adjustment, or special implementation periods or provisions.¹³

Special districts created by special act are subject to review by the Joint Legislative Auditing Committee (JLAC) at a public meeting for not complying with reporting requirements under ch. 189, F.S., as well as oversight matters in general.¹⁴ Special districts created by local ordinance or resolution are subject to review by the chair, or the equivalent, of the local governing body.¹⁵ Special districts created or established by rule of the Governor and Cabinet may be reviewed as directed by the Governor and Cabinet.¹⁶ Special districts not subject to other oversight may be reviewed as directed by the President of the Senate and the Speaker of the House of Representatives.¹⁷

State agencies administering funding programs to eligible special districts oversee the use of such funds by the special districts. The state agencies must report the existence of programs as well as an annual list of special districts participating in state funding programs to the DEO Special District Accountability Program.¹⁸

Special District Websites

Each special district is required to maintain an official website containing essential information about the district.¹⁹ Each independent special district is required to maintain a separate website.²⁰ Each dependent district is, at a minimum, required to be prominently displayed on the home page of the website of the local general-purpose government upon which it is dependent.²¹ However, a dependent special district may maintain a separate website.²² A special district shall post the following information, at a minimum, on the district's official website:²³

- The full legal name of the special district.
- The public purpose of the special district.
- The name, official address, official e-mail address, and, if applicable, term and appointing authority for each member of the governing body of the special district.

¹³ Section 189.068(1), F.S. Any final recommendations from the oversight review process which are adopted and implemented by the appropriate level of government may not be implemented in a manner that would impair the obligation of contracts.

¹⁴ Section 189.0651(2), F.S.

¹⁵ Section 189.0652(2), F.S. Dependent special districts, not created by special act, may be reviewed by the local general-purpose government upon which it is dependent; see s. 189.068(2)(c), F.S.

¹⁶ Section 189.068(2)(d), F.S.

¹⁷ Section 189.068(2)(e), F.S.

¹⁸ Sections 189.065(1)-(2), F.S. The list of participating special districts must indicate if a district is not in compliance with state funding program requirements.

¹⁹ Section 189.069(1), F.S.

²⁰ Section 189.069(1)(a), F.S.

²¹ Section 189.069(1)(b), F.S.

²² *Id.*

²³ Section 189.069(2)(a), F.S.

- The fiscal year of the special district.
- The full text of the special district's charter, the date of establishment, the establishing entity, and the statute or statutes under which the special district operates, if different from the statute or statutes under which the special district was established. Community development districts may reference ch. 190, F.S., as the uniform charter but must include information relating to any grant of special powers.
- The mailing address, e-mail address, telephone number, and website uniform resource locator of the special district.
- A description of the boundaries or service area of, and the services provided by, the special district.
- A listing of all taxes, fees, assessments, or charges imposed and collected by the special district, including the rates or amounts for the fiscal year and the statutory authority for the levy of the tax, fee, assessment, or charge. For purposes of this subparagraph, charges do not include patient charges by a hospital or other health care provider.
- The primary contact information for the special district for purposes of communication from the department.
- A code of ethics adopted by the special district, if applicable, and a hyperlink to generally applicable ethics provisions.
- The budget of the special district and any amendments thereto in accordance with s. 189.016, F.S.
- The final, complete audit report for the most recent completed fiscal year and audit reports required by law or authorized by the governing body of the special district.
- A listing of its regularly scheduled public meetings as required by s. 189.015(1), F.S.
- The public facilities report,²⁴ if applicable.
- The link to the Department of Financial Services website as set forth in s. 218.32(1)(g), F.S.
- At least 7 days before each meeting or workshop, the agenda of the event, along with any meeting materials available in an electronic format, excluding confidential and exempt information. The information must remain on the website for at least 1 year after the event.

Noncomplying Special Districts

If an independent special district fails to file required reports or information regarding registered agents,²⁵ public meetings,²⁶ public facilities,²⁷ or its budget²⁸ with the local general-purpose government in which it is located, the local government notifies the district's registered agent.²⁹ If the governing body of the local general-purpose government determines that there has been an unjustified failure to file reports or information it must notify DEO.³⁰ This notification triggers a

²⁴ Section 189.08(2)(a), F.S., states that a public facilities report shall provide a description of existing public facilities owned or operated by the special district, and each public facility that is operated by another entity, except a local general-purpose government, through a lease or other agreement with the special district.

²⁵ Section 189.014, F.S.

²⁶ Section 189.015, F.S.

²⁷ Section 189.08, F.S.

²⁸ Section 189.016(9), F.S.

²⁹ Section 189.066(1), F.S. An extension of up to 30 days for filing the required reports or information is possible.

³⁰ *Id.* This notification triggers a series of steps taken by DEO to assist a special district in complying with its financial reporting requirements pursuant to s. 189.067, F.S.

series of steps taken by DEO to assist a special district in complying with its financial reporting requirements pursuant to s. 189.067, F.S.

If a dependent special district fails to file such reports with the local governing authority to which it is dependent, the local governing authority is obligated to take the necessary steps to enforce the special district's accountability.³¹ These may include withholding funds, removing the governing body members, vetoing the special district's budget, conducting the oversight review process, or amending, merging, or dissolving the special district in accordance with the provisions contained in the ordinance that created the dependent special district.³²

The oversight and accountability provisions in s. 189.067, F.S., are also initiated by special district noncompliance related to noticing of bond issues, state agency actuarial reports, annual financial reports, and annual financial audit reports.³³ If a special district fails to comply after DEO has exhausted its attempt to assist under s. 189.067, F.S., the failure is deemed final action by the district.³⁴ The district is subject to the oversight process headed by either the JLAC³⁵ or the local governing body,³⁶ as appropriate.

Federal and State Laws Regulating Access to Records by Disabled Individuals

The Americans with Disabilities Act³⁷

The Americans with Disabilities Act (ADA) was signed into law on July 26, 1990, by President George H.W. Bush. The legislation prohibits discrimination and guarantees that people with disabilities have the same opportunities as persons without disabilities. Modeled after the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, religion, sex, or national origin -- and Section 504 of the Rehabilitation Act of 1973 -- the ADA is considered an "equal opportunity" law for people with disabilities.

To be protected by the ADA, one must have a disability, which is defined by the ADA as a physical or mental impairment that substantially limits one or more major life activities; a person who has a history or record of such an impairment; or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered. Title I of the ADA applies to employment, Title II applies to public services and Title III applies to public accommodations and services operated by private entities.

Title II: Public Entities

Title II of the ADA prohibits public entities from excluding the participation in or denying the benefits of their services, programs, or activities to qualified individuals with a disability,³⁸ or

³¹ Section 189.066(2), F.S.

³² *Id.*

³³ See s. 189.066, F.S.

³⁴ Section 189.067(2), F.S.

³⁵ Sections 189.067(2) and 189.0651, F.S.

³⁶ Sections 189.067(2) and 189.0652, F.S.

³⁷ United States Department of Justice, Civil Rights Division, *Information and Technical Assistance on the Americans with Disabilities Act*, available at https://www.ada.gov/ada_intro.htm (last visited Jan. 19, 2020).

³⁸ A person is a 'qualified' individual with a disability with respect to licensing if he or she, with or without reasonable modifications, 'meets the essential requirements' for the receipt of services or the participation in programs or activities

otherwise discriminating against such individuals, because of the disability.³⁹ “Public entities” includes state and local governments, state and local agencies, and special districts.⁴⁰ To meet the definition of a qualified individual with a disability, the person must be eligible for receipt of the public benefit with or without a reasonable modification.⁴¹

If the need is obvious or upon request,⁴² a public entity must:

- Make reasonable modifications to its rules, policies, or practices;
- Remove architectural, communication, or transportation barriers; or
- Provide auxiliary aids and services when necessary to accommodate an individual with a disability.⁴³

A public entity must provide auxiliary aids and services in a timely manner and in an accessible format, and must protect the privacy and independence of the individual.⁴⁴ An accommodation or modification that fundamentally alters the nature of the activity, service, or program, or that causes the public entity an undue financial or administrative burden is not reasonable or necessary.⁴⁵

Title III: Private Entities

Title III prohibits certain private entities⁴⁶ from discriminating against an individual on the basis of a disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. A private entity may provide a different or separate benefit if necessary to effectively provide benefits.⁴⁷

A private entity must make reasonable modifications to its policies, practices, or procedures, or take any steps necessary to ensure individuals are not denied services, segregated or otherwise treated differently due to the absence of an aid or service. A modification or step that will fundamentally alter the nature of the product or service, or pose a direct danger to others is not required. When readily achievable,⁴⁸ a private entity must:

- Remove any existing architectural, structural communication, or transportation barrier; or
- Offer access to its product or service through alternative methods.⁴⁹

provided by a public entity. 42 U.S.C. s. 12131(2). *See also The Fla. Bar v. Clement*, 662 So. 2d 690, 700 (Fla. 1995), as amended (November 28, 1995).

³⁹ 42 U.S.C. s. 12132.

⁴⁰ 42 U.S.C. s. 12131(1)

⁴¹ 42 U.S.C. s. 12131(2)

⁴² *See McCullum v. Orlando Regional Healthcare*, No. 6:11-cv-1387-Orl-31GJK, 2013 WL 1212860, at *4 (M.D.Fla.2013); *see also Smith v. Rainey*, 747 F.Supp.2d 1327, 1338 (M.D.Fla.2010).

⁴³ *See* 42 U.S.C. s. 12131(2).

⁴⁴ 28 C.F.R. s. 35.160(b).

⁴⁵ *See Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 603, 119 S. Ct. 2176 (1999).

⁴⁶ 42 U.S.C. s. 12181(6). A private entity is defined as any entity other than a public entity. Private entities that own, lease, or operate places of public accommodation fall under Title III.

⁴⁷ *See* 42 U.S.C. s. 12182.

⁴⁸ 42 U.S.C. s. 12181(9). Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense.

⁴⁹ 42 U.S.C. s. 12182. *See also A.L. by & through D.L. v. Walt Disney Parks & Resorts US, Inc.*, 900 F.3d 1270 (11th Cir. 2018)(holding that the Defendant’s blanket accommodation for all cognitively disabled theme park guests was not per se ADA violation).

ADA Internet Website Access Administration

The Department of Justice (DOJ) is responsible for administering Title II and Title III of the ADA.⁵⁰ In 2010, DOJ took the position that internet website access fell within the scope of the ADA, even in the absence of explicit language. Therefore, public entities communicating through web-based applications or otherwise providing internet services must ensure that individuals with disabilities have equal access to such services or information unless it would alter the nature of the product or cause the entity an undue burden. To date, the DOJ has promulgated no regulations on this issue.⁵¹

From December 2006 to June 2007, the Civil Rights Division of DOJ released a Best Practices Tool Kit for State and Local Governments.⁵² Chapter 5 addresses web accessibility under Title II. DOJ provides suggestions for how governments may design their websites and recommends referencing the Worldwide Web Consortium's (W3C) Web Content Accessibility Guidelines 2.0 (WCAG 2.0), an internationally accepted resource, for conformance standards.

State and local governments are not required to use the Tool Kit. However, DOJ intends to provide a reasonable approach to achieve compliance through the Tool Kit. Among the common basic challenges to website accessibility cited in the Tool Kit are images without text equivalents. According to the Tool Kit, screen readers and refreshable Braille displays utilized by persons who are visually impaired cannot interpret photographs, charts, color-coded information, or other graphic elements on a webpage. The suggested solution for this challenge is the addition of HTML⁵³ code to provide text for each image and graphic to enable a user with a vision disability to understand what it is. For documents posted online, DOJ suggests governments posting documents online in Portable Document Format (PDF), or other image-based format, also post a version in Rich Text Format (RTF), or other text-based format, to allow compatibility with assistive technologies. The Tool Kit includes a checklist to help local governments assess the accessibility of their websites.

Section 508 of the Rehabilitation Act of 1973

Federal agency website accessibility is not regulated under the ADA but primarily under section 508 of the Rehabilitation Act of 1973 (Section 508).⁵⁴ Public entities are not required to follow these guidelines. However, Florida requires its state agencies, which includes the executive,

⁵⁰ See 28 CFR parts 35 (Title II) and 36 (Title III).

⁵¹ DOJ stated in its 2010 comments, "The Department expects to engage in rulemaking relating to website accessibility under the ADA in the near future." Department of Justice, *2010 Guidance and Section-by-Section Analysis (Attorney General's Comments)*, available at https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm#a35102 (last visited Jan. 20, 2020).

⁵² Department of Justice, *ADA Best Practices Tool Kit for State and Local Governments, Chapter 5*, available at <https://www.ada.gov/pcatoolkit/chap5toolkit.htm> (last visited Jan. 20, 2020). The Tool Kit contains a notice that some chapters may not fully reflect the current ADA.

⁵³ Hypertext mark-up language is a common mark-up language used to present webpages. It tells the web browser how information should be structured and accessed.

⁵⁴ See 29 U.S.C. s. 794d, s. 508 of the Rehabilitation Act; 47 U.S.C. s. 255, and s. 255 of the Telecommunications Act. There is proposed legislation currently in the U.S. Congress that would research the best guidance for state and local governments providing website access. See H.R. 4099 (2019).

legislative, and judicial branches, to follow Section 508 when providing public and employee access to electronic information and data.⁵⁵

Under Section 508, when federal agencies develop, procure, maintain, or use electronic and information technology, they must give employees and members of the public with disabilities access to that information that is comparable to the access available to those without disabilities. The U.S. Access Board (Access Board) is responsible for developing federal accessibility standards.⁵⁶ The Access Board updated its rules in 2018 and currently incorporates the WCAG 2.0 into its regulation.⁵⁷

Florida Statutes Related to Accessibility of Electronic Information

Chapter 282, F.S., regulates the accessibility of electronic information among state agencies.⁵⁸ Executive, legislative, and judicial branches of state government must ensure that state employees with disabilities have access to and are provided with electronic information and data comparable to the access and use by state employees who do not have disabilities unless an undue burden would be imposed on the agency.⁵⁹ Similarly, individuals with disabilities who are members of the public must be provided with access to and use of electronic information and data comparable to that provided to nondisabled members of the public, unless an undue burden would be imposed on the agency.⁶⁰

Each state agency must develop, procure, maintain, and use accessible electronic information and information technology in conformance with federal law,⁶¹ absent an undue burden. If an agency claims compliance will impose an undue burden, it must provide proof an alternative method allows the individual to use the information and data.⁶² The statute does not extend its requirements to local governments.⁶³

Case Law Involving Access to Electronic Information

To establish a claim under Title II, a plaintiff must establish he or she had a disability, was denied a public benefit or other discrimination, and the denial of benefits or discrimination was by reason of the plaintiff's disability.⁶⁴ The scope of public entities subject to Title II of the ADA includes public prisons,⁶⁵ universities,⁶⁶ courts,⁶⁷ and legislative chambers.⁶⁸ Additionally, states

⁵⁵ See ss. 282.601-606, F.S.

⁵⁶ See 29 U.S.C. s. 794d; 36 CFR s. 1194. See also U.S. General Services Administration, *IT Accessibility Laws and Policies*, <https://www.section508.gov/manage/laws-and-policies> (last visited Jan. 20, 2020).

⁵⁷ See 36 CFR Part 1194, Appendix C. The WCAG guidelines are primarily intended for web content developers.

⁵⁸ Sections 282.601-606, F.S.

⁵⁹ Section 282.601(1), F.S.

⁶⁰ Section 282.601(2), F.S.

⁶¹ Including Section 508 and 36 C.F.R. part 1194.

⁶² Section 282, 603, F.S.

⁶³ See ch. 282, F.S.

⁶⁴ *Kornblau v. Dade Cty.*, 86 F.3d 193 (11th Cir. 1996).

⁶⁵ *Pennsylvania Dep't of Corr. v. Yeskey*, 524 U.S. 206 (1998); *Edison v. Douberly*, 604 F.3d 1307 (11th Cir. 2010).

⁶⁶ *Bd. of Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356 (2001).

⁶⁷ *Tennessee v. Lane*, 541 U.S. 509 (2004).

⁶⁸ *Nat'l Ass'n of Deaf v. State*, 318 F. Supp. 3d 1338, Case no. 18-cv-21232-UU (S.D. Fla. 2018).

may be held accountable for discrimination by private entities that lease government-owned property.⁶⁹

While currently there appears to be no Florida appellate court decision resolving a challenge to state agency website accessibility, there have been a number of federal cases in recent years. In *Nat'l Assn. of Deaf v. State*, hearing impaired individuals sued the Florida Senate and House of Representatives claiming the failure to put closed captions on live and archived videos of Florida legislative sessions violates the ADA.⁷⁰ The case survived a motion to dismiss because the Court found the right to participate in the democratic process is a fundamental right that properly abrogates the state's Eleventh Amendment sovereign immunity.⁷¹

Local governments are facing continued federal litigation in the absence of official rules on ADA compliance for government website and electronic document access. The case law is new and unsettled, but there are two emerging legal theories currently being used to determine if a case is viable. Some courts have relied on the standing analysis in Title III (Private Entities) website access cases to resolve Title II cases.⁷² Other courts have adopted a new Title II rubric based, in part, on the connection the plaintiff has with the defendant-government.⁷³

Some governments argue that these cases are not ripe for adjudication because DOJ has not yet promulgated regulations. Courts have generally dismissed this argument, with one court emphasizing that DOJ has had eight years to comment further or promulgate rules on website accessibility compliance but failed to do so.⁷⁴

Community Development Districts

Community Development Districts (CDDs) are special-purpose units of local government established to help Florida development and growth “pay for itself” by providing infrastructure and services for new and existing communities when such infrastructure and services would not otherwise be available from other local, general-purpose governments like counties and municipalities.⁷⁵ CDDs serve as an alternative means of financing, constructing, acquiring, operating, and maintaining public infrastructure improvements to communities throughout Florida such as roads, utilities, hardscaping, landscaping, streetlights, stormwater infrastructure, conservation and mitigation areas, recreation facilities, and various other improvements allowed by statute.⁷⁶

⁶⁹ See *Haas v. Quest Recovery Servs., Inc.*, 549 U.S. 1163 (2007).

⁷⁰ *Nat'l Ass'n of Deaf v. State*, 318 F. Supp. 3d 1338, Case no. 18-cv-21232-UU (S.D. Fla. 2018)(aff'd *Nat'l Ass'n of Deaf v. State*, 945 F.3d 1339 (11th Cir. 2020).

⁷¹ “Order of Motion to Dismiss Based on Sovereign Immunity,” *Id.* (June 18, 2018).

⁷² See *Gil v. Broward Cty.*, No. 18-60282-CIV, 2018 WL 4941108 (S.D. Fla. 2018)

⁷³ See *Price v. City of Ocala*, 375 F. Supp. 3d 1264 (M.D. Fla. 2019)(reasoning Title III analysis is the wrong standard to apply to Title II website access cases because Title III requires a nexus between a physical place and the alleged violation), and *Gil v. City of Pensacola, Fla.*, 392 F. Supp. 3d 1493 (N.D. Fla. 2019).

⁷⁴ See *Open Access for All, Inc. v. Town of Juno Beach, Fla.*, “Order Denying Defendant’s Motion to Dismiss,” Case no. 9:19-CV-80518-ROSENBERG/REINHART, 2019 WL 3425090 (S.D. Fla. July 29, 2019)(case dismissed on other grounds August 15, 2019).

⁷⁵ Jere L. Earlywine and Katie S. Buchanan, *The Role of Community Development Districts In Florida*, Florida Environmental and Land Use Law Treatise 25.10-1 (2015).

⁷⁶ *Id.*

Powers of a Community Development District

A Community Development District (CDD) is a local unit of special-purpose government that has limited authority, subject to the powers and duties enumerated in ch. 190, F.S.⁷⁷

A CDD's general powers⁷⁸ include:

- The power to sue and be sued;
- The ability to contract for specific services, pursuant to the public bidding requirements of s. 190.033, F.S.;
- The authority to adopt rules and orders pursuant to ch. 120, F.S., that describe the powers, duties, and functions of the district's officers; the conduct of the district's business; the maintenance of records; and the form of certificates that evidence tax liens and all of the CDD's other documents and records;
- The right to raise user charges or fees, subject to board approval, in instances in which the money is necessary for the conduct of the district's activities and services, to assess ad valorem taxes pursuant to ch. 190, F.S., and to levy special assessments pursuant to ch. 170, F.S.; and
- To cooperate with, or contract with, other governmental agencies, in connection with any of the powers, duties, or purposes authorized by ch. 190, F.S.

If a CDD wants any of the special powers enumerated in s. 190.012, F.S.,⁷⁹ it must request such powers from the local general-purpose government within the jurisdiction of which they are to be exercised. A CDD's special powers⁸⁰ include the powers to finance, construct, acquire, operate and maintain the following:

- Water management and control;
- Road and roadway improvements, such as street lights, landscaping, and placement of electric utility lines underground;
- Construction of parks and facilities for recreational, cultural, and educational uses;
- Fire prevention and control;
- School buildings and related structures and site improvements;
- Security, including, but not limited to, construction of guardhouses, fences and gates, electronic intrusion-detection systems, and patrol cars.

Specifically, s. 190.007(1) authorizes a community development district board of supervisors to employ and fix the compensation of a district manager. The statute further provides that:

- The district manager has charge and supervision of the works of the district and is responsible for:
 - Preserving and maintaining any improvement or facility constructed or erected pursuant to the provisions of the Uniform Community Development District Act of 1980;

⁷⁷ See, e.g., ss. 190.03(6), 190.011, and 190.012, F.S.

⁷⁸ Section 190.011, F.S.

⁷⁹ Such powers include the ability to finance, construct, acquire, operate, and maintain parks and facilities for certain uses; fire prevention and control; school buildings and related structures; security; control and elimination of mosquitoes; and waste collection and disposal. Section 190.012(2), F.S.

⁸⁰ Section 190.012, F.S.

- Maintaining and operating the equipment owned by the district; and
- Performing such other duties as may be prescribed by the board;
- It is not a conflict of interest under ch. 112, F.S., for a board member or the district manager or another employee of the district to be a stockholder, officer, or employee of a landowner or of an entity affiliated with a landowner; and
- The district manager may hire or otherwise employ and terminate the employment of such persons, including, without limitation, professional, supervisory, and clerical employees, as may be necessary and authorized by the board.⁸¹

Implementation of Amendment 12, Lobbying and Abuse of Office by Public Officers

Amendment 12 of the 2018 Constitution Revision Commission was adopted during the 2018 election with 78.92% support.⁸²

Effective December 31, 2020,⁸³ Amendment 12 prohibits a public officer or public employee from abusing his or her public position in order to obtain a “disproportionate benefit.”

“Disproportionate benefit” may not be obtained by the public officer or public employee for:

- Himself or herself;
- His or her spouse, children, or employer; or
- For any business:
 - With which he or she contracts;
 - In which he or she is an officer, a partner, a director, or a proprietor; or
 - In which he or she owns an interest.⁸⁴

Amendment 12 further provides that by October 1, 2019,⁸⁵ the Florida Commission on Ethics (Commission) is required, by rule in accordance with statutory procedures governing administrative rulemaking, to define “disproportionate benefit” and prescribe the requisite intent for finding a violation of the prohibition against abuse of public position.⁸⁶

Following adoption of the Commission’s rules, Amendment 12 requires the Legislature to enact implementing legislation establishing penalties for violations of the prohibition against abuse of public position to take effect December 31, 2020.⁸⁷ CS/SB 7006 is proposed as the implementing legislation that establishes penalties for violations of the prohibition.

Rulemaking by the Florida Commission on Ethics

The Commission has adopted Rule 34-18.001 of the Florida Administrative Code, effective September 30, 2019. The rule defines the term “disproportionate benefit” and prescribes the requisite intent for finding a violation of the prohibition against abuse of public position by a

⁸¹ Section 190.007, F.S.

⁸² Div. of Elections, Fla. Dep’t of State, *November 6, 2018 General Election*, available at <https://results.elections.myflorida.com/Index.asp?ElectionDate=11/6/2018&DATAMODE> = (last visited Feb. 11, 2020).

⁸³ FLA. CONST. art. XII, s. 38.

⁸⁴ FLA. CONST. art. II, s. 8. See Note.

⁸⁵ FLA. CONST. art. XII, s. 38.

⁸⁶ FLA. CONST. art. II, s. 8. See Note.

⁸⁷ FLA. CONST. art. XII, s. 38.

public officer or public employee in order to obtain a disproportionate benefit, both required by Amendment 12.

The rule defines “disproportionate benefit” as a benefit, privilege, exemption or result arising from an act or omission by a public officer or public employee inconsistent with the proper performance of his or her public duties.⁸⁸

The rule prescribes that the public officer or public employee acted, or refrained from acting, with the requisite intent for finding a violation of the prohibition against abuse of public position if the public officer or public employee acted, or refrained from acting, with a wrongful intent for the purpose of obtaining any benefit, privilege, exemption, or result from the act or omission which is inconsistent with the proper performance of his or her public duties.⁸⁹

The Florida Code of Ethics

The Code of Ethics for Public Officers and Employees (Code of Ethics) contains standards of ethical conduct and disclosures applicable to public officers, employees, candidates, lobbyists, and others in State and local government, with the exception of judges.⁹⁰

The Florida Constitution was revised in 1968 to require a code of ethics, prescribed by law, for all state employees and nonjudicial officers prohibiting conflict between public duty and private interests. Florida’s first successful constitutional initiative following adoption of the 1968 Constitution resulted in the adoption of the Sunshine Amendment in 1976, providing additional constitutional guarantees concerning ethics in government. In the area of enforcement, the Sunshine Amendment requires that there be an independent commission (the Commission on Ethics) to investigate complaints concerning breaches of public trust by public officers and employees other than judges. The Code of Ethics has been adopted by the Legislature as Part III of Chapter 112, Florida Statutes. Foremost among the goals of the Code is to promote the public interest and maintain the respect of the people for their government. The Code is also intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law. While seeking to protect the integrity of government, the Code also seeks to avoid the creation of unnecessary barriers to public service. Criminal penalties, which initially applied to violations of the Code, were eliminated in 1974 in favor of administrative enforcement. The Legislature created the Commission on Ethics that year “to serve as guardian of the standards of conduct” for public officials, state and local. Five of the Commission’s nine members are appointed by the Governor, and two each are appointed by the President of the Senate and Speaker of the House of Representatives. No more than five Commission members may be members of the same political party, and none may be lobbyists, or hold any public employment during their two-year terms of

⁸⁸ Fla. Admin. Code R. 34-18.001(2)(2019).

⁸⁹ Fla. Admin. Code R. 34-18.001(4)(2019).

⁹⁰ Florida Commission on Ethics, *Ethics Laws*, available at <http://www.ethics.state.fl.us/Research/EthicsLaws.aspx> (last visited Feb. 11, 2020).

office. A chair is selected from among the members to serve a one-year term and may not succeed himself or herself.⁹¹

The Code of Ethics contains several provisions that provide exemptions from what is otherwise prohibited conduct:

- Section 112.313(7), F.S., prohibits conflicting employment or contractual relationships, but provides that where a special tax district is created by general or special law and limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which an agency has jurisdiction, or when the agency has been organized pursuant to chapter 298 (water control districts), then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se.
- Section 112.313(12), F.S., contains exemptions from the prohibitions in subsections (3) (prohibition on doing business with one's agency) and (7) of the section by providing that:
 - The prohibitions may be waived for a person serving on an advisory board by the body which appointed the person to the advisory board; and
 - No person is in violation of those subsections if:
 - Within a city or county the business is transacted under a rotation system;
 - The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder who meet certain additional criteria;
 - The purchase or sale is for legal advertising in a newspaper, for any utilities service, or for passage on a common carrier;
 - An emergency purchase or contract must be made in order to protect the health, safety, or welfare of the citizens of the state or political subdivision of the state;
 - The business entity is the sole source of supply;
 - The total amount of transactions do not exceed \$500 per calendar year; and
 - Several other conditions exist related to bank officers, university transactions and purchases by public officers or employees in a private capacity.
- Section 112.313(15), F.S., provides that elected public officers are not in violation of subsection (7) of the section, dealing with conflict of interest, for maintaining an employment relationship with a tax-exempt organization as long as certain condition.
- Section 112.313(16), F.S., provides certain exemptions from the prohibitions of subsections (3) and (7) of the section for local government attorneys.
- Section 112.3143, F.S., prohibits a state public officer from voting on any matter that the officer knows would inure to his or her special private gain or loss; however paragraph (3)(b) of the section provides that a commissioner of a community redevelopment agency or an officer of an independent special tax district elected on a one-acre, one-vote basis, is not prohibited from voting.

III. Effect of Proposed Changes:

Section 1 amends s. 189.031, F.S., to provide that board members or public employees of special districts do not abuse their public position under Article II, section 8(h)(2) of the Florida

⁹¹ Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, 1 (2020), available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf?cp=2020211> (last visited Feb. 11, 2020).

Constitution if they commit acts or omissions authorized under s. 112.313(7), (12), (15), or (16), F.S., or s. 112.3143(3)(b), F.S., and board members do not abuse their public position if they commit acts or omissions in connection with a vote if they follow the procedures required by s. 112.3143, F.S.

Section 2 amends s. 189.069, F.S., to allow a special district to satisfy the required posting of its most recent final, complete audit report and other statutorily required audit reports on its own website by providing a link to the most recent audit report maintained on the Auditor General's website. In addition, amending provisions remove the requirement for online posting of a special district's public facilities report and any of a special district's meeting or workshop materials. Required posting of a special district meeting or workshop, and the agendas of such events, remains.

Section 3 amends s. 190.007, F.S., to provide that board members or public employees of community development districts do not abuse their public position under Article II, section 8(h)(2) of the Florida Constitution if they commit acts or omissions authorized under s. 112.313(7), (12), (15), or (16), F.S., s. 112.3143(3)(b), F.S., or s. 190.007(1), F.S. and board members do not abuse their public position if they commit acts or omissions in connection with a vote if they follow the procedures required by s. 112.3143, F.S.

Section 4 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

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's removal of certain required website reports and documents may have a negative impact on private companies that provide specific ADA compliant website development and maintenance for special districts.

C. Government Sector Impact:

Special districts may realize a positive financial impact if they are no longer required to post certain reports and documents on their websites.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 189.031, 189.069, and 190.007 of the Florida Statutes.

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

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

CS by Governmental Oversight and Accountability on February 10, 2020:

The CS adds language to chs. 189 and 190, F.S., regarding special districts and community development districts, respectively, that excludes certain acts or omissions by board members or employees of special districts or community development districts from being considered abuse of public position under Article II, section 8(h)(2) of the Florida Constitution if such acts or omissions are authorized under specific provisions of the Florida Code of Ethics.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability;
and Senators Baxley and Broxson

585-03392-20

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A bill to be entitled

An act relating to government accountability; amending s. 189.031, F.S.; specifying conditions under which board members and public employees of special districts do not abuse their public positions; amending s. 189.069, F.S.; revising the list of items required to be included on the websites of special districts; amending s. 190.007, F.S.; specifying conditions under which board members and public employees of community development districts do not abuse their public positions; providing effective dates.

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

Section 1. Effective January 1, 2021, subsection (6) is added to section 189.031, Florida Statutes, to read:

189.031 Legislative intent for the creation of independent special districts; special act prohibitions; model elements and other requirements; local general-purpose government/Governor and Cabinet creation authorizations.—

(6) GOVERNANCE.—For purposes of s. 8(h)(2), Art. II of the State Constitution, a board member or a public employee of a special district does not abuse his or her public position if the board member or public employee commits an act or omission that is authorized under s. 112.313(7), (12), (15), or (16) or s. 112.3143(3)(b), and an abuse of a board member's position does not include any act or omission in connection with a vote when the board member has followed the procedures required by s.

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112.3143.

Section 2. Paragraph (a) of subsection (2) of section 189.069, Florida Statutes, is amended to read:

189.069 Special districts; required reporting of information; web-based public access.—

(2)(a) A special district shall post the following information, at a minimum, on the district's official website:

1. The full legal name of the special district.
2. The public purpose of the special district.
3. The name, official address, official e-mail address, and, if applicable, term and appointing authority for each member of the governing body of the special district.
4. The fiscal year of the special district.

5. The full text of the special district's charter, the date of establishment, the establishing entity, and the statute or statutes under which the special district operates, if different from the statute or statutes under which the special district was established. Community development districts may reference chapter 190 as the uniform charter but must include information relating to any grant of special powers.

6. The mailing address, e-mail address, telephone number, and website uniform resource locator of the special district.

7. A description of the boundaries or service area of, and the services provided by, the special district.

8. A listing of all taxes, fees, assessments, or charges imposed and collected by the special district, including the rates or amounts for the fiscal year and the statutory authority for the levy of the tax, fee, assessment, or charge. For purposes of this subparagraph, charges do not include patient

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charges by a hospital or other health care provider.

9. The primary contact information for the special district for purposes of communication from the department.

10. A code of ethics adopted by the special district, if applicable, and a hyperlink to generally applicable ethics provisions.

11. The budget of the special district and any amendments thereto in accordance with s. 189.016.

12. The final, complete audit report for the most recent completed fiscal year and audit reports required by law or authorized by the governing body of the special district. If the special district has submitted its most recent final, complete audit report to the Auditor General, this requirement may be satisfied by providing a link to the audit report on the Auditor General's website.

13. A listing of its regularly scheduled public meetings as required by s. 189.015(1).

~~14. The public facilities report, if applicable.~~

~~15.~~ The link to the Department of Financial Services' website as set forth in s. 218.32(1)(g).

~~15.16.~~ At least 7 days before each meeting or workshop, the agenda of the event, along with any meeting materials available in an electronic format, excluding confidential and exempt information. The information must remain on the website for at least 1 year after the event.

Section 3. Effective January 1, 2021, subsection (1) of section 190.007, Florida Statutes, is amended to read:

190.007 Board of supervisors; general duties.—

(1) The board shall employ, and fix the compensation of, a

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district manager. The district manager shall have charge and supervision of the works of the district and shall be responsible for preserving and maintaining any improvement or facility constructed or erected pursuant to the provisions of this act, for maintaining and operating the equipment owned by the district, and for performing such other duties as may be prescribed by the board. It shall not be a conflict of interest under chapter 112 for a board member or the district manager or another employee of the district to be a stockholder, officer, or employee of a landowner or of an entity affiliated with a landowner. The district manager may hire or otherwise employ and terminate the employment of such other persons, including, without limitation, professional, supervisory, and clerical employees, as may be necessary and authorized by the board. The compensation and other conditions of employment of the officers and employees of the district shall be as provided by the board. For purposes of s. 8(h)(2), Art. II of the State Constitution, a board member or a public employee of a district does not abuse his or her public position if the board member or public employee commits an act or omission that is authorized under this subsection, s. 112.313(7), (12), (15), or (16), or s. 112.3143(3)(b), and an abuse of a board member's public position does not include any act or omission in connection with a vote when the board member has followed the procedures required by s. 112.3143.

Section 4. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2020.

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

February 10, 2020

The Honorable Chair Lizbeth Benacquisto
400 Senate Office Building
Tallahassee, Florida 32399

Dear Chair Benacquisto,

I would like to request that SB 1466 Special Districts be heard in the next Rules Committee meeting.

This good bill will allow special districts to satisfy the statutory requirement to post the most recent financial audit by providing a link to the report maintained on the state's Auditor General's website. The bill also removes the requirement for districts to post facility reports and meeting materials online, only requiring the district to post a meeting or event agenda. The facility reports and meeting materials will continue to be available for inspection and copying.

CS/SB 1466 makes it clear that public officials and public employees of special districts who comply with existing statutes are not engaged in an "abuse of his or her public position" under the newly adopted Amendment 12 by making clear that the current safe harbors and exemptions in the current Florida Statutes remain applicable.

Thank you for your favorable consideration.

Onward & Upward,



Senator Dennis K. 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

Bill Galvano
President of the Senate

David Simmons
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

3/2/20

Meeting Date

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

1466

Bill Number (if applicable)

Topic Government Accountability

Amendment Barcode (if applicable)

Name Michael Eckert

Job Title Attorney Hopping Green & Sams

Address 119 S. Monroe St. Suite 300

Phone 850-222-7500

Street

Tallahassee FL 32301

City

State

Zip

Email michael@hgs/aw.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Assoc. of FL 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)

3/2/20

Meeting Date

1466

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Chris Lyon

Job Title

Address 315 S. Calhoun St., Ste. 830

Phone 850/222-5702

Street

Tallahassee

FL

32301

City

State

Zip

Email chlyon@llw-law.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Association of Special Districts

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-2-2020
Meeting Date

CS/SB/1466
Bill Number (if applicable)

Topic Ethics/Spec. Dist.

Amendment Barcode (if applicable)

Name Chris Anderson

Job Title Exec. Director Comm. Ethics

Address 325 John Knox Rd.
Street

Phone 850 488-7864

TALL FL 32313
City State Zip

Email anderson.chris@leg.state.fl.us

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Fla. Comm. on Ethics

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 898

INTRODUCER: Banking and Insurance Committee and Senator Gruters and others

SUBJECT: Insurance Guaranty Associations

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Palecki</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
2. <u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	Favorable
3. <u>Palecki</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 898 amends s. 631.57, F.S., which governs the powers and duties of the Florida Insurance Guaranty Association, Incorporated (FIGA). The FIGA provides a mechanism for the payment of covered claims of insolvent property and casualty insurance companies. Upon an insurer's insolvency, the FIGA is currently obligated to pay an insured condominium or homeowners association the lesser of policy limits or the amount of each covered property insurance claim up to \$100,000 multiplied by the number of condominium or other residential units. The bill increases the FIGA's obligation by increasing the covered property insurance claim limits to \$200,000 multiplied by the number of condominium or other residential units.

The bill also increases the amount of funding available to the FIGA through emergency assessments levied against insurers for the direct payment of covered claims of insurers rendered insolvent by the effects of a hurricane. The bill authorizes emergency assessments up to four percent of an insurer's net written premiums in this state in any one calendar year, which is an increase from the current limit of two percent. Such assessments may be used, up to the four-percent limit, to provide for the full and timely payment of the principal, redemption premium, if any, and interest, and related costs of the issuance of municipal and county bonds for the purpose of paying covered claims caused by a hurricane.

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

II. Present Situation:

Florida Insurance Guaranty Association

Part II of ch. 631, F.S., governs the operations of the Florida Insurance Guaranty Association, Incorporated (FIGA), a nonprofit corporation created to provide a mechanism for the payment of covered claims, including unearned premiums, of insolvent property and casualty insurance companies.¹ A covered claim is an unpaid insurance claim arising out of and within the coverage of the applicable limits of an insurance policy issued by an insurer that has become insolvent.² The FIGA was designed with the intent of avoiding excessive delay in payment and financial loss to claimants or policyholders due to the insolvency of an insurer.³ Membership in the FIGA is a condition of the authority to transact business in Florida as a property or casualty insurance company.⁴ When a property and casualty insurance company becomes insolvent, the FIGA is required to assume the claims of the insurer and pay the claims of the company's policyholders, which includes claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

Condominium and Homeowners' Association Claims

For condominium and homeowners' associations that have a responsibility to provide insurance coverage on residential units within the association, FIGA is obligated to pay out the lesser of:

- The policy limits;⁵ or
- Each covered property insurance claim which is less than \$100,000 multiplied by the number of units in the association.⁶

For homeowners associations, the FIGA is only obligated to pay those covered claims for damage to, or loss of, residential units and attached structures.⁷

The FIGA does not, however, have an obligation to pay covered claims that are funded by the proceeds of municipality and county bonds issued for the purpose of paying claims arising out of the hurricane-related insolvency of an insurer.⁸

FIGA Funding and Assessments

In order to secure funds for the payment of covered claims, the Office of Insurance Regulation of the Financial Services Commission (OIR) levies assessments based on each insurer's net written

¹ Workers' compensation insurance is excluded from FIGA since the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) pays covered claims under ch. 440, F.S., Florida's Workers' Compensation Law.

² Section 631.54(4), F.S.

³ Section 631.51(1), F.S.

⁴ Section 631.55(1), F.S.

⁵ Section 631.57(1)(a)4., F.S.

⁶ Section 631.57(1)(a)3.a., F.S.

⁷ *Id.*

⁸ Section 631.57(1)(a)3.b., F.S. Such bonds are payable from and secured by moneys received by or on behalf of the municipality or county from assessments levied under s. 631.57(3)(a), F.S., and assigned and pledged to or on behalf of the municipality or county for the benefit of the holders of the bonds in connection with the assistance program. See s. 631.695(2), F.S.

premiums in Florida.⁹ Regular assessments levied against any insurer may not exceed more than two percent of that insurer's net direct written premiums in this state for the kinds of insurance included within such account in any one calendar year.¹⁰ To the extent necessary to secure funds for the payment of covered claims of insurers rendered insolvent by the effects of a hurricane, and the reasonable costs to administer such claims, the FIGA is authorized to levy emergency assessments upon insurers in addition to regular assessments. The emergency assessments levied against any insurer may not exceed two percent of that insurer's net written premiums in this state in any one calendar year.¹¹ Once an insurance company pays the assessment to the FIGA, it may begin to recoup the assessment from its policyholders at policy issuance or renewal. A uniform assessment percentage is collected from policyholders.¹²

III. Effect of Proposed Changes:

Section 1 of the bill amends ss. 631.57(1)(a)3.a. and (3)(e), F.S., regarding the powers and duties of the FIGA.

Section 631.57(1)(a)3.a., F.S., is amended by the bill to increase the limit of the FIGA obligations for policies covering condominium and homeowners associations claims. The bill increases the FIGA's responsibility for covered claims from \$100,000 multiplied by the number of condos or other residential units to \$200,000 multiplied by the number of condos or other residential units. The bill doubles the possible claim payout a condominium association or homeowners association could receive upon experiencing a covered loss and the insolvency of their insurer.

Section 631.57(3)(e)1., F.S., is amended by the bill to increase the amount of funding available to the FIGA via emergency assessments. The bill doubles the percentage of an insurer's net written premiums in this state that are available to the FIGA via an emergency assessment from two percent to four percent of an insurer's net written premiums for any one calendar year.

Section 631.57(3)(e)2., F.S., is amended by the bill to conform with the amendments to s. 631.57(3)(e)1., F.S. Thus, in each year the board of the FIGA chooses to participate in the issuance of municipal and county bonds in accordance with s. 631.695, F.S.,¹³ during which those bonds are secured by emergency assessments and are outstanding, the OIR may levy emergency assessments upon insurers in an amount up to the four-percent limit, as required, in order to provide for the full and timely payment of the principal of redemption premium, if any, interest, and costs related to issuance of such bonds.

Section 2 of the bill provides an effective date of July 1, 2020.

⁹ Section 631.57(3)(a), F.S.

¹⁰ Section 631.57(3)(a), F.S.

¹¹ Section 631.57(3)(e), F.S.

¹² Section 631.57(3)(c), F.S.

¹³ Municipality and county bonds issued for the purpose of paying claims arising out of the hurricane-related insolvency of an insurer. See s. 631.695(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:

Condominium and homeowners' association policyholders of insolvent insurers will be eligible for a higher claim payout and thus stand a better chance of being made whole after suffering a loss or damage.

The increase in the percentage of an insurer's net premiums that are subject to emergency assessments imposes upon insurers a higher potential liability for emergency assessments. Insurers recoup such assessments from their policyholders, so the cost of the increased obligation to pay an emergency assessment of up to four percent, rather than the current two percent, is ultimately borne by the policyholders of the assessed insurers. The FIGA estimates that its current assessment base is approximately \$19.6 billion, which means that doubling the emergency assessment authority to four percent would, if utilized, currently result in up to approximately \$390 million in additional assessments.¹⁴

¹⁴ Email from Tom Streukens, Executive Director, Florida Insurance Guaranty Association to James Knudson, Staff Director, Florida Senate Banking and Insurance Committee (Jan. 15, 2020) (on file with the Senate Committee on Innovation, Industry, and Technology).

C. **Government Sector Impact:**

The bill doubles both the obligation of the FIGA to pay a covered claim of an insured condominium or homeowners association and the emergency assessment authority of the FIGA to pay covered claims caused by a hurricane.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 631.57 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 January 15, 2020:

The CS makes conforming changes to ensure the FIGA can utilize the entirety of the proposed four percent emergency assessments in the issuance of bonds.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senators Gruters
and Broxson

597-02277-20

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A bill to be entitled

An act relating to insurance guaranty associations;
amending s. 631.57, F.S.; increasing the obligation of
the Florida Insurance Guaranty Association,
Incorporated, for certain claims under policies
covering certain condominium associations and
homeowners' associations; increasing the percentage
limit of certain insurer net written premiums up to
which the Office of Insurance Regulation may levy
certain emergency assessments upon insurers; providing
an effective date.

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

Section 1. Paragraph (a) of subsection (1) and paragraph
(e) of subsection (3) of section 631.57, Florida Statutes, are
amended to read:

631.57 Powers and duties of the association.—

(1) The association shall:

- (a) 1. Be obligated to the extent of the covered claims
existing:
 - a. Prior to adjudication of insolvency and arising within
30 days after the determination of insolvency;
 - b. Before the policy expiration date if less than 30 days
after the determination; or
 - c. Before the insured replaces the policy or causes its
cancellation, if she or he does so within 30 days of the
determination.
- 2. The obligation under subparagraph 1. includes only the

Page 1 of 5

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

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amount of each covered claim which is in excess of \$100 and is
less than \$300,000, except that policies providing coverage for
homeowner's insurance shall provide for an additional \$200,000
for the portion of a covered claim which relates only to the
damage to the structure and contents.

3.a. Notwithstanding subparagraph 2., the obligation under
subparagraph 1. for policies covering condominium associations
or homeowners' associations, which associations have a
responsibility to provide insurance coverage on residential
units within the association, shall include that amount of each
covered property insurance claim which is less than \$200,000
~~\$100,000~~ multiplied by the number of condominium units or other
residential units; however, as to homeowners' associations, this
sub-subparagraph applies only to claims for damage or loss to
residential units and structures attached to residential units.

b. Notwithstanding sub-subparagraph a., the association has
no obligation to pay covered claims that are to be paid from the
proceeds of bonds issued under s. 631.695. However, the
association shall assign and pledge the first available moneys
from all or part of the assessments to be made under paragraph
(3)(a) to or on behalf of the issuer of such bonds for the
benefit of the holders of such bonds. The association shall
administer any such covered claims and present valid covered
claims for payment in accordance with the provisions of the
assistance program in connection with which such bonds have been
issued.

4. In no event shall the association be obligated to a
policyholder or claimant in an amount in excess of the
obligation of the insolvent insurer under the policy from which

Page 2 of 5

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the claim arises.

(3)

(e)1. In addition to assessments authorized in paragraph (a), and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(b) for the direct payment of covered claims of insurers rendered insolvent by the effects of a hurricane and to pay the reasonable costs to administer such claims, or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy emergency assessments upon insurers holding a certificate of authority. The emergency assessments levied against any insurer may not exceed in any one calendar year more than 4 ~~2~~ percent of that insurer's net written premiums in this state for the kinds of insurance within the account specified in s. 631.55(2)(b).

2. Emergency assessments authorized under this paragraph shall be levied by the office upon insurers in accordance with paragraph (f), upon certification as to the need for such assessments by the board of directors. If the board participates in the issuance of bonds in accordance with s. 631.695, emergency assessments shall be levied in each year that bonds issued under s. 631.695 and secured by such emergency assessments are outstanding in amounts up to such 4-percent ~~2-percent~~ limit as required in order to provide for the full and timely payment of the principal of, redemption premium, if any,

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and interest on, and related costs of issuance of, such bonds.

The emergency assessments are assigned and pledged to the municipality, county, or legal entity issuing bonds under s. 631.695 for the benefit of the holders of such bonds in order to provide for the payment of the principal of, redemption premium, if any, and interest on such bonds, the cost of issuance of such bonds, and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, without further action by the association, the office, or any other party. If bonds are issued under s. 631.695 and the association determines to secure such bonds by a pledge of revenues received from the emergency assessments, such bonds, upon such pledge of revenues, shall be secured by and payable from the proceeds of emergency assessments levied under this paragraph shall be remitted directly to and administered by the trustee or custodian appointed for such bonds.

3. Emergency assessments used to defease bonds issued under this part may be payable in a single payment or, at the option of the association, may be payable in 12 monthly installments with the first installment being due and payable at the end of the month after an emergency assessment is levied and subsequent installments being due by the end of each succeeding month.

4. If emergency assessments are imposed, the report required by s. 631.695(7) must include an analysis of the revenues generated from the emergency assessments imposed under this paragraph.

5. If emergency assessments are imposed, the references in

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117 sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to
118 assessments levied under paragraph (a) must include emergency
119 assessments imposed under this paragraph.

120 6. If the board of directors participates in the issuance
121 of bonds in accordance with s. 631.695, an annual assessment
122 under this paragraph shall continue while the bonds issued with
123 respect to which the assessment was imposed are outstanding,
124 including any bonds the proceeds of which were used to refund
125 bonds issued pursuant to s. 631.695, unless adequate provision
126 has been made for the payment of the bonds in the documents
127 authorizing the issuance of such bonds.

128 Section 2. This act shall take effect July 1, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

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

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR JOE GRUTERS

23rd District

February 17, 2020

The Honorable Lizbeth Benacquisto, Chair
Committee on Rules
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Benacquisto:

I am writing to request that Senate Bill 898, Insurance Guaranty Associations to 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,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

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)

3/2/20

Meeting Date

898

Bill Number (if applicable)

Topic FIGA

Amendment Barcode (if applicable)

Name Travis Moore

Job Title _____

Address P.O. Box 2020

Phone 727.421.6902

Street

St. Petersburg

FL

33731

City

State

Zip

Email travis@moore-relations.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Community Associations Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-2-2020

Meeting Date

898

Bill Number (if applicable)

Topic SB 898

Amendment Barcode (if applicable)

Name Mark Anderson

Job Title Lobbyist

Address 110 S Annac st
Street

Phone 913-205-0654

Tallahassee
City

FL
State

32301
Zip

Email Mark@consultanderson.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing CEOMC (Chief Executive Officers of Management Companies)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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 1140

INTRODUCER: Senator Gruters

SUBJECT: Public Accountancy

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Oxamendi	Imhof	IT	Favorable
2. Reeve	McKay	CM	Favorable
3. Oxamendi	Phelps	RC	Favorable

I. Summary:

SB 1140 permits a nonresident Florida-licensed certified public accountant (CPA) to renew his or her license if the CPA has complied with the continuing education requirements in the state in which his or her office is located. However, a nonresident CPA must satisfy Florida's ethics-related continuing education requirements. If the state in which the nonresident CPA's office is located does not have continuing education requirements as a condition for license renewal, the nonresident CPA must comply with the continuing education requirements in Florida.

The bill permits a CPA to place his or her license in a retired status. If a licensee on retired status reenters the workforce in a position that has an association with accounting or any of the CPA services, the licensee automatically loses her or his retired status. A retired CPA may continue to be engaged in specific activities but may not offer professional services that require the use of the CPA title. A retired CPA may reactivate her or his license in a conditional manner determined by the Florida Board of Accountancy, which must require the payment of fees and the completion of any required continuing education.

The bill takes effect July 1, 2020.

II. Present Situation:

Certified Public Accountants

The Florida Board of Accountancy (board) within the Department of Business and Professional Regulation (DBPR) is responsible for regulating and licensing the more than 38,000 active and 2,700 inactive CPAs and more than 5,700 accounting firms in Florida.¹ The Division of Certified

¹ Florida Department of Business and Professional Regulation, *Fiscal Year 2018-2019 Annual Report*, 12, available at http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY1819.pdf (last visited Jan. 27, 2020).

Public Accounting provides administrative support to the nine-member board, which consists of seven CPAs and two laypersons.²

A certified public accountant is an individual 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 preparation, management advisory or consulting services, or preparation of financial statements.⁴ To engage in the practice of public accounting,⁵ 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.

CPA Licensing

Section 473.308, F.S., provides licensing requirements for CPAs. To be licensed as a certified public accountant, a person must be of good moral character, pass the licensure exam, and have at least 150 semester hours of education with a focus on accounting and business.⁶ CPA licenses must be renewed on a biennial basis through procedures adopted by the DBPR.⁷

License by Endorsement

Individuals who are licensed as a CPA in another state or territory, as well as individuals who are not licensed in another state or territory but have met certain requirements, may apply to the board for licensure by endorsement.⁸ If the applicant is not licensed and has never been licensed in another state or territory, the applicant must:⁹

- Meet the education, work experience, and good moral character requirements;
- Have passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306, F.S.; and
- Have completed continuing professional education courses that are at least equivalent to the continuing professional education requirements for a Florida CPA during the 2 years immediately preceding the application for licensure by endorsement.

If the applicant is licensed in another state or territory, the applicant must:¹⁰

- Have satisfied licensing criteria that were substantially equivalent to the licensure criteria in Florida at the time the license was issued; or

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.

⁵ Section 473.302(8), F.S., defines the terms “practice of,” practicing public accountancy,” and “public accounting”

⁶ Sections 473.308(2)-(5), F.S.

⁷ Section 473.311(2), F.S.

⁸ Section 473.308(7), F.S.

⁹ Section 473.308(7)(a), F.S.

¹⁰ Section 473.308(7)(b), F.S.

- Have passed a national, regional, state or territorial licensing examination with examination criteria that were substantially equivalent to the examination criteria required in this state and meet the education, work experience, and good moral character requirements, if the criteria for issuance of such a license were not substantially equivalent to Florida's criteria; or
- Have held a valid license in another state or territory for at least 10 years before applying for a license in Florida, have passed a national, regional, state or territorial licensing examination with examination criteria that were substantially equivalent to the examination criteria required in this state, and meet the education, work experience, and good moral character requirements; and
- Have completed continuing professional education courses that are at least equivalent to the continuing professional education requirements for a Florida CPA during the 2 years immediately preceding the application for licensure by endorsement.

Continuing Education

CPAs, as part of the license renewal procedure, are required to submit proof satisfactory to the board that, during the 2 years prior to the 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. 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.¹¹

Not less than 10 percent of the total continuing education 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.¹²

Not less than five percent of the continuing education shall be in ethics applicable to the practice of public accounting, including a review of the provisions of ch. 455, F.S., relating to the regulations of businesses and professions, ch. 473, F.S., and the related administrative rules. This requirement must be administered by providers approved by the board.

Inactive Licenses

Section 473.313(1), F.S., permits Florida-licensed CPAs to request that their license be placed on inactive status. Licenses can also be placed on inactive status for failing to complete, or failure to report completion of, the continuing education requirements. Section 473.313(2), F.S., authorizes the board to adopt rules establishing fees for placing a license on inactive status, renewal of inactive status, and reactivation of an inactive license.¹³

A CPA may reactivate an inactive license by paying the DPBR a \$250 application fee¹⁴ and receiving certification that the CPA has completed the education requirements.¹⁵

¹¹ Section 473.312(1)(a), F.S.

¹² Section 473.312(1)(b), F.S.

¹³ See Fla. Admin. Code R. 61H1-33.006 (2019).

¹⁴ Fla Admin. Code R. 61H1-31.006 (2019).

¹⁵ Section 473.313(2), F.S.

If a license that was placed on inactive status for failure to report completed continuing education requirements is inactive on January 1, the applicant must submit a complete application to the board by March 15 immediately after the delinquent period.¹⁶

III. Effect of Proposed Changes:

Licensure by Endorsement

The bill amends s. 473.308(7)(a)1., F.S., referring to applicants for licensure by endorsement who are not licensed in another state, to change the term “another” state to “any” state. The bill does not make the same change throughout s. 473.308, F.S., where the term “another” state is used in several instances.

As amended by the bill, s. 473.308(7)(a)1., F.S., appears to refer to persons who have not been licensed as a CPA in *any* state, including Florida, instead of persons who have not been licensed in any state *aside* from Florida. This change in language would prevent a previously-licensed Florida CPA from using the licensure by endorsement process to regain a license.

Continuing Education

The bill creates s. 473.311(1)(b), F.S., permitting a nonresident licensee seeking a renewal of his or her Florida license to comply with the continuing education requirements of the state in which his or her office is located. Under the bill, a licensee must still complete no less than 5 percent of the total continuing education hours required in ethics applicable to public accounting as administered by providers approved by the board.

The nonresident licensee must comply with all of Florida’s continuing education requirements if the state in which the nonresident licensee’s office is located does not have continuing education requirements as a condition for license renewal.

The bill also amends s. 473.312(1)(c), F.S., to require that a majority of the continuing education hours in ethics include a review of the provisions of the provisions of ch. 455, F.S., relating to the regulations of businesses and professions, ch. 473, F.S., and the related administrative rules.

Retired Status

Under current law, a CPA licensed in Florida is not permitted to place his or license in a retired status. The bill amends s. 473.313, F.S., to permit a Florida-licensed CPA to submit an application to the DBPR to place his or her license in a retired status if the licensee:

- Is at least 55 years of age;
- Holds a current active or inactive license; and
- Is in good standing and not the subject of any sanction or disciplinary action.

Under the bill, a licensee in retired status that reenters the workforce in a position associated with accounting, or any related services defined in ss. 473.302(8)(a), (c), and (d), F.S., automatically loses his or her retired status. A CPA on retired status may continue to provide services utilizing

¹⁶ Section 473.313(3), F.S.

accounting skills, as well as tax, management advisory, or consulting services, as defined in s. 473.302(8)(b), F.S., but may not provide certain accounting services that involve expressing an opinion on or preparing financial statements, as defined in ss. 473.302(8)(a), (c), and (d), F.S.

Retired licensees are permitted to use the title of “retired CPA” but may not offer or render professional services that require her or his signature and use of the CPA title, regardless of whether the word “retired” is attached to such title.

The bill authorizes a retired licensee to serve without compensation on a board of directors or board of trustees, provide volunteer tax preparation services, participate in a government-sponsored business mentoring program, and participate in an advisory role for a similar charitable, civic, or nonprofit organizations. A retired licensee may accept routine reimbursement for actual costs of travel and meals associated with volunteer services or de minimis per diem amounts paid to the retired licensee to cover such expenses as allowed by law.

Retired licensees are not required to maintain the continuing education requirements set forth in ch. 473, F.S.

A retired licensee must affirm in writing his or her understanding of the limited types of activities in which he or she may engage while in retired status and that he or she has a professional duty to ensure that he or she holds the professional competencies necessary to participate in such activities.

A retired licensee may reactivate his or her license in a conditional manner determined by the board, which must require the payment of fees and the completion of any required continuing education.

Effective Date

The bill takes effect July 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Section 19(a), Article VII of the State Constitution limits the authority of the legislature to enact legislation that imposes a new state tax or fee by requiring such legislation to be approved by a 2/3 vote in each chamber of the legislature. Section 19(e), Article VII of the Florida Constitution provides that a state tax or fee imposed, authorized, or raised must be contained in a separate bill that contains no other subject.

SB 1140 permits a licensed CPA in retired status to reactivate his or her license in a conditional manner determined by the Florida Board of Accountancy. The bill requires that the conditions for the reactivation of a license in retired status must include the payment of fees. The board currently has the authority to impose a fee for the reactivation of an inactive license. Because the bill requires the board to impose a fee of an unknown amount for the reactivation of a license in retired status, it is unclear if the voting and separate bill requirements found in the State Constitution apply to the bill.

B. Private Sector Impact:

Retired CPAs wishing to reactivate their licenses will be subject to reactivation fees in an amount determined by the board.

C. Government Sector Impact:

The DBPR has stated that the technological modifications required to administer the bill can be made with existing resources. Other potential expenditures required by the DBPR are indeterminate but expected to be accommodated with existing resources.

The Revenue Estimating Conference has not yet met regarding the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill creates s. 473.311(1)(b), F.S., permitting a nonresident licensee seeking a renewal of his or her Florida license to comply with the continuing education requirements of the *state* in which his or her office is located. It is unclear if these new provisions are intended to apply to territories as well as states. Existing provisions governing the renewal of CPA licenses in ch. 473, F.S., refer to other states *and* territories.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 473.308, 473.311, 473.312, and 473.313.

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 Gruters

23-01202A-20

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A bill to be entitled

An act relating to public accountancy; amending s. 473.308, F.S.; requiring certain applicants to not be licensed in any state or territory in order to be licensed by endorsement; amending s. 473.311, F.S.; providing license renewal requirements for nonresident licensees; amending s. 473.312, F.S.; requiring that a majority of the hours required for continuing education include specific content; amending s. 473.313, F.S.; authorizing certain Florida certified public accountants to apply to the Department of Business and Professional Regulation to have their license placed in a retired status; providing requirements for such conversion; providing requirements and prohibitions for retired licensees; authorizing retired licensees to use a specified title under certain circumstances; providing that retired licensees are not required to maintain continuing education requirements; authorizing retired licensees to reactivate their licenses if certain conditions are met; defining the term "retired licensee"; providing an effective date.

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

Section 1. Subsection (7) of section 473.308, Florida Statutes, is amended to read:
473.308 Licensure.—

(7) The board shall certify as qualified for a license by

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

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endorsement an applicant who:

(a)1. Is not licensed and has not been licensed in any ~~another~~ state or territory and who has met the requirements of this section for education, work experience, and good moral character and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; and

2. Has completed such continuing education courses as the board deems appropriate, within the limits for each applicable 2-year period as set forth in s. 473.312, but at least such courses as are equivalent to the continuing education requirements for a Florida certified public accountant licensed in this state during the 2 years immediately preceding her or his application for licensure by endorsement; or

(b)1.a. Holds a valid license to practice public accounting issued by another state or territory of the United States, if the criteria for issuance of such license were substantially equivalent to the licensure criteria that existed in this state at the time the license was issued;

b. Holds a valid license to practice public accounting issued by another state or territory of the United States but the criteria for issuance of such license did not meet the requirements of sub-subparagraph a.; has met the requirements of this section for education, work experience, and good moral character; and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; or

c. Holds a valid license to practice public accounting issued by another state or territory of the United States for at

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

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least 10 years before the date of application; has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; and has met the requirements of this section for good moral character; and

2. Has completed continuing education courses that are equivalent to the continuing education requirements for a Florida certified public accountant licensed in this state during the 2 years immediately preceding her or his application for licensure by endorsement.

Section 2. Subsection (1) of section 473.311, Florida Statutes, is amended to read:

473.311 Renewal of license.—

(1) (a) The department shall renew a license issued under s. 473.308 upon receipt of the renewal application and fee and upon certification by the board that the Florida certified public accountant has satisfactorily completed the continuing education requirements of s. 473.312.

(b) A nonresident licensee seeking renewal of a license in this state shall be determined to have met the continuing education requirements in s. 473.312, except for the requirements in s. 473.312(1)(c), if the licensee has complied with the continuing education requirements applicable in the state in which his or her office is located. If the state in which the nonresident licensee's office is located has no continuing education requirements for license renewals, the nonresident licensee must comply with the continuing education requirements in s. 473.312.

Section 3. Paragraph (c) of subsection (1) of section

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473.312, Florida Statutes, is amended to read:

473.312 Continuing education.—

(1)

(c) Not less than 5 percent of the total hours required by the board shall be in ethics applicable to the practice of public accounting. This requirement shall be administered by providers approved by the board and a majority of the hours shall include a review of the provisions of chapter 455 and this chapter and the related administrative rules.

Section 4. Section 473.313, Florida Statutes, is amended to read:

473.313 Inactive status and retired status.—

(1) A Florida certified public accountant may request that her or his license be placed in an inactive status by making application to the department. The board may prescribe by rule fees for placing a license on inactive status, renewal of inactive status, and reactivation of an inactive license.

(a)(2) A license that has become inactive under this 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 continuing education requirements for reactivating a license 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.

(b)(3) A license that is delinquent for failure to report

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completion of the requirements in s. 473.312 may be reactivated under s. 473.311 upon application to the department. Reactivation requires the payment of an application fee as determined by the board and certification by the Florida certified public accountant that the applicant satisfactorily completed the continuing education requirements set forth under s. 473.311. If the license is delinquent on January 1 because of failure to report completed continuing education requirements, the applicant must submit a complete application to the board by March 15 immediately after the delinquent period.

(c)(4) Any Florida certified public accountant holding an inactive license may be permitted to reactivate such license in a conditional manner. The conditions of reactivation shall require the payment of fees and the completion of required continuing education.

(d)(5) Notwithstanding the provisions of s. 455.271, the board may, at its discretion, reinstate the license of an individual whose license has become null and void if the individual has made a good faith effort to comply with this section but has failed to comply because of illness or unusual hardship. The individual shall apply to the board for reinstatement in a manner prescribed by rules of the board and shall pay an application fee in an amount determined by rule of the board. The board shall require that the individual meet all continuing education requirements as provided in subsection (2), pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this chapter.

(2) A Florida certified public accountant who is at least 55 years of age and currently holds an active or inactive

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license under this chapter may apply to the department for her or his license to be placed in a retired status. The application must be prescribed by the board and must state that the applicant has no association with accounting or any of the services described in s. 473.302(8)(a), (c), or (d). If a licensee who has been granted retired status reenters the workforce in a position that has an association with accounting or any of the services described in s. 473.302(8)(a), (c), or (d), the licensee automatically loses her or his retired status except as provided in paragraph (a).

(a) A retired licensee who serves without compensation on a board of directors or board of trustees, provides volunteer tax preparation services, participates in a government-sponsored business mentoring program such as the Internal Revenue Service's Volunteer Income Tax Assistance program or the Small Business Administration's SCORE program, or participates in an advisory role for a similar charitable, civic, or other nonprofit organization shall continue to be eligible for retired status.

(b) The board shall require a retired licensee to affirm in writing her or his understanding of the limited types of activities in which she or he may engage while in retired status and that she or he has a professional duty to ensure that she or he holds the professional competencies necessary to participate in such activities.

(c) Licensees may convert their license to retired status only if they hold a license in good standing and are not the subject of any sanction or disciplinary action.

(d) A retired licensee may accept routine reimbursement for

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175 actual costs of travel and meals associated with volunteer
176 services or de minimis per diem amounts paid to the licensee to
177 cover such expenses as allowed by law.

178 (e) A retired licensee may use the title of "retired CPA"
179 on any business card or letterhead or any other printed or
180 electronic document. However, such title must not be applied in
181 such a manner that could confuse the public as to the current
182 status of the licensee. The licensee is not required to have a
183 certificate issued with the word "retired" on the certificate.

184 (f) A retired licensee is not required to maintain the
185 continuing education requirements under s. 473.312.

186 (g) A retired licensee may not offer or render professional
187 services that require her or his signature and use of the CPA
188 title, regardless of whether the word "retired" is attached to
189 such title.

190 (h) A retired licensee may reactivate her or his license in
191 a conditional manner determined by the board. The conditions of
192 reactivation must require the payment of fees and the completion
193 of any required continuing education.

194
195 For the purposes of this subsection, the term "retired licensee"
196 means a licensee whose license has been placed in retired status
197 by the department.

198 Section 5. This act shall take effect July 1, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

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

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR JOE GRUTERS

23rd District

February 4, 2020

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 1140, Public Accountancy to 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,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

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)

3-2-20

Meeting Date

1140

Bill Number (if applicable)

Topic Public Accountancy

Amendment Barcode (if applicable)

Name Justin Thomas

Job Title Director of Gov. Affairs

Address 119 S. Monroe St., Suite 121

Phone 528-2209

Street

City

Tallahassee

State

FL

Zip

32307

Email justin@figa.org

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
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/SJR 1216

INTRODUCER: Education Committee; Ethics and Elections Committee; and Senator Gruters

SUBJECT: Limitation on Terms of Office for Members of a District School Board

DATE: February 28, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Roberts</u>	<u>EE</u>	Fav/CS
2.	<u>Sagues</u>	<u>Sikes</u>	<u>ED</u>	Fav/CS
3.	<u>Fox</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SJR 1216 proposes that district school board members be subject to an 8-year consecutive service term limitation. The language mirrors the current “eight is enough” term limit that applies to Cabinet members and legislators. The provision would operate prospectively beginning with the 2020 general election. The likely earliest date that any currently serving school board member could be “termed-out” would be in November 2028.

The joint resolution, if passed by a 3/5ths vote of each House of the Legislature, will be voted on at the general election in November 2020, unless the legislature authorizes an earlier special election for that specific purpose.

II. Present Situation:

Term Limits

The Florida Constitution provides that a person holding any of the following offices may not have his or her name on the ballot for reelection if the person has served, or but for resignation would have served, in an office for eight consecutive years:

- State Senator;
- State Representative;
- Lieutenant Governor;
- Florida Cabinet member;

- U.S. Representative from Florida; or
- U.S. Senator from Florida.¹

The U.S. Supreme Court has held that state-imposed limits on the terms of *federal* office holders violate the U.S. Constitution, effectively rendering unenforceable Florida's term limits on its congressional members.²

The term limits provision was proposed by citizen initiative and passed at the 1992 general election by a greater than 3-to-1 margin (approved by over 76 percent of electors voting on the measure).³ The amendment applied *prospectively*; service prior to the 1992 election did not count toward the eight-year restriction. Thus, the term limits amendment did not begin to have a direct impact until the 2000 election cycle.

Florida School Boards

There are currently 358 school board members across the 67 districts in Florida, serving upwards of 2.83 million public school students.⁴ There is no provision in the Florida Constitution or Florida Statutes that limits the term of school board members.

Section 4(a) of Article IX of the Florida Constitution provides that:

Each county shall constitute a school district ... In each school district there shall be a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law.

The responsibility of each school district includes operating, controlling, and supervising all free public schools within the school district and determining the rate of school district taxes within the limits of the school district.⁵

III. Effect of Proposed Changes:

The joint resolution provides that a person may not appear on the ballot for reelection to the office of school board member if by the end of his or her current term he or she served, or but for resignation will have served, in that office for 8 consecutive years. The language mirrors the current constitutional limits that apply to Cabinet members and state legislators. The proposed amendment would operate prospectively beginning with the 2020 general election, unless the

¹ Art. VI, s. 4(b), FLA. CONST.

² See, *U.S. Term Limits, Inc. v. Thornton*, 115 S. Ct. 1842 (1995).

³ See Florida Division of Elections website at <http://dos.elections.myflorida.com/initiatives/> (Year= "1992"; Status = "Passed/Defeated"; Ballot Proposal #9) (last visited Jan. 13, 2020). For more information on the 1992 term-limit constitutional amendment, see <http://dos.elections.myflorida.com/initiatives/initdetail.asp?account=1066&seqnum=1> (last visited Jan. 13, 2020).

⁴ The Florida School Boards Association, *State of the Association, Vol. 4* at p.1 (2018-19 Annual Report), available at: <http://fsba.org/wp-content/uploads/2019/12/2018-2019-Annual-Report-FINAL.pdf> (last visited Jan. 13, 2020). For a list of all Florida school boards and a link to the corresponding school boards website see: <http://fsba.org/membership/school-boards/> (last visited Jan. 13, 2020).

⁵ Fla. Const. Art. IX s. 4(b).

Legislature authorizes it to be voted at an earlier special election. Thus, barring a special election on the amendment, the earliest any currently serving school board member could be “termed-out” would be at the 2028 general election.

The joint resolution, if passed by a 3/5ths vote of each House of the Legislature, will be voted on at the general election in November 2020, unless the legislature authorizes an earlier special election for that purpose. The joint resolution would apply upon approval of the voters — at least 60 percent of those voting on the measure.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments.

The Division has not completed an agency bill analysis for this bill or for the identical House Bill. Using the Division's 2018 general election estimate of \$120.31 per word, this 318-word amendment should cost just over **\$38,250**.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This joint resolution substantially amends Articles IX and XII of the Florida Constitution.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS/CS by Education on February 10, 2020:

The committee substitute makes a technical correction.

CS by Ethics and Elections on February 3, 2020:

The CS reduces the term-limit provisions for school board members from 12 to 8 consecutive years.

B. Amendments:

None.

By the Committees on Education; and Ethics and Elections; and
Senators Gruters and Baxley

581-03381-20

20201216c2

Senate Joint Resolution

A joint resolution proposing an amendment to Section 4
of Article IX and the creation of a new section in
Article XII of the State Constitution to limit the
terms of office for a member of a district school
board.

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

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

ARTICLE IX

EDUCATION

SECTION 4. School districts; school boards.—

(a) Each county shall constitute a school district;
provided, two or more contiguous counties, upon vote of the
electors of each county pursuant to law, may be combined into
one school district. In each school district there shall be a
school board composed of five or more members chosen by vote of
the electors in a nonpartisan election for appropriately
staggered terms of four years, as provided by law.

(b) The school board shall operate, control and supervise
all free public schools within the school district and determine
the rate of school district taxes within the limits prescribed
herein. Two or more school districts may operate and finance

581-03381-20

20201216c2

joint educational programs.

(c) A person may not appear on the ballot for reelection to
the office of school board member if, by the end of his or her
current term of office, the person will have served, or but for
resignation would have served, in that office for eight
consecutive years.

ARTICLE XII

SCHEDULE

Limitation on terms of office for members of a district
school board.—This section and the amendment to Section 4 of
Article IX imposing limits on the terms of office for members of
a district school board shall take effect on the date they are
approved by the electorate, but no service in a term of office
that commenced before November 3, 2020, will be counted toward
the limitation imposed by this amendment.

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

CONSTITUTIONAL AMENDMENT

ARTICLE IX, SECTION 4

ARTICLE XII

LIMITATION ON TERMS OF OFFICE FOR MEMBERS OF A DISTRICT
SCHOOL BOARD.—Proposing an amendment to the State Constitution
to limit terms for school board members by prohibiting incumbent
members who have held the office for the preceding eight years
from appearing on a ballot for reelection to that office and to
specify that the amendment applies only to terms of office
beginning on or after November 3, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR JOE GRUTERS

23rd District

February 11, 2020

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 1216, Limitation on Terms of Office for Members of a District School Board to 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,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

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)

3/2/2020

Meeting Date

SB 1216

Bill Number (if applicable)

Topic School Board Term Limits

Amendment Barcode (if applicable)

Name NINA STEPHENS

Job Title _____

Address 5110 S.W. 69th Street

Phone _____

Street

Gainesville

FL

32608

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20

Meeting Date

SB 1216

Bill Number (if applicable)

Topic School Board Terms

Amendment Barcode (if applicable)

Name Trish Neely

Job Title Consultant

Address 2024 Shangri La Lane

Phone 850 322 3317

Street

Tally

City

FL

State

32303

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League Women Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/2020
Meeting Date

SB 1216
Bill Number (if applicable)

Topic SCHOOL BOARD TERM LIMITS

Amendment Barcode (if applicable)

Name BARRY COLLINS

Job Title SELF EMPLOYED

Address _____
Street

Phone X

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/2020
Meeting Date

SB 1216
Bill Number (if applicable)

Topic SCHOOL BOARD TERM LIMITS

Amendment Barcode (if applicable)

Name ROBERT REDMOND

Job Title _____

Address PO Box 21088
Street

Phone _____

ST PETERSBURG FL 33742
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20

Meeting Date

1216

Bill Number (if applicable)

Topic School Board term limit

Amendment Barcode (if applicable)

Name Danielle Thomas

Job Title

Address 3525 Oakwood Dr

Street

Pensacola

City

State

Zip

Phone 850 320 0884

Email dthomas@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

SB 1216
Bill Number (if applicable)

Topic School Bd. Term limits

Amendment Barcode (if applicable) _____

Name DAVID D. BRUN

Job Title _____

Address 1027 Long Branch Ln
Street

Phone (407) 416-8066

OLNEY FL 32765
City State Zip

Email confer@yolov.ca

Speaking: ☐ For ☐ Against ☐ Information

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

Representing JEFL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/2020

Meeting Date

1216

Bill Number (if applicable)

Topic School Board Term limits

Amendment Barcode (if applicable)

Name Wayne Lukash

Job Title _____

Address 2415 Drake Dr
Street

Phone _____

Orlando FL 32810
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2020

Meeting Date

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

SB 1216

Bill Number (if applicable)

Topic School Board Term limits

Amendment Barcode (if applicable)

Name Barbara Cochran

Job Title

Address 241 E Halifax Ave

Street

Phone 321 208 6216

Oak Hill

City

FL

State

32759

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20
Meeting Date

SB 1218
Bill Number (if applicable)

Topic School Boards

Amendment Barcode (if applicable)

Name Dr. Rich Tempin

Job Title _____

Address 135 S Monroe

Phone 850-224-6926

Street

Tallahassee

FL

32301

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/2020

Meeting Date

1216

Bill Number (if applicable)

Topic School Boards

Amendment Barcode (if applicable)

Name Ida V. Eskaman

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 Organize Florida + New Florida Majority

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20

Meeting Date

1216

Bill Number (if applicable)

Topic School Board Term Limits

Amendment Barcode (if applicable)

Name Gary Ford

Job Title _____

Address 241 East Halifax

Phone 386-314-6730

Street

Oak Hill

FL

32759

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/20

Meeting Date

508 1216

Bill Number (if applicable)

Topic School Board Term Limits

Amendment Barcode (if applicable)

Name Nicolas Tomboulides

Job Title Executive Director, US Term Limits

Address 3270 Sunrise Blvd #201

Phone 646-704-2466

Street

Melbourne

FL

32940

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

3-2-20

Meeting Date

1216

Bill Number (if applicable)

Topic School Board Term Limits

Amendment Barcode (if applicable)

Name Chris Doolin

Job Title Consultant

Address 1118-B Thomasville Rd.

Phone 850-508-5492

Street Tallahassee
City State Zip

Email cdoolin@nettally.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Small School District Council Consortium

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-2-20

Meeting Date

1216

Bill Number (if applicable)

Topic School Board Term Limits

Amendment Barcode (if applicable)

Name Barbara Deane

Job Title Ms

Address 625 E. Brevard St

Phone 251-4280

Street

City

Jacksonville

State

FL 32308

Zip

Email barbadeane10@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/2020

Meeting Date

SB1216

Bill Number (if applicable)

Topic School Board Term limits

Amendment Barcode (if applicable)

Name Jason Smith

Job Title

Address Po Box 21088

Street

St

City

Fla

State

33742

Zip

Phone 727 8516342

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

03-02-20

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

SB 1216

Meeting Date

Bill Number (if applicable)

Topic School Board Term Limits

Amendment Barcode (if applicable)

Name RODNEY IVERY

Job Title OPPOSE MINT 1

Address 3529 Thene path
Street

Phone 352-

Oxford FL 38484
City State Zip

Email IVERY42049@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing my 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
APPEARANCE RECORD

3-2-2020

Meeting Date

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

1216

Bill Number (if applicable)

Topic School Board Term limits

Amendment Barcode (if applicable)

Name Zefnia Durham III

Job Title _____

Address 3827 NE 14th Street

Phone _____

Street

Gainesville

FL

32609

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

03/02/2020
Meeting Date

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

1216
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Nataly Chalco Lopez

Job Title Student

Address 809 B W Jefferson
Street

Phone _____

Tallahassee
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)

3/2/2020
Meeting Date

SB 1216
Bill Number (if applicable)

Topic School Board Term Limits

Amendment Barcode (if applicable)

Name Guy T. MASTERS

Job Title _____

Address 602 SE. DEAN TER.
Street
PORT ST. LUCIE, FL. 34984
City State Zip

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/2020
Meeting Date

SB 1216
Bill Number (if applicable)

Topic SCHOOL BOARD TERM LIMITS

Amendment Barcode (if applicable)

Name LEROY COOPER

Job Title

Address 3598 SW PUMPKIN ST
Street
PSL FL 34953
City State Zip

Phone

Email HATINBEATE@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

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

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1366

INTRODUCER: Judiciary Committee and Senator Gruters

SUBJECT: Trusts

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stallard	Cibula	JU	Fav/CS
2. Palecki	Knudson	BI	Favorable
3. Stallard	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1366 permits, but does not require, a trustee of certain trusts to use trust assets to pay directly on behalf of, or to reimburse, the person considered the owner of the trust for taxes attributable to the trust, subject to certain limitations.

The bill is applicable only to grantor trusts, a trust in which the grantor retains certain rights or powers over the trust such that federal tax law treats the grantor and the trust as one entity, thus making the grantor tax-liable for trust income. Under the bill, the trustee is authorized to make such a payment out of the trust assets unless the trust instrument prohibits such payment, or the trustee is:

- A qualified beneficiary of the trust.
- Treated as the owner of part or all of the trust under federal or state tax law.
- A “related or subordinate party” with respect to:
 - A person treated as the owner of all or part of the trust under federal or state tax law; or
 - A qualified beneficiary of the trust.

The bill expressly applies retroactively to trusts created before or after the effective date unless:

- The trustee gives the grantor and all others who may remove the trustee 60 days’ notice that the trustee intends to irrevocably opt out of the bill’s application to the trust; or
- Applying the bill would prevent a contribution to the trust from qualifying for, or would reduce, a federal tax benefit.

Life insurance policies held in the trust, the policy's cash value, or a loan secured by such policy may not be utilized to cover the grantor/settlor's tax liability.

The bill takes effect July 1, 2020.

II. Present Situation:

Trusts

Chapter 736, F.S., the Florida Trust Code, governs express trusts, and trusts created pursuant to a law, judgment, or decree that requires the trust to be administered in the manner of an express trust.¹ The common law of trusts and other principles of equity supplement the trust code, except to the extent modified by the trust code or another law of Florida.² An express trust arises from the express intent of the owner of property to create a trust, i.e., a fiduciary relationship in which one or more trustees is called upon to manage, protect, and invest certain property for the benefit of one or more beneficiaries.³

The settlor, who creates and contributes property to the trust,⁴ may keep the trust revocable,⁵ which allows the settlor to terminate or amend the trust at any time, or elect to make it irrevocable. Unless expressly stated in the trust instrument, a trust is presumed to be revocable.⁶ While a trust is revocable, the duties of the trustee are owed exclusively to the settlor.⁷ The property of a revocable trust is subject to the claims of a settlor's creditors during the settlor's lifetime to the extent the property is not otherwise exempted from such claims. However, the property of an irrevocable trust is only subject to the claims of a creditor or assignee of the settlor to the extent the property may be distributed for the settlor's benefit. Any discretionary power granted to the trustee to pay directly, or to reimburse the settlor for any tax on trust income or principal payable to the settlor does not further subject the assets of an irrevocable trust to claims of a settlor's creditors.⁸

Taxation of Grantor Trusts

Federal tax law calls the settlor a "grantor." Sections 671-678 of the Internal Revenue Code ("IRC"), known as the grantor trust rules, provide that, if certain conditions are met, the grantor and the trust are treated as one entity, thus requiring the settlor to pay income tax on income generated by the trust, even if the grantor has no beneficial interest in the trust and cannot access its income.⁹

¹ Section 736.0102, F.S. Chapter 736, F.S., does not apply to resulting or constructive trusts.

² Section 736.0106, F.S.

³ "Beneficiary" means a person who has a present or future beneficial interest in a trust, vested or contingent, or who holds a power of appointment over trust property in a capacity other than that of trustee. Section 736.0103(4), F.S.

⁴ Section 736.0103(18), F.S.

⁵ "Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest. Section 736.0103(17), F.S.

⁶ Section 736.0602, F.S.

⁷ Section 736.0603, F.S.

⁸ Section 736.0505, F.S.

⁹ 26 U.S.C. s. 671.

Under the IRC, a grantor will be treated as the owner of a trust if the settlor retains certain rights to or powers over the trust, including:

- The “power to revoke,” that is, the power to revest title to trust property in the grantor;¹⁰
- A revisionary interest that exceeded 5 percent of the value of the income or corpus at the trust’s inception;¹¹
- The “power to control beneficial enjoyment” of the corpus or income without the approval of an “adverse party,” which is a person, such as a beneficiary, whose substantial interest in the trust will be adversely affected by the exercise of power;¹²
- Certain “administrative powers,” such as the power to borrow from the corpus at low or no interest, or to sell the trust assets for below market value, without the approval of an adverse party;¹³ or
- The right to income for the grantor or spouse without approval of an adverse party.¹⁴

Revenue Ruling 2004-64

Until 2004, it was unclear whether federal gift and estate tax consequences would result from an independent trustee holding a discretionary power under a trust to reimburse the grantor for taxes paid attributable to trust income. The Internal Revenue Service resolved these uncertainties with Revenue Ruling 2004-64, when it held that when an independent trustee holds a discretionary power under a trust to reimburse the grantor for taxes paid attributable to trust income, the exercise of such power does not result in a taxable gift from the trust beneficiaries to the grantor, and the existence of such power does not by itself cause the value of the trust assets to be includable in the grantor’s gross estate for federal estate tax purposes. The ruling suggests that outcomes may vary where there is a pre-arranged understanding between the grantor and trustee regarding how the trustee would exercise the trustee’s discretion to reimburse the grantor for income taxes, the grantor could remove the trustee and name himself or herself as trustee, or local law would cause the trust assets to be subject to claims of the grantor’s creditors.

Following Revenue Ruling 2004-64, several states, including Florida, amended their laws to provide that the existence of a power in a trust document authorizing the trustee to reimburse the grantor for income taxes attributable to trust income does not subject the assets of the trust to claims of the grantor’s creditors.¹⁵

Legislation in Other States

Several states, including Colorado,¹⁶ Delaware,¹⁷ New Hampshire,¹⁸ and New York,¹⁹ permit a trustee to pay a settlor’s taxes on trust income unless the trust instrument expressly prohibits it.

¹⁰ 26 U.S.C. s. 676.

¹¹ 26 U.S.C. s. 673.

¹² 26 U.S.C. s. 674.

¹³ 26 U.S.C. s. 675.

¹⁴ 26 U.S.C. s. 677.

¹⁵ See ch. 2006-217, s. 5, Laws of Florida; s. 736.0505(1)(c), F.S.

¹⁶ Colo. Rev. Stat. s. 15-5-818 (2019).

¹⁷ Del. Code 12 s. 3344 (2019).

¹⁸ N.H. Rev. Stat s. 564-B:8-816(c) (2019).

¹⁹ N.Y. Est. Powers and Trusts Law s. 7-1.11(a) (2019).

III. Effect of Proposed Changes:

The bill permits a trustee to, in its sole discretion, to utilize trust assets, with certain exceptions, to reimburse the person being treated as owner of the trust under the Internal Revenue Code or similar law for income tax liability attributable to the trust, or to pay such amount directly to the appropriate taxing authority. Life insurance policies held in the trust, the cash value of any such policy, or the proceeds of any loan secured by an interest in such policy may not be utilized for such reimbursement or payment.

The bill applies to trusts created before or after the effective date of the bill unless:

- The trustee provides written notification to the grantor and all others who may remove the trustee at least 60 days' notice that the trustee intends to irrevocably opt out of the bill's application to the trust; or
- Application would prevent a contribution to the trust from qualifying for, or would reduce, a federal tax benefit that was originally claimed or could have been claimed for the contribution, including:
 - An exclusion under s. 2503(b) or s. 2504(c) of the IRC;
 - A marital deduction under s. 2056, s. 2056A, or s. 2523 of the IRC;
 - A charitable deduction under s. 170(a), s. 642(c), s. 2055(a), or s. 2522(a) of the IRC; or
 - Skip direct treatment under s. 2642(c) of the IRC.

Trustees may not exercise or participate in the exercise of reimbursing the grantor or paying the taxing authority on the grantor's behalf if the trustee is treated as the owner of the trust, is the beneficiary of such trust, or is a related or subordinate party.

In the event that the terms of the trust require the trustee to act at the direction or with the consent of a trust advisor, a protector, or any other person, or that the decision to reimburse the grantor or pay the taxing authority directly be made directly by such person, the powers granted to a trustee under the bill extend to such trust advisor, protector, or other person.

The bill does not create a beneficiary status for any person, including for the purposes of determining an elective estate.

The bill takes effect July 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may attract more trust business to Florida, and will have an indeterminate impact.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 736.08145 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 Judiciary Committee on February 11, 2020:

The committee substitute:

- Prohibits a trustee from choosing to pay the grantor's trust-income taxes if the trustee is a beneficiary or is a related or subordinate party to a beneficiary;
- Provides that if a trust advisor, protector, or other person is authorized to act in place of a trustee by the trust's terms, that person may also choose to pay the grantor's trust-income taxes; and
- Provides that the bill does not, of itself, make anyone a beneficiary of a trust, including for the purposes of determining the elective estate.

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 Senator Gruters

590-03495-20

20201366c1

A bill to be entitled

An act relating to trusts; creating s. 736.08145, F.S.; authorizing trustees of certain trusts to reimburse persons being treated as the owner of the trust for specified amounts and in a specified manner; prohibiting certain policies, values, and proceeds from being used for such reimbursement; providing applicability; prohibiting certain trustees from taking specified actions relating to trusts; requiring that specified powers be granted to certain persons if the terms of the trust require a trustee to act at the direction or with the consent of such persons or that specified decisions be made directly by such persons; providing construction; providing an effective date.

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

Section 1. Section 736.08145, Florida Statutes, is created to read:

736.08145 Grantor trust reimbursement.—

(1) (a) Except as otherwise provided under the terms of a trust, if all or any portion of the trust is treated as being owned by a person under s. 671 of the Internal Revenue Code or any similar federal, state, or other tax law, the trustee may, in the trustee's sole discretion, reimburse the person being treated as the owner for any amount of the person's personal federal, state, or other income tax liability which is attributable to the inclusion of the trust's income, capital gains, deductions, or credits in the calculation of the person's

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

590-03495-20

20201366c1

taxable income. In the trustee's sole discretion, the trustee may pay such tax reimbursement amount, determined without regard to any other distribution or payment made from trust assets, to the person directly or to the appropriate taxing authority.

(b) A life insurance policy held in the trust, the cash value of any such policy, or the proceeds of any loan secured by an interest in the policy may not be used for such reimbursement or such payment if the person is an insured.

(2) This section applies to all trusts, whether created on, before, or after July 1, 2020, unless:

(a) The trustee provides written notification that the trustee intends to irrevocably elect out of the application of this section, at least 60 days before the effective date of such election, to the person treated as the owner of all or a portion of the trust under s. 671 of the Internal Revenue Code or any similar federal, state, or other tax law and to all persons who have the ability to remove and replace the trustee.

(b) Applying this section would prevent a contribution to the trust from qualifying for, or would reduce, a federal tax benefit, including a federal tax exclusion or deduction, which was originally claimed or could have been claimed for the contribution, including:

1. An exclusion under s. 2503(b) or s. 2503(c) of the Internal Revenue Code;

2. A marital deduction under s. 2056, s. 2056A, or s. 2523 of the Internal Revenue Code;

3. A charitable deduction under s. 170(a), s. 642(c), s. 2055(a), or s. 2522(a) of the Internal Revenue Code; or

4. Direct skip treatment under s. 2642(c) of the Internal

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

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Revenue Code.

(3) A trustee may not exercise, or participate in the exercise of, the powers granted by this section with respect to any trust if any of the following applies:

(a) The trustee is treated as the owner of all or part of such trust under s. 671 of the Internal Revenue Code or any similar federal, state, or other tax law.

(b) The trustee is a beneficiary of such trust.

(c) The trustee is a related or subordinate party, as defined in s. 672(c) of the Internal Revenue Code, with respect to a person treated as the owner of all or part of such trust under s. 671 of the Internal Revenue Code or any similar federal, state, or other tax law or with respect to a beneficiary of such trust.

(4) If the terms of a trust require the trustee to act at the direction or with the consent of a trust advisor, a protector, or any other person, or that the decisions addressed in this section be made directly by a trust advisor, a protector, or any other person, the powers granted by this section to the trustee must instead or also be granted, as applicable under the terms of the trust, to the advisor, protector, or other person subject to the limitations set forth in subsection (3), which must be applied as if the advisor, protector, or other person were a trustee.

(5) A person may not be considered a beneficiary of a trust solely by reason of the application of this section, including for purposes of determining the elective estate.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20

Meeting Date

1366

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Martha Edenfield

Job Title _____

Address 215 So. Monroe Street

Phone 850 999 4100

Street

Tallahassee

FL

32301

Email medenfield@deanmead.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Real Property, Probate and Trust Law Section of the Florida Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 1424

INTRODUCER: Senator Gruters

SUBJECT: Special Neighborhood Improvement Districts

DATE: February 28, 2020

REVISED: _____

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

I. Summary:

SB 1424 revises provisions relating to the board of directors of a special neighborhood improvement district, including authorizing the appointment of a three-, five-, or seven-member board and requiring the board members to be landowners in the district. The bill requires counties or municipalities to specify the number of directors in the ordinance creating the special neighborhood improvement district.

The bill has no impact on state government.

The bill takes effect July 1, 2020.

II. Present Situation:

Safe Neighborhood Improvement Districts

Purposes and Creation

Part IV of ch. 163, F.S., is known as the “Safe Neighborhoods Act.” The intent of the act is to:

- Guide and accomplish the coordinated, balanced, and harmonious development of safe neighborhoods;
- Promote the health, safety, and general welfare of these areas and their inhabitants, visitors, property owners, and workers;
- Establish, maintain, and preserve property values and preserve and foster the development of attractive neighborhoods and business environments;
- Prevent overcrowding and congestion;
- Improve or redirect traffic and provide pedestrian safety;
- Reduce crime rates and the opportunities for the commission of crime; and

- Provide improvements in neighborhoods so they are defensible against crime.¹

Section 163.503(1), F.S., defines the term “safe neighborhood improvement district” (SNID) or “neighborhood improvement district” to mean:

[a] district located in an area in which more than 75 percent of the land is used for residential purposes, or in an area in which more than 75 percent of the land is used for commercial, office, business, or industrial purposes, excluding the land area used for public facilities, and where there is a plan to reduce crime through the implementation of crime prevention through environmental design, environmental security, or defensible space techniques, or through community policing innovations.

The act allows county or municipal governing bodies to create SNIDs through the adoption of a planning ordinance. Each SNID that is established is required to register within 30 days with both the Department of Economic Opportunity (DEO) and the Department of Legal Affairs (DLA) and provide the name, location, size, type of SNID, and such other information that the departments may require.² Under current law, there are four types of SNIDs:

- Local government SNIDs;
- Property owners’ association SNIDs;
- Community redevelopment SNIDs; and
- Special SNIDs, which are further classified as either residential or business.³

As of January 25, 2020, there are 27 active SNIDs in the state of Florida.⁴ Twenty-four of these are local government SNIDs; two are special residential SNIDs; and one is classified as a property owners’ association SNID.

SNID Boards and Revenue Sources

The board of directors of a local government SNID is the local governing body of the municipality or county that created the SNID; however, as an alternative, a majority of the local governing body may also appoint a different board.⁵ The board of a property owners’ association SNID is comprised of the officers of the property owners’ association.⁶

The board of a special SNID is a three-member body, appointed by the governing body of the municipality or county that created the SNID, who are residents of the area, are subject to ad valorem taxation in the district, and serve staggered terms of three years.⁷ The board of a community redevelopment SNID is the community redevelopment board of commissioners,

¹ See s. 163.502(3), F.S.

² Section 163.5055(1)(a), F.S.

³ See ss. 163.506, 163.508, 163.511, and 163.512, F.S.

⁴ Florida Department of Economic Opportunity, Division of Community Development, *Official List of Special Districts Online*, available at <http://specialdistrictreports.floridajobs.org/webreports/mainindex.aspx> (last visited Feb. 11, 2020).

⁵ Sections 163.506(1)(e) and (3), F.S.

⁶ Section 163.508(1)(e), F.S.

⁷ Sections 163.511(1)(f), and (8), F.S.

which is designated by the governing body of the municipality or county that created the community redevelopment agency.⁸

Local government SNIDs and special SNIDs are authorized to levy ad valorem taxes up to two mills annually.⁹ Local government SNIDs are authorized to levy tax without a referendum; however, special SNIDs require a referendum to levy ad valorem taxes.¹⁰ For a special *residential* SNID, taxes are approved by a majority of the electors voting in the referendum.¹¹ For a special *business* SNID, taxes are approved by freeholders representing in excess of 50 percent of the assessed value of the property within the SNID.¹²

All SNIDs are also authorized to make and collect special assessments, but all special assessments are subject to referendum approval.¹³ Special assessments are approved by a majority of registered voters residing in the SNID.¹⁴ Assessments may be collected pursuant to ss. 197.3632 and 197.3635, F.S., which address the uniform method for collection of non-ad valorem assessments. Assessments may not exceed \$500 for each individual parcel of land per year.

Community redevelopment SNIDs may also utilize community redevelopment trust funds to implement district planning and programming that is consistent with the community redevelopment plan created pursuant to s. 163.360, F.S.¹⁵

SNID Dissolutions

Local government and community redevelopment SNIDs may be dissolved by the governing body that established them.¹⁶ Property owners' association SNIDs continue in perpetuity as long as the property owners' association exists.¹⁷ Special SNIDs are dissolved at the end of the tenth fiscal year of operation.¹⁸

III. Effect of Proposed Changes:

Section 1 amends s. 163.511, F.S., to revise several provisions relating to the board of directors of a special SNID. The bill provides for the appointment of a three-, five-, or seven-member board rather than the 3-member board currently required by law. The number of appointed

⁸ Section 163.512(1)(d), F.S.

⁹ Sections 163.506(1)(c), F.S., and 163.511(1)(b), F.S.

¹⁰ Section 163.511(1)(a) and (b), F.S.

¹¹ Section 163.511(3)(g), F.S. Although the term "elector" is used in s. 163.511(3)(g), F.S., it is not defined in the act; it appears the intent is that the vote be made by district residents who are registered voters. See s. 163.511(3)(b), F.S.

¹² Section 163.511(4)(g), F.S. Similarly, although the term "freeholder" is used in s. 163.511(4)(g), F.S., it is not defined in the act; it appears the intent is that the vote be made by property owners on the tax assessment roll whose property is in the district.

¹³ Section 163.514(16), F.S. This authority and any of the other SNID powers enumerated in s. 163.514, F.S., may be prohibited by the SNID's enacting ordinance.

¹⁴ *Id.* See also *supra* notes 11 and 12 regarding the terms "elector" and "freeholder."

¹⁵ Section 163.512(1)(c), F.S.

¹⁶ Sections 163.506(4) and 163.512(3), F.S.

¹⁷ Section 163.508(4), F.S.

¹⁸ Section 163.511(13), F.S. Special SNIDs may continue for subsequent 10-year periods if the continuation of the district is approved through referendum.

directors must be specified in the local planning ordinance, and the members must be elected to staggered terms of four years. Additionally, the board of directors must be landowners in the district, whereas current law only requires the board of directors to be residents of the area.

Section 2 provides the bill takes effect July 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.

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. 163.511 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 Gruters

23-01841-20

20201424__

A bill to be entitled

An act relating to special neighborhood improvement districts; amending s. 163.511, F.S.; revising the number of directors allowed on the boards of special neighborhood improvement districts; requiring local planning ordinances to specify the number of directors and provide for 4-year staggered terms; requiring that directors be landowners in the proposed area and be subject to certain taxation; making technical changes; providing an effective date.

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

Section 1. Paragraph (f) of subsection (1) and subsections (7) and (8) of section 163.511, Florida Statutes, are amended to read:

163.511 Special neighborhood improvement districts; creation; referendum; board of directors; duration; extension.—

(1) After a local planning ordinance has been adopted authorizing the creation of special neighborhood improvement districts, the governing body of a municipality or county may declare the need for and create special residential or business neighborhood improvement districts by the enactment of a separate ordinance for each district, which ordinance:

(f) Provides for the appointment of a three-member board of directors, a five-member board of directors, or a seven-member ~~3-member~~ board of directors for the district, the members of which must be elected to staggered terms of 4 years. The number of appointed directors must be specified in the ordinance.

23-01841-20

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(7) The business and affairs of a special neighborhood improvement district shall be conducted and administered by a board of three, five, or seven directors who ~~must~~ shall be ~~landowners in residents of~~ the proposed area and who are subject to ad valorem taxation in the district. Upon their appointment and qualification and in January of each year, the directors shall organize by electing from their number a chair and a secretary, and may also employ staff and legal representatives as deemed appropriate, who shall serve at the pleasure of the board and may receive such compensation as ~~shall be~~ fixed by the board. The secretary shall keep a record of the proceedings of the district and is the ~~shall be~~ custodian of all books and records of the district. The directors may ~~shall~~ not receive any compensation for their services or, nor may they be employed by the district.

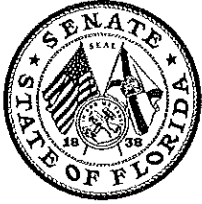
(8) Within 30 days after of the approval of the creation of a special neighborhood improvement district, if the district is in a municipality, a majority of the governing body of the municipality, or, if the district is in the unincorporated area of the county, a majority of the county commission, shall appoint the ~~three~~ directors provided for under this section ~~herein for staggered terms of 3 years. The initial appointments shall be as follows: one for a 1-year term, one for a 2-year term, and one for a 3-year term.~~ Each director shall hold office until his or her successor is appointed and qualified unless the director ceases to be qualified to act as a director or is removed from office. Vacancies on the board shall be filled for the unexpired portion of a term in the same manner as the initial appointments were made.

23-01841-20

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR JOE GRUTERS
23rd District

February 17, 2020

The Honorable Lizbeth Benacquisto, Chair
Committee on Rules
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Benacquisto:

I am writing to request that Senate Bill 1424, Special Neighborhood Improvement Districts to 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,

A handwritten signature in black ink that reads "Joe Gruters". The signature is stylized with a large, flowing "J" and "G".

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

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 1376

INTRODUCER: Senator Broxson

SUBJECT: Credit For Reinsurance

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Arnold	Knudson	BI	Favorable
2. Davis	Cibula	JU	Favorable
3. Arnold	Phelps	RC	Favorable

I. Summary:

SB 1376 provides insurers with credit for reinsurance and eliminates additional collateral requirements for reinsurers if the reinsurer is domiciled in a “reciprocal jurisdiction” and meets requirements set forth in the bill. The requirements include, but are not limited to:

- Minimum capital and surplus requirements;
- Minimum solvency or capital ratio;
- Annual confirmation from the domiciliary supervisory authority stating that the reinsurer meets the capital, surplus, and minimum solvency or capital ratio requirements; and
- Prompt claims payment practices.

The bill defines a reciprocal jurisdiction as:

- A non-United States jurisdiction that is subject to an in-force covered agreement¹ with the United States or, in the case of a covered agreement between the United States and the European Union,² an EU member state;
- A United States jurisdiction that meets the National Association of Insurance Commissioners’ requirements for accreditation; or
- Any other qualified jurisdiction that meets the Office of Insurance Regulation’s requirements as set forth in rule.

¹ The bill defines a “covered agreement” to mean an agreement entered into pursuant 31 U.S.C ss. 313 and 314 (The Dodd-Frank Wall Street Reform and Consumer Protection Act) which is effective or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

² The United States entered into such an agreement on September 22, 2017, the Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance.

The bill also provides insurers with protections against reinsurer failure that include, but are not limited to, requiring the reinsurer to post collateral equal to all outstanding reinsurance liabilities in the event the reinsurer enters into receivership; requiring the reinsurer to consent to the jurisdiction of courts of the State of Florida; and requiring the reinsurer to post collateral equal to all outstanding liabilities if the reinsurer resists enforcement of a court order from a jurisdiction in which it has consented.

The bill's revisions to Florida law governing credit for reinsurance enact 2019 revisions to the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786).

The bill takes effect July 1, 2020.

II. Present Situation:

Reinsurance

Reinsurance is insurance that a primary insurance company purchases from a second insurance company to protect itself from major losses sustained by its policy holders. The large-scale losses are generally caused by natural disasters such as wildfires or hurricanes. The primary insurance company is referred to as the ceding insurer and the second insurance company is referred to as the reinsurer. In this contract of indemnity, the reinsurer agrees to compensate the ceding insurer for all or part of the losses and loss adjustment expenses the ceding insurer incurs under insurance policies it has issued to its policyholders.³ The vast majority of reinsurers, who are domiciled overseas, do not write insurance policies of their own to policyholders.

Through the reinsurance contract, the insurer reduces its probable maximum loss on either an individual risk (facultative reinsurance) or a specific class of insurance policies (treaty reinsurance) by ceding a portion of its liability to the reinsurer.⁴ Reinsurance serves to (1) increase underwriting capacity; (2) stabilize underwriting results; (3) protect against catastrophic losses; (4) finance expanding volume; (5) withdraw from a class or line of business, or a geographic area, within a short time period; and (6) share large risks with other companies.⁵ Reinsurers may in turn further spread their assumed risk by purchasing reinsurance protection, which is called retrocession.⁶

Reinsurance creates privity of contract between the insurer and reinsurer, and does not modify the insured's policy with its insurer.⁷ Therefore, the reinsurance contract does not discharge the

³ National Association of Insurance Commissioners, *Glossary of Insurance Terms* https://content.naic.org/consumer_glossary.htm#R (last visited January 13, 2020).

⁴ Barron's Dictionary of Insurance Terms, 437 (6th ed. 2013).

⁵ *Id.*

⁶ The Center for Insurance Policy and Research, National Association of Insurance Commissioners, *Reinsurance*, https://content.naic.org/cipr_topics/topic_reinsurance.htm (last visited January 13, 2020).

⁷ U.S. Department of Treasury, Federal Insurance Office, *The Breadth and Scope of the Global Reinsurance Market and the Critical Role Such Market Plays in Supporting Insurance in the United States*, 7 (December 2014), <https://www.treasury.gov/initiatives/fio/reports-and-notice/Documents/FIO%20-Reinsurance%20Report.pdf> (last visited January 13, 2020).

insurer from its primary liability to its policyholders or its obligation to pay policyholder claims.⁸ Similarly, only the insurer has direct rights to recover from the reinsurer unless expressly provided for in the reinsurance contract.⁹

Florida regulates reinsurance under s. 624.610, F.S., and rule 69O-144, F.A.C.

Regulation of Reinsurance

The United States (U.S.) is both the largest insurance market and reinsurance market in the world by premium volume.¹⁰ Furthermore, roughly half of all business originates from North America.¹¹ In support of U.S. domestic insurers, non-U.S. reinsurers provide a majority of the available reinsurance protection to fulfill the needs of the U.S. insurance market. In 2018, offshore reinsurers assumed 65.7 percent of U.S. ceded premiums.¹² Together, offshore reinsurers and alien-owned¹³ U.S. reinsurers assumed 88.9 percent of U.S. ceded premiums during the same year.¹⁴ Such access to alien reinsurance contributes to the global diversification of risk, provides claims burden relief to U.S. reinsurers, and mitigates financial impacts of catastrophes.¹⁵

The purchase of reinsurance from reinsurers not domiciled or licensed in the U.S. may expose U.S. domestic insurers to additional credit risk to the extent that any reinsurer is unable to meet the obligation assumed in the reinsurance contract. It similarly presents significant challenges to U.S. state insurance regulators charged with regulating insurer solvency.

Direct Regulation of Authorized Reinsurers

The Office of Insurance Regulation (OIR) directly regulates authorized reinsurers¹⁶ domiciled and licensed in Florida as well as reinsurers licensed in Florida but domiciled in a foreign state.¹⁷ When an insurer cedes business to a licensed reinsurer, the insurer is permitted under statutory accounting rules to recognize a reduction in its liabilities for the amount of ceded liabilities, without a regulatory requirement for the reinsurer to post collateral to secure the reinsurer's ultimate payment of the reinsured liabilities.¹⁸ A reinsurer licensed in a state is subject to solvency and other regulations imposed by the state which are applicable to insurance companies generally.

⁸ *Id.*

⁹ *Morris & Co. v. Skandinavia Ins. Co.*, 279 U.S. 405, 408 (1929); *Citizens Cas. Co. v. Am. Glass. Co.*, 166 F.2d 91, 95 (7th Cir. 1948).

¹⁰ *See supra* Note 7 at 1.

¹¹ *Id.*

¹² Reinsurance Association of America, *Offshore Reinsurance in the U.S. Market: 2018 Data*, 13

https://www.reinsurance.org/RAA/Industry_Data_Center/Offshore_Report/Offshore_Report_2018_Data.html (last visited January 13, 2020).

¹³ In the insurance context, “alien” means domiciled in a foreign country. “Alien” is distinguishable from “foreign,” which means domiciled in a state other than the one in which the company is writing business.

¹⁴ *See supra* Note 12 at 14.

¹⁵ International Association of Insurance Supervisors, *Reinsurance and Financial Stability*, 8 (July 2012), <https://www.iaisweb.org/file/34046/reinsurance-and-financial-stability> (last visited January 13, 2020).

¹⁶ An “authorized” reinsurer is one that is licensed or accredited in a given state.

¹⁷ Section 624.610(3)(a),(b), F.S.

¹⁸ *Id.*

Indirect Regulation of Unauthorized Reinsurers

In the absence of direct supervisory authority, OIR indirectly regulates unauthorized reinsurers¹⁹ by limiting the ceding insurer's credit for reinsurance unless the reinsurer posts collateral to secure the reinsurer's ultimate payment of the reinsured liabilities.²⁰

The 2007 Legislature reduced the collateral requirements for insurers to receive credit for reinsurance commensurate with the financial strength of the reinsurer and the quality of the regulatory regime, and authorized OIR to enact rulemaking to implement corresponding regulatory changes.²¹ In considering whether to allow credit for reinsurance, the reinsurer must hold surplus in excess of \$250 million and have a secure financial strength rating (SFSR) from at least two statistical rating organizations deemed acceptable by the Commissioner of OIR (Commissioner).²² The Commissioner must also consider:

- The domiciliary regulatory jurisdiction of the reinsurer;
- The structure and authority of the domiciliary regulator with regard to solvency regulation and the financial surveillance of the reinsurer;
- The substance of financial and operating standards for reinsurers in the domiciliary jurisdiction;
- The form and substance of financial reports required to be filed by the reinsurers in the domiciliary jurisdiction or other public financial statements filed in accordance with generally accepted accounting principles;
- The domiciliary regulator's willingness to cooperate with U.S. regulators in general and OIR in particular;
- The history of performance by reinsurers in the domiciliary jurisdiction;
- Any documented evidence of substantial problems with the enforcement of valid U.S. judgments in the domiciliary jurisdiction; and
- Any other matters deemed relevant by the Commissioner.²³

The collateral required to allow 100 percent credit shall be no less than the percentage specified for the lowest rating as indicated in the SFSR below:²⁴

Rating	Collateral Required	AM Best	S&P	Moody's	Fitch	Demotech
Secure – 1	0%	A++	AAA	Aaa	AAA	A"
Secure – 2	10%	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-	A'
Secure – 3	20%	A	A+, A	A1, A2	A+, A	A

¹⁹ An "unauthorized" reinsurer fails to meet the definition of an authorized reinsurer. *See supra* Note 13. Furthermore, "unauthorized" is distinguishable from "non-U.S.". A U.S. reinsurer that does not meet the definition of "authorized" reinsurer is considered "unauthorized". However, non-U.S. reinsurers cannot become accredited in a U.S. state based on their own domestic license.

²⁰ Historically, in order to receive financial statement credit for unauthorized reinsurance, a U.S. insurer must have been the beneficiary of security posted by the unauthorized reinsurer, providing collateral equal to 100 percent of the actuarially-estimated liabilities under the reinsurance contract.

²¹ Ch. 2007-1, s. 15, Laws of Fla.

²² Section 624.610(3)(e), F.S.

²³ Section 624.610(3)(e)(1)-(8), F.S.

²⁴ Rule 69O-144.007(4), F.A.C.

Secure – 4	50%	A-	A-	A3	A-	n/a
Secure – 5	75%	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-	n/a
Vulnerable – 6	100%	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD	n/a

Revisions to NAIC Model Law 785 and Regulation 786

The 2019 revisions to the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786) incorporate substantive provisions from the 2017 Bilateral Agreement between the United States and European Union on Prudential Measures Regarding Insurance and Reinsurance (Covered Agreement) reached between the U.S. Department of the Treasury, U.S. Trade Representative, and the European Union (EU).

The Covered Agreement, in part, commits the U.S. to phasing-out state-based reinsurance collateral requirements for EU reinsurers by 2022.²⁵ It further exempts EU reinsurers from current U.S. domiciliary requirements for authorized reinsurer status by creating a new, broader classification of jurisdiction called “reciprocal jurisdiction.”²⁶ Credit for Reinsurance Model Law (#785) defines a “reciprocal jurisdiction” as a jurisdiction that meets one of the following requirements:

- A non-U.S. jurisdiction that is subject to an in-force covered agreement with the U.S., each within its legal authority, or in the case of a covered agreement between the U.S. and EU, is a member state of the EU;
- A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or
- A qualified jurisdiction, as determined by the Commissioner.²⁷

“Covered agreements” are authorized under 31 U.S.C ss. 313 and 314 where the term is defined. The term means:

a written bilateral or multilateral agreement regarding prudential measures with respect to the business of insurance or reinsurance that—

(A) is entered into between the United States and one or more foreign governments, authorities, or regulatory entities; and

(B) relates to the recognition of prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for insurance or

²⁵ United States Department of Treasury, Federal Insurance Office, *Statement of the United States on the Covered Agreement with the European Union*, 1 (September 22, 2017), https://home.treasury.gov/system/files/311/US_Covered_Agreement_Policy_Statement_Issued_September_2017_1.pdf (last visited January 13, 2020).

²⁶ *Id.*

²⁷ National Association of Insurance Commissioners, *Credit for Reinsurance Model Law-785*, 7 (Summer 2019), <https://www.naic.org/store/free/MDL-785.pdf> (last visited January 13, 2020).

reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.²⁸

NAIC Accreditation and Adoption of Model Laws

NAIC accreditation is a certification that legal, regulatory, and organizational oversight standards and practices are being fulfilled by a state insurance department to promote sound insurer financial solvency regulation. The accreditation program is also designed to allow for interstate cooperation and reduces regulatory redundancies.²⁹ For example, the OIR's examinations may be recognized by other member states, thereby avoiding the need to have a Florida domestic insurer examined by multiple states.³⁰

Currently, all 50 states, the District of Columbia and Puerto Rico are accredited. Once accredited, a state is subject to a full accreditation review every five years, as well as interim reviews.³¹ One major component of NAIC accreditation standards is the adequacy of solvency laws and regulations in each accredited state to protect consumers and guaranty funds, through the adoption of model laws.³²

Effective January 1, 2019, NAIC included the 2011 revisions to the Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786) as accreditation standards.³³ It subsequently included the 2019 revisions to Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786) as accreditation standards to be effective October 1, 2022.³⁴

III. Effect of Proposed Changes:

Section 1 amends s. 624.610, F.S., which provides the criteria under which an insurer is given credit for reinsurance. The bill provides insurers with credit for reinsurance if the reinsurer is domiciled in a "reciprocal jurisdiction" and meets the requirements of this section. It defines "reciprocal jurisdiction" as a jurisdiction that is:

²⁸ 31 U.S.C. s. 313(r)(2).

²⁹ National Association of Insurance Commissioners, *Financial Regulation Standards and Accreditation Program*, 4 (December 2019), https://content.naic.org/sites/default/files/inline-files/FRSA%20Pamphlet%2012-2019_0.pdf (last visited January 13, 2020).

³⁰ *Id.* at 2.

³¹ National Association of Insurance Commissioners, *State Legislative Brief: The NAIC Accreditation Program* (November 2019), https://www.naic.org/documents/cnte_legislative_liaison_brief_accreditation.pdf (last visited January 13, 2020).

³² See *supra* Note 29.

³³ *Id.*

³⁴ National Association of Insurance Commissioners, *CIPR Topics: Reinsurance* (September 1, 2019), https://content.naic.org/cipr_topics/topic_reinsurance.htm (last visited January 13, 2020).

- A non-U.S. jurisdiction that is subject to an in-force covered agreement³⁵ with the U.S. or, in the case of a covered agreement between the United States and the European Union,³⁶ an E.U. member state;
- A U.S. jurisdiction that meets the NAIC's requirements for accreditation; or
- Any other qualified jurisdiction that meets the OIR's requirements as set forth in rule.

A reinsurer domiciled in a reciprocal jurisdiction must maintain minimum capital and surplus amounts, and a minimum solvency or capital ratio as specified by financial services commission rule. The reinsurer's supervisory authority must annually confirm to OIR whether the reinsurer complies with these minimum requirements. In the event the reinsurer falls below these minimum requirements, or if regulatory action is taken against it for serious noncompliance with applicable law, the reinsurer must provide written notice to OIR.

The reinsurer must consent to the jurisdiction of Florida state courts and the designation of the Chief Financial Officer for purposes of lawful service of process in any action, suit, or proceeding brought by the insurer against the reinsurer. The reinsurer must consent to pay all final judgements declared enforceable in the jurisdiction where the judgment was obtained, and the reinsurance contract must contain a provision requiring the reinsurer to provide security equal to 100 percent of reinsurance liabilities in the event the reinsurer resists enforcement of a final judgment or a properly enforceable arbitration award.

The reinsurer must agree to provide security equal to 100 percent of reinsurance liabilities and notify the insurer if the reinsurer enters into receivership for conservation, rehabilitation, or liquidation purposes.

The reinsurer must pay claims promptly pursuant to OIR rule.

The reinsurer must provide annual documentation to the OIR required by commission rule and may provide to the OIR information on a voluntary basis.

OIR may revoke the reinsurer's eligibility for recognition if the reinsurer fails to meet one or more of the requirements of the subsection. In the event OIR revokes the reinsurer's eligibility, the insurer does not qualify for credit for reinsurance except to the extent the reinsurer has provided collateral to secure the reinsurance liabilities.

Many reinsurers domiciled in what the bill defines as "reciprocal jurisdictions" are currently required under Florida law to hold surplus in excess of \$250 million and have a secure financial strength rating from at least two statistical rating agencies.³⁷ The bill will allow reinsurers in reciprocal jurisdictions to instead meet the requirements created by this bill. This will allow

³⁵ The bill defines a "covered agreement" to mean an agreement entered into pursuant 31 U.S.C. ss. 313 and 314 (The Dodd-Frank Wall Street Reform and Consumer Protection Act) which is effective or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

³⁶ The United States entered into such an agreement on September 22, 2017, the Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance.

³⁷ See s. 624.610(3)(e), F.S.

insurers in this state to receive credit for reinsurance obtained from reinsurers with a surplus of less than \$250 million if the reinsurer is domiciled in a reciprocal jurisdiction and otherwise meets the requirements established by the bill.

Section 2 provides an effective date of July 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:

At line 194, the bill references “certain additional requirements” that would be requisite conditions for the Office of Insurance Regulation to determine whether a jurisdiction is a qualified jurisdiction, but neither lists such additional requirements nor specifies standards or guidelines for the Office of Insurance Regulation to promulgate rules.

At line 258, the bill references “certain documentation” the reinsurer or its successors must provide the Office of Insurance Regulation upon request by the Office of Insurance Regulation, but neither lists such documentation nor specifies standards or guidelines for the Office of Insurance Regulation to promulgate rules.

The Legislature may wish to amend the provisions at lines 194 and 258 to minimize the potential for the bill to be construed as giving too much discretion to the Office of Insurance Regulation in violation of the nondelegation doctrine implicit in Article II, s. 3 of the State Constitution.³⁸

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁸ See *Askew v. Cross Key Waterways*, 372 So. 2d 913 (Fla. 1978).

B. Private Sector Impact:

Allowing insurers to receive credit for reinsurance and eliminating additional collateral requirements for reinsurers if the reinsurer is domiciled in a “reciprocal jurisdiction” provides U.S. domestic insurers with greater access to global reinsurance and improves diversifying of risk.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 624.610 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Broxson

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A bill to be entitled

An act relating to credit for reinsurance; amending s. 624.610, F.S.; adding conditions under which a ceding insurer must be allowed credit for reinsurance; defining the terms "reciprocal jurisdiction" and "covered agreement"; specifying requirements for assuming insurers and reinsurance agreements; requiring the Financial Services Commission to adopt certain rules; authorizing a ceding insurer or its representative that is subject to rehabilitation, liquidation, or conservation to seek a certain court order; specifying a limitation on credit taken by a ceding insurer; authorizing the Office of Insurance Regulation to revoke or suspend an assuming insurer's eligibility under certain conditions; providing construction; deleting an obsolete provision; conforming provisions to changes made by the act; making technical changes; providing an effective date.

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

Section 1. Present subsections (4) through (14) of section 624.610, Florida Statutes, are redesignated as subsections (5) through (15), respectively, a new subsection (4) is added to that section, and subsection (2), paragraphs (c) and (e) of subsection (3), present subsections (4) and (15), paragraph (a) of present subsection (5), and paragraph (b) of present subsection (11) are amended, to read:

624.610 Reinsurance.—

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(2) Credit for reinsurance must be allowed a ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (3) (a), paragraph (3) (b), ~~or~~ paragraph (3) (c), or subsection (4). Credit must be allowed under paragraph (3) (a) or paragraph (3) (b) only for cessions of those kinds or lines of business that the assuming insurer is licensed, authorized, or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed or authorized to transact insurance or reinsurance.

(3)

(c)1. Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in paragraph (6) (b) ~~(5) (b)~~, for the payment of the valid claims of its United States ceding insurers and their assigns and successors in interest. To enable the office to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the office information substantially the same as that required to be reported on the NAIC Annual Statement form by authorized insurers. The assuming insurer shall submit to examination of its books and records by the office and bear the expense of examination.

2.a. Credit for reinsurance must not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

(I) The insurance regulator of the state in which the trust is domiciled; or

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(II) The insurance regulator of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

b. The form of the trust and any trust amendments must be filed with the insurance regulator of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers and their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the insurance regulator.

c. The trust remains in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year, the trustee of the trust shall report to the insurance regulator in writing the balance of the trust and list the trust's investments at the preceding year end, and shall certify that the trust will not expire prior to the following December 31.

3. The following requirements apply to the following categories of assuming insurer:

a. The trust fund for a single assuming insurer consists of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20 million. Not

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less than 50 percent of the funds in the trust covering the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and trustee surplus shall consist of assets of a quality substantially similar to that required in part II of chapter 625. Clean, irrevocable, unconditional, and evergreen letters of credit, issued or confirmed by a qualified United States financial institution, as defined in paragraph (6)(a) ~~(5)(a)~~, effective no later than December 31 of the year for which the filing is made and in the possession of the trust on or before the filing date of its annual statement, may be used to fund the remainder of the trust and trustee surplus.

b.(I) In the case of a group including incorporated and individual unincorporated underwriters:

(A) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, the trust consists of a trustee account in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group;

(B) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this section, the trust consists of a trustee account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and

(C) In addition to these trusts, the group shall maintain in trust a trustee surplus of which \$100 million must be held

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jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.

(II) The incorporated members of the group must not be engaged in any business other than underwriting of a member of the group, and are subject to the same level of regulation and solvency control by the group's domiciliary regulator as the unincorporated members.

(III) Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the insurance regulator an annual certification by the group's domiciliary regulator of the solvency of each underwriter member or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(e) If the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (a), paragraph (b), paragraph (c), or paragraph (d), the office commissioner may allow credit, but only if the assuming insurer holds surplus in excess of \$250 million and has a secure financial strength rating from at least two statistical rating organizations deemed acceptable by the office commissioner as having experience and expertise in rating insurers doing business in Florida, including, but not limited to, Standard & Poor's, Moody's Investors Service, Fitch Ratings, A.M. Best Company, and Demotech. In determining whether credit should be allowed, the office commissioner shall consider the following:

1. The domiciliary regulatory jurisdiction of the assuming insurer.
2. The structure and authority of the domiciliary regulator

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with regard to solvency regulation requirements and the financial surveillance of the reinsurer.

3. The substance of financial and operating standards for reinsurers in the domiciliary jurisdiction.

4. The form and substance of financial reports required to be filed by the reinsurers in the domiciliary jurisdiction or other public financial statements filed in accordance with generally accepted accounting principles.

5. The domiciliary regulator's willingness to cooperate with United States regulators in general and the office in particular.

6. The history of performance by reinsurers in the domiciliary jurisdiction.

7. Any documented evidence of substantial problems with the enforcement of valid United States judgments in the domiciliary jurisdiction.

8. Any other matters deemed relevant by the office commissioner. The office commissioner shall give appropriate consideration to insurer group ratings that may have been issued. The office commissioner may, in lieu of granting full credit under this subsection, reduce the amount required to be held in trust under paragraph (c).

(4) Credit must be allowed when the reinsurance is ceded to an assuming insurer meeting the requirements of this subsection.

(a) The assuming insurer must be licensed in, and have its head office in or be domiciled in, as applicable, a reciprocal jurisdiction. As used in this subsection, the term "reciprocal jurisdiction" means a jurisdiction that is any of the following:

1. A non-United States jurisdiction that is subject to an

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in-force covered agreement with the United States, each within its legal authority; or, in the case of a covered agreement between the United States and the European Union, a jurisdiction that is a member state of the European Union. As used in this paragraph, the term "covered agreement" means an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. ss. 313 and 314, which is currently in effect or in a period of provisional application and which addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

2. A United States jurisdiction that meets the requirements for accreditation under the Financial Regulation Standards and Accreditation Program of the National Association of Insurance Commissioners.

3. A qualified jurisdiction, as determined by the office, which is not otherwise described in subparagraph 1. or subparagraph 2. and which meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by commission rule.

(b) The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount specified by commission rule. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis minimum capital and surplus

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equivalents (net of liabilities) calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts specified by commission rule.

(c) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as specified by commission rule. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer is licensed and has its head office or where it is domiciled, as applicable.

(d) The assuming insurer must agree and provide adequate assurance to the office, in a form specified by the commission, of all of the following:

1. Prompt written notice and explanation to the office if the assuming insurer falls below the minimum requirements set forth in paragraph (b) or paragraph (c), or if any regulatory action is taken against it for serious noncompliance with applicable law.

2. The assuming insurer's written consent to the jurisdiction of the courts of this state and designation of the Chief Financial Officer, pursuant to s. 48.151, or of a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company. This subparagraph does not limit or alter the capacity of parties to a reinsurance agreement to agree to an alternative dispute resolution mechanism, except to the extent that such

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agreements are unenforceable under applicable insolvency or delinquency laws.

3. The assuming insurer's written consent to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor which have been declared enforceable in the jurisdiction where the judgment was obtained.

4. Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement, if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or of a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate.

5. The assuming insurer's confirmation that it is not presently participating in any solvent scheme of arrangement which involves this state's ceding insurers, and must agree to notify the ceding insurer and the office and to provide security in an amount equal to 100 percent of the assuming insurer's liabilities to the ceding insurer if the assuming insurer enters into such a solvent scheme of arrangement. Such security must be consistent with subsection (3) and this subsection.

(e) If requested by the office, the assuming insurer or its legal successor must provide on behalf of itself and any legal predecessors certain documentation to the office pursuant to criteria set forth by commission rule.

(f) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements pursuant to

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criteria set forth by commission rule.

(g) The assuming insurer's supervisory authority must confirm to the office on an annual basis, on a form adopted by the commission, that, as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, the assuming insurer complied with the requirements of paragraphs (b) and (c).

(h) This subsection does not preclude an assuming insurer from providing the office with information on a voluntary basis.

(i) If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer or its representative may seek and, if determined appropriate by the court in which the proceedings are pending, obtain an order requiring that the assuming insurer post security for all outstanding ceded liabilities.

(j) This subsection does not limit or alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in the reinsurance agreement, except as expressly prohibited by this section or other applicable law or rule of the commission.

(k)1. Credit may be taken under this subsection only for reinsurance agreements entered into, amended, or renewed on or after the date on which the assuming insurer has satisfied the requirements to assume reinsurance under this subsection, and only with respect to losses incurred and reserves reported on or after the later of the date on which the assuming insurer has met all eligibility requirements pursuant to this subsection or the effective date of the new reinsurance agreement, amendment, or renewal.

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2. This paragraph does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this subsection, if the reinsurance qualifies for credit under any other applicable provision of this section.

3. This subsection does not authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement, except as permitted by the terms of the agreement.

4. This subsection does not limit or alter the capacity of parties to any reinsurance agreement to renegotiate the agreement.

(1) If the office determines that an assuming insurer no longer meets one or more of the requirements under this subsection, the office may revoke or suspend the eligibility of the assuming insurer for recognition under this subsection.

1. During the suspension of an assuming insurer's eligibility, a reinsurance agreement issued, amended, or renewed after the effective date of the suspension does not qualify for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with this subsection.

2. If an assuming insurer's eligibility is revoked, a credit for reinsurance may not be granted after the effective date of the revocation with respect to any reinsurance agreement entered into by the assuming insurer, including a reinsurance agreement entered into before the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the office and

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consistent with this subsection.

~~(5)(4)~~ An asset allowed or a deduction from liability taken for the reinsurance ceded by an insurer to an assuming insurer not meeting the requirements of subsections (2), ~~and~~ (3), and ~~(4)~~ is allowed in an amount not exceeding the liabilities carried by the ceding insurer. The deduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution, as defined in paragraph ~~(6)(b)~~ ~~(5)(b)~~. This security may be in the form of:

(a) Cash in United States dollars;

(b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets pursuant to part II of chapter 625;

(c) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in paragraph ~~(6)(a)~~ ~~(5)(a)~~, effective no later than December 31 of the year for which the filing is made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement; or

(d) Any other form of security acceptable to the office.

~~(6)(a)~~ ~~(5)(a)~~ For purposes of paragraph ~~(5)(c)~~ ~~(4)(c)~~ regarding letters of credit, a "qualified United States

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financial institution" means an institution that:

1. Is organized or, in the case of a United States office of a foreign banking organization, is licensed under the laws of the United States or any state thereof;

2. Is regulated, supervised, and examined by United States or state authorities having regulatory authority over banks and trust companies; and

3. Has been determined by either the office or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the office.

(12)~~(11)~~

(b) The summary statement must be signed and attested to by either the chief executive officer or the chief financial officer of the reporting insurer. In addition to the summary statement, the office may require the filing of any supporting information relating to the ceding of such risks as it deems necessary. If the summary statement prepared by the ceding insurer discloses that the net effect of a reinsurance treaty or treaties (or series of treaties with one or more affiliated reinsurers entered into for the purpose of avoiding the following threshold amount) at any time results in an increase of more than 25 percent to the insurer's surplus as to policyholders, then the insurer shall certify in writing to the office that the relevant reinsurance treaty or treaties comply with the accounting requirements contained in any rule adopted by the commission under subsection (15) ~~(14)~~. If such

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

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certificate is filed after the summary statement of such reinsurance treaty or treaties, the insurer shall refile the summary statement with the certificate. In any event, the certificate must state that a copy of the certificate was sent to the reinsurer under the reinsurance treaty.

~~(15) Any reinsurer approved pursuant to s. 624.610(3)(a)2., as such provision existed prior to July 1, 2000, which fails to obtain accreditation pursuant to this section prior to December 30, 2003, shall have its approval terminated by operation of law on that date.~~

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

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The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 30, 2020

I respectfully request that **Senate Bill #1376**, relating to Credit for Reinsurance, be placed on the:

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

A handwritten signature in cursive script, appearing to read "Doug Broxson".

Senator Doug Broxson
Florida Senate, District 1

THE FLORIDA SENATE
APPEARANCE RECORD

3/2/2020

Meeting Date

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

1376

Bill Number (if applicable)

Topic Credit for Reinsurance

Amendment Barcode (if applicable)

Name Susanne Murphy

Job Title Deputy Commissioner

Address 200 E. Gaines Street

Phone 413-5005

Street

Tallahassee

FL

32399

City

State

Zip

Email Susanne.Murphy@flor.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Office of Insurance Regulation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 1672

INTRODUCER: Judiciary Committee and Senator Broxson

SUBJECT: Protection of Vulnerable Investors

DATE: March 2, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Johnson	Knudson	BI	Favorable
2. Elsesser	Cibula	JU	Fav/CS
3. Johnson	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1672 provides additional protections for investors who are specified adults (age 65 years or older) or vulnerable adults who may be victims of suspected financial exploitation. A vulnerable adult is a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. In Florida an estimated 20 percent (or 4,129,854) of the population is age 65 or older.¹ Studies show that financial exploitation is the most common form of elder abuse and yet few incidents are reported. Estimates of annual losses to older adults have ranged from \$2.9 billion to \$36.5 billion in the United States.

The bill explicitly requires securities dealers, investment advisers, and associated persons to report knowledge or suspicion of abuse, neglect, or exploitation of vulnerable adults to the Department of Children and Families' central abuse hotline immediately. Current law requires *any person* who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited to report suspected abuse to the central abuse hotline immediately.

¹ Department of Elder Affairs, *Profile of Older Floridians, 2018 Projections* at http://elderaffairs.state.fl.us/doea/pubs/stats/County_2018_projections/Counties/Florida.pdf (last viewed Jan. 23, 2020).

The bill also allows securities dealers and investment advisers to delay disbursements or transaction of funds or securities from an account of a specified adult or a vulnerable adult if the following conditions apply:

- The dealer or investment adviser reasonably believes that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted in connection with the disbursement or transaction.
- No later than 3 business days after the date on which the delay was first placed, the dealer or investment adviser provides written notification to all parties authorized to transact business on the account and any trusted contact on the account, using the contact information provided on the account, unless the dealer or investment adviser believes that any of the parties are involved in the suspected exploitation. The notice must provide the reason for the delay.
- No later than 3 business days after the date on which the delay was first placed, the dealer or investment adviser notifies the Office of Financial Regulation (OFR) of the delay electronically on a form prescribed by commission rule. The notice must identify the dealer or investment adviser that made the delay, the name of the person who authorized the delay, and the date on which the delay was made.
- The dealer or investment adviser immediately initiates an internal review of the facts and circumstances that caused the dealer or investment adviser to reasonably believe that the financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted.

A delay in disbursement or transaction of funds or securities expires in 15 business days, and may be extended for an additional 10 business days. A court of competent jurisdiction may shorten or extend the length of any delay.

The bill grants immunity from any administrative or civil liability that might otherwise arise from a delay in a disbursement or transaction to any dealer, investment adviser, or associated person who in good faith and exercising reasonable care complies with the provisions of s. 517.34, F.S. The bill does not alter the obligation of a dealer, investment adviser, or associated person to comply with instructions from a client absent a reasonable belief of financial exploitation.

The bill does not create new rights or obligations of a dealer, investment adviser, or associated person under other applicable laws or rules. The bill does not limit the right of a dealer, investment adviser, or associated person to refuse to place a delay on a transaction or disbursement under other laws or rules or under a customer agreement.

The bill has indeterminate fiscal impact on the Office of Financial Regulation.

II. Present Situation:

In Florida an estimated 20 percent (or 4,129,854) of the population is age 65 or older.² Since 2013, financial institutions have reported to the federal government over 180,000 suspicious activities targeting older adults, involving a total of more than \$6 billion. These

² Department of Elder Affairs, *Profile of Older Floridians, 2018 Projections* at http://elderaffairs.state.fl.us/doea/pubs/stats/County_2018_projections/Counties/Florida.pdf (last viewed Jan. 23, 2020).

reports indicate that financial exploitation of older adults by scammers, family members, caregivers, and others is widespread in the United States.³ Studies show that financial exploitation is the most common form of elder abuse and yet few incidents are reported.⁴ Estimates of annual losses to older adults have ranged from \$2.9 billion to \$36.5 billion.⁵ Financial exploitation occurs when a person misuses or takes the assets of a vulnerable adult for his or her own personal benefit. This frequently occurs without the knowledge or consent of a senior or disabled adult, depriving him or her of financial resources for personal needs. Assets are taken commonly by deception, false pretenses, coercion, harassment, duress and threats. The following is a list of commonly reported forms of financial exploitation reported to adult protective services in the United States:⁶

- Investment - includes investments made without knowledge or consent and may include high-fee funds (front or back-loaded) or excessive trading activity to generate commissions for financial advisors.
- Theft - involves taking assets without knowledge, consent or authorization and may include taking of cash, valuables, medications, or other personal property.
- Fraud - involves acts of dishonesty by persons entrusted to manage assets and may include falsification of records, forgeries, unauthorized check-writing, and Ponzi-type financial schemes.
- Real Estate - involves unauthorized sales, transfers or changes to property, and may include unauthorized or invalid changes to estate documents.
- Contractor - includes building contractors who receive payment for building repairs, but fail to initiate or complete the project and may include invalid liens by contractors.
- Lottery scams - involves payments to collect unclaimed property or “prizes” from lotteries or sweepstakes.
- Electronic - includes “phishing” e-mail messages to trick persons into unwittingly surrendering bank passwords and may include faxes, wire transfers, telephonic communications.
- Mortgage - includes financial products, which are unaffordable or out-of-compliance with regulatory requirements and may include loans issued against property by unauthorized parties.
- Insurance - involves sales of inappropriate products, such as a 30-year annuity for an elderly person and may include unauthorized trading of life insurance policies.

Social isolation and mental impairment have been identified as two factors that make older adults vulnerable to abuse. Recent studies show that nearly half of those with dementia experienced abuse or neglect. Interpersonal violence also occurs at disproportionately higher rates among adults with disabilities.⁷

³ Consumer Financial Protection Bureau, *Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends* (Feb. 2019) at https://files.consumerfinance.gov/f/documents/cfpb_suspicious-activity-reports-elder-financial-exploitation_report.pdf (last viewed Jan. 18, 2020).

⁴ *Id.*

⁵ *Id.*

⁶ National Adult Protective Services Association website, see <http://www.napsa-now.org/get-informed/what-is-financial-exploitation/> (last viewed Jan. 20, 2020). Definitions of financial exploitation vary from jurisdiction to jurisdiction.

⁷ National Council on Aging, *Elder Abuse Facts*, at <https://www.ncoa.org/public-policy-action/elder-justice/elder-abuse-facts/> (last viewed Jan. 23, 2020).

Mandatory Reporting for Abuse or Exploitation of Vulnerable Adults in Florida

The Adult Protective Services Act (ch. 415, F.S.) defines abuse as any willful act or threatened act by a relative, caregiver, or household member, which harms or is likely to harm a vulnerable adult's physical, mental, or emotional health.⁸ The Adult Protective Services program is located within the Department of Children and Families, and is responsible for investigating allegations of abuse, neglect or exploitation, as provided in the Adult Protective Services Act.⁹ Section 415.1034, F.S., requires any person who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited to report suspected abuse to the central abuse hotline immediately. Any person reporting or that participates in a judicial proceeding is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from any civil or criminal liability that otherwise might be incurred or imposed.¹⁰

For purposes of the Adult Protective Services Act, the following terms apply:

- A “vulnerable adult” is a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.¹¹
- “Exploitation” means a person who:¹²
 - Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or
 - Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult.
- “Exploitation” may include, but is not limited to:¹³
 - Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property;
 - Unauthorized taking of personal assets;
 - Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or
 - Intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance.

⁸ Section 415.102, F.S.

⁹ Sections 415.101-415.113, F.S.

¹⁰ Section 415.1036, F.S.

¹¹ See s. 415.102(28), F.S.

¹² See s. 415.102(8), F.S.

¹³ *Id.*

Once a person reports to the central abuse hotline, the department must initiate a protective investigation within 24 hours.¹⁴ If a caregiver refuses to allow the department to begin a protective investigation or interferes with the investigation, the department can contact the appropriate law enforcement agency for assistance. If, during the course of the investigation, the department has reason to believe that the abuse, neglect, or exploitation is perpetrated by a second party, the appropriate law enforcement agency and state attorney must be notified. The department shall make a preliminary written report to the law enforcement agencies within 5 working days after the oral report and complete the investigation within 60 days.¹⁵

Regulation of Securities

Federal Oversight

The Securities and Exchange Commission (SEC), created by the federal Securities Act of 1934 ('34 Act), has broad authority over all aspects of the securities industry, including the power to register, regulate, and oversee broker-dealers, brokerage firms, transfer agents, and clearing agencies, as well as the nation's securities self-regulatory organizations (SROs).¹⁶ The '34 Act broadly defined "broker" as "any person engaged in the business of effecting transactions in securities for the account of others," which the SEC has interpreted to persons involved in any of the key aspects of a securities transaction, such as solicitation, negotiation, and execution.¹⁷ A "dealer" is "any person engaged in the business of buying and selling securities ... for such person's own account through a broker or otherwise."¹⁸ In addition to being registered with the SEC, broker-dealers must comply with state registration requirements.

The Financial Industry Regulatory Authority (FINRA) is a SRO. Most broker-dealers in the United States are members of FINRA. As members, such broker-dealers are subject to FINRA rules and examination by FINRA. In an effort to address financial exploitation of seniors, FINRA implemented rules to provide a safe harbor for a FINRA member to place temporary holds on disbursements of funds or securities held in accounts of specified adults where there is a reasonable belief of financial exploitation of these customers is occurring, has been attempted, or will be attempted.¹⁹

The FINRA Rule 2165²⁰ defines a specified adult as:

¹⁴ Section 415.104, F.S.

¹⁵ *Id.*

¹⁶ 15 U.S.C. ss. 78c(4) and 78o; U.S. SECURITIES AND EXCHANGE COMMISSION, *Guide to Broker-Dealer Registration*, <http://www.sec.gov/divisions/marketreg/bdguide.htm#II> (last visited Feb. 19, 2018).

¹⁷ *Id.*

¹⁸ 15 U.S.C. s. 78c(5). Certain entities in the securities industry are referred to as "broker-dealers" because the institution is a "broker" when executing trades on behalf of a customer, but is a "dealer" when executing trades for its own account.

¹⁹ See Supplementary Material, Rule 2165.01, *Applicability of Rule*. This rule provides members and their associated persons with a safe harbor from FINRA Rules 2010, 2150, and 11870 when members exercise discretion in placing temporary holds on disbursements of funds or securities from the accounts of specified adults consistent with the requirements of this rule. This rule does not require members to place temporary holds on disbursements of funds or securities from the accounts of specified adults. See also Rule 4512, *Customer Account Information*.

²⁰ FINRA, Financial Exploitation of Specified Adults, Rule 2165, at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=12784 and FINRA, Frequently Asked Questions Regarding FINRA Rules Relating to Financial Exploitation of Seniors, available at

- A natural person age 65 and older; or
- A natural person age 18 and older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests.²¹

Further, the rule defines the term, “financial exploitation” to mean:

- The wrongful or unauthorized taking, withholding, appropriation, or use of a specified adult's funds or securities; or
- Any act or omission by a person, including through the use of a power of attorney, guardianship, or any other authority regarding a specified adult, to:
 - Obtain control, through deception, intimidation or undue influence, over the Specified Adult's money, assets or property; or
 - Convert the specified adult's money, assets or property.²²

The rules provide that a FINRA member has the ability to contact a customer's designated trusted contact person and, when appropriate, place a temporary hold on a disbursement of funds or securities from a customer's account.²³ The temporary hold expires after 15 business days, but the FINRA member may extend the hold by up to an additional 10 business days if the member's internal review of facts and circumstances supports its reasonable belief that the financial exploitation has occurred, is occurring, has been attempted, or will be attempted.²⁴ Rule 2165 became effective February 5, 2018. However, the rule does not apply to broker-dealers and investment advisers who are not members of FINRA.

Florida Oversight

In addition to federal securities laws, “Blue Sky Laws” are state laws that protect the investing public through registration requirements for both broker-dealers and securities offerings, merit review of offerings, and various investor remedies for fraudulent sales practices and activities.²⁵

In Florida, the Office of Financial Regulation (OFR)²⁶ administers the Securities and Investor Protection Act, ch. 517, F.S., (act). The OFR regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms in accordance with the act. There are 2,577 dealers, 6,307 investment advisers, 10,479 branches, and 325,939 associated persons (or stockbrokers) registered in Florida.²⁷

<http://www.finra.org/industry/frequently-asked-questions-regarding-finra-rules-relating-financial-exploitation-seniors> (last viewed Jan. 19, 2020).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ U.S. Securities and Exchange Commission, *Blue Sky Laws*, <http://www.sec.gov/answers/bluesky.htm> (last visited Feb. 19, 2018).

²⁶ The OFR reports to the Financial Services Commission, which is comprised of the Governor, Attorney General, Chief Financial Officer, and the Commissioner of Agriculture and Consumer Services. Section 20.121, F.S.

²⁷ Office of Financial Regulation, *Fast Facts* (2018 Edition) at <https://www.flofr.com/sitePages/documents/FastFacts.pdf> (last viewed Jan. 20, 2020).

The act requires the following individuals or businesses to be registered with the OFR under s. 517.12, F.S., in order to sell or offer to sell any securities in or from offices in this state, or to sell securities to persons in this state from offices outside this state:²⁸

- “Dealer,” includes any person, other than an associated person registered under ch. 517, F.S., who engages, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person. The term, “Dealer,” also includes any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of her or his time, directly or indirectly, in the business of offering or selling securities, which are issued or are proposed to be issued by the issuer.²⁹
- “Investment adviser,” includes any person who receives compensation, directly or indirectly, and engages for all or part of her or his time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services.³⁰ The term, does not include a “federal covered adviser.”³¹
- “Associated persons,” with respect to a federal covered adviser, includes any person who is an investment adviser representative and who has a place of business in this state, and with respect to a dealer or investment adviser, includes any of the following:
 - Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;
 - Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial; or
 - Any natural person, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser as defined in s. 517.021, F.S.³²

North American Securities Administrators Association

The North American Securities Administrators Association (NASAA) is an international organization devoted to investor protection. Its membership consists of securities administrators. The NASAA adopted the Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation (Model Act) on January 22, 2016.³³ The Model Act focuses on the reporting and prevention of senior financial exploitation. The Model Act contains the following:

²⁸ Section 517.12(1), F.S.

²⁹ Section 517.021(6)(a), F.S. The term “dealer,” as defined under Florida law, encompasses the definitions of “broker” and “dealer” under federal law. See also s. 517.12(22)(a)1., F.S.

³⁰ Section 517.021(14)(a), F.S.

³¹ Section 517.021(9) and (14)(b)9., F.S. A federal covered adviser must be registered under federal law and must provide a notice filing to the OFR. Sections 517.021 and 517.1201, F.S.

³² Section 517.021(2), F.S.

³³ NASAA Adopt Model Act to Protect Seniors and Vulnerable Adults at <http://serveourseniors.org/about/policy-makers/nasaa-model-act/> (last viewed Jan. 20, 2020).

- Mandatory reporting to the state securities regulator and state adult protective services agency when a qualified individual³⁴ has a reasonable belief that financial exploitation of an eligible adult has been attempted or occurred of broker-dealers and investment advisers;
- Notification to third-parties of potential financial exploitation with advance consent of the investor;
- Authority to temporarily delay disbursement of funds;
- Immunity from civil and administrative liability for a qualified individual, broker-dealer or investment adviser that, in good faith and exercising reasonable care, complies with the reporting, notification, and delay disbursement provisions; and
- Mandatory sharing of records related to exploitation with law enforcement and state adult protective services agencies.

As of January 1, 2019, 25 states have adopted legislation or regulations consistent with the Model Act.³⁵

III. Effect of Proposed Changes:

Mandatory Reporting of Suspected Financial Exploitation

Section 1 amends s. 415.1034, F.S., to specify that a dealer, an investment adviser, or an associated person who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited to report such information or suspicion to Adult Protective Services within the Department of Children and Families through the central abuse hotline. Currently, s. 415.1034, F.S., requires *any person* who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited to report suspected abuse to the central abuse hotline immediately.

Conditions for Delaying a Disbursement or Transaction of Funds or Securities

Section 2 creates s. 517.34, F.S., to allow a dealer or investment adviser to delay a disbursement or transaction of funds or securities from an account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner.

The bill defines the following terms:

- A “specified adult” is an individual who is age 65 or older or who meets the definition of “vulnerable adult” pursuant to s. 415.1034, F.S., the Adult Protective Services Act.
- “Financial exploitation” means the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of a specified adult; or any act or omission by a person, including through the use of a power of attorney, guardianship, or conservatorship of a specified adult, to:

³⁴ A “qualified individual” means any agent, investment adviser representative or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser. See Section 2 of the Model Act.

³⁵ NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation Update Center at <http://serveourseniors.org/about/policy-makers/nasaa-model-act/update/> (last viewed Jan. 22, 2020).

- Obtain control over the specified adult's money, assets, or property through deception, intimidation, or undue influence to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property; or
- Convert the specified adult's money, assets, or property to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property.
- "Trusted contact" means a natural person 18 years of age or older who the account owner has expressly identified and who is recorded in the books and records of a dealer or an investment adviser as the person who may be contacted about the account.

An investment adviser or dealer may delay a disbursement or transaction if the following conditions are met:

- The dealer or investment adviser reasonably believes that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted in connection with the disbursement or transaction.
- No later than 3 business days after the date on which the delay was first placed, the dealer or investment adviser notifies in writing all parties authorized to transact business on the account and any trusted contact on the account, using the contact information provided on the account, unless the dealer or investment adviser believes that any of the parties are involved in the suspected exploitation. The notice, which may be provided electronically, must provide the reason for the delay.
- No later than 3 business days after the date on which the delay was first placed, the dealer or investment adviser notifies the OFR of the delay electronically on a form prescribed by commission rule. The notice must identify the dealer or investment adviser that made the delay, the name of the person who authorized the delay, and the date on which the delay was made.
- The dealer or investment adviser immediately initiates an internal review of the facts and circumstances that caused the dealer or investment adviser to reasonably believe that the financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted.

Such a delay in a disbursement or transaction expires within 15 business days after the date on which the delay was first placed. However, the delay may be extended for up to 10 additional business days if the dealer's or investment adviser's review of the available facts or circumstances continues to support such dealer's or investment adviser's reasonable belief that financial exploitation of the specified adult has occurred. A dealer or broker must notify the OFR of any extension of a delay. A court of competent jurisdiction may shorten or extend the length of any delay.

Legislative Findings and Intent

The Legislature finds that many persons in this state, because of age or disability, are at increased risk of financial exploitation and loss of their assets, funds, investments, and investment accounts. The Legislature further finds that senior investors in this state are at a statistically higher risk of being targeted for financial exploitation, regardless of diminished capacity or other disability, because of their accumulation of substantial assets and wealth compared to younger age groups. In enacting this section, the Legislature recognizes the freedom of specified adults to manage their assets, make investment choices, and spend their funds, and

intends that such rights may not be infringed absent a reasonable belief of financial exploitation as provided in this section.

The Legislature therefore intends to provide for the prevention of financial exploitation of such persons. The Legislature intends to encourage the constructive involvement of securities dealers, investment advisers, and associated persons who take action based upon the reasonable belief that specified adults with investment accounts have been or are the subject of financial exploitation, and to provide securities dealers, investment advisers, and associated persons immunity from liability for taking actions as authorized by the bill. The Legislature intends to balance the rights of specified adults to direct and control their assets, funds, and investments and exercise their constitutional rights consistent with due process with the need to provide securities dealers, investment advisers, and associated persons the ability to place narrow, time-limited restrictions on these rights in an effort to decrease specified adults' risk of loss due to abuse, neglect, or financial exploitation.

Immunity

The bill grants immunity from any administrative or civil liability that might otherwise arise from a delay in a disbursement or transaction to any dealer, investment adviser, or associated person who in good faith and exercising reasonable care complies with the provisions of s. 517.34, F.S. This provision does not supersede or diminish any immunity granted under ch. 415, F.S.

Obligations and Rights of a Dealer, Investment Adviser, or an Associated Person

The bill does not alter the obligation of a dealer, an investment adviser, or an associated person to comply with instructions from a client absent a reasonable belief of financial exploitation. The bill does not create new rights or obligations of a dealer, investment adviser, or associated person under other applicable laws or rules. The bill does not limit the right of a dealer, investment adviser, or associated person to refuse to place a delay on a transaction or disbursement under other laws or rules or under a customer agreement.

Training, Policies, and Procedures

Prior to placing a delay on a disbursement or transaction, a dealer or investment adviser must comply with the following:

- Develop training policies or programs reasonably designed to educate associated persons on issues pertaining to financial exploitation;
- Conduct training for all associated persons at least annually and maintain a written record of all trainings conducted; and
- Develop, maintain, and enforce written procedures regarding the manner in which suspected financial exploitation is reviewed internally, including, if applicable, the manner in which suspected financial exploitation is required to be reported to supervisory personnel.

Effective Date

Section 3 provides the bill takes effect July 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:

Indeterminate. However, the bill will provide additional tools for dealers, investment advisers, and associated persons to protect individuals 65 years of age or older and vulnerable adults from alleged financial exploitation in a more effective and expedient manner.

C. Government Sector Impact:

The fiscal impact to the OFR is indeterminate and depends on the number of reports of delays or extensions received from OFR licensees. The OIR will review these delays to determine whether they are proper and whether the delays comply with the requirements of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 415.1034 of the Florida Statutes.

This bill creates section 517.34 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 Judiciary on February 11, 2020:

The committee substitute differs from the underlying bill by:

- Specifying the form and necessary information required for a notice filed when a dealer delays a transaction due to a suspected exploitation.

- B. **Amendments:**

None.

By the Committee on Judiciary; and Senators Broxson and Baxley

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1 A bill to be entitled
 2 An act relating to the protection of vulnerable
 3 investors; amending s. 415.1034, F.S.; requiring
 4 securities dealers, investment advisers, and
 5 associated persons to immediately report knowledge or
 6 suspicion of abuse, neglect, or exploitation of
 7 vulnerable adults to the Department of Children and
 8 Families' central abuse hotline; creating s. 517.34,
 9 F.S.; defining terms; providing legislative findings
 10 and intent; authorizing dealers and investment
 11 advisers to delay disbursements or transactions of
 12 funds or securities from certain accounts associated
 13 with specified adults if certain conditions are met;
 14 specifying the expiration of a delay; authorizing
 15 dealers and investment advisers to extend delays under
 16 certain circumstances; providing requirements for
 17 notifying the Office of Financial Regulation;
 18 specifying required information in the form for such
 19 notice; authorizing a court of competent jurisdiction
 20 to shorten or extend a delay; requiring dealers and
 21 investment advisers to make certain records available
 22 to the office upon request; providing for
 23 administrative and civil immunity for dealers,
 24 investment advisers, and associated persons;
 25 specifying training and written procedures
 26 requirements for dealers and investment advisers
 27 before they may place a delay; providing for
 28 rulemaking by the Financial Services Commission;
 29 providing construction; providing an effective date.

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30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Paragraph (a) of subsection (1) of section
 34 415.1034, Florida Statutes, is amended to read:
 35 415.1034 Mandatory reporting of abuse, neglect, or
 36 exploitation of vulnerable adults; mandatory reports of death.—
 37 (1) MANDATORY REPORTING.—
 38 (a) Any person, including, but not limited to, any:
 39 1. Physician, osteopathic physician, medical examiner,
 40 chiropractic physician, nurse, paramedic, emergency medical
 41 technician, or hospital personnel engaged in the admission,
 42 examination, care, or treatment of vulnerable adults;
 43 2. Health professional or mental health professional other
 44 than one listed in subparagraph 1.;
 45 3. Practitioner who relies solely on spiritual means for
 46 healing;
 47 4. Nursing home staff; assisted living facility staff;
 48 adult day care center staff; adult family-care home staff;
 49 social worker; or other professional adult care, residential, or
 50 institutional staff;
 51 5. State, county, or municipal criminal justice employee or
 52 law enforcement officer;
 53 6. Employee of the Department of Business and Professional
 54 Regulation conducting inspections of public lodging
 55 establishments under s. 509.032;
 56 7. Florida advocacy council or Disability Rights Florida
 57 member or a representative of the State Long-Term Care Ombudsman
 58 Program; ~~or~~

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59 8. Bank, savings and loan, or credit union officer,
60 trustee, or employee; or

61 9. Dealer, investment adviser, or associated person under
62 chapter 517,

63
64 who knows, or has reasonable cause to suspect, that a vulnerable
65 adult has been or is being abused, neglected, or exploited must
66 ~~shall~~ immediately report such knowledge or suspicion to the
67 central abuse hotline.

68 Section 2. Section 517.34, Florida Statutes, is created to
69 read:

70 517.34 Protection of specified adults.—

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

72 (a) "Financial exploitation" means the wrongful or
73 unauthorized taking, withholding, appropriation, or use of
74 money, assets, or property of a specified adult; or any act or
75 omission by a person, including through the use of a power of
76 attorney, guardianship, or conservatorship of a specified adult,
77 to:

78 1. Obtain control over the specified adult's money, assets,
79 or property through deception, intimidation, or undue influence
80 to deprive him or her of the ownership, use, benefit, or
81 possession of the money, assets, or property; or

82 2. Convert the specified adult's money, assets, or property
83 to deprive him or her of the ownership, use, benefit, or
84 possession of the money, assets, or property.

85 (b) "Specified adult" means a natural person 65 years of
86 age or older, or a vulnerable adult as defined in s. 415.102.

87 (c) "Trusted contact" means a natural person 18 years of

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88 age or older who the account owner has expressly identified and
89 who is recorded in a dealer's or investment adviser's books and
90 records as the person who may be contacted about the account.

91 (2) The Legislature finds that many persons in this state,
92 because of age or disability, are at increased risk of financial
93 exploitation and loss of their assets, funds, investments, and
94 investment accounts. The Legislature further finds that senior
95 investors in this state are at a statistically higher risk of
96 being targeted for financial exploitation, regardless of
97 diminished capacity or other disability, because of their
98 accumulation of substantial assets and wealth compared to
99 younger age groups. In enacting this section, the Legislature
100 recognizes the freedom of specified adults to manage their
101 assets, make investment choices, and spend their funds, and
102 intends that such rights may not be infringed absent a
103 reasonable belief of financial exploitation as provided in this
104 section. The Legislature therefore intends to provide for the
105 prevention of financial exploitation of such persons. The
106 Legislature intends to encourage the constructive involvement of
107 securities dealers, investment advisers, and associated persons
108 who take action based upon the reasonable belief that specified
109 adults with investment accounts have been or are the subject of
110 financial exploitation, and to provide securities dealers,
111 investment advisers, and associated persons immunity from
112 liability for taking actions as authorized herein. The
113 Legislature intends to balance the rights of specified adults to
114 direct and control their assets, funds, and investments and
115 exercise their constitutional rights consistent with due process
116 with the need to provide securities dealers, investment

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advisers, and associated persons the ability to place narrow, time-limited restrictions on these rights in an effort to decrease specified adults' risk of loss due to abuse, neglect, or financial exploitation.

(3) A dealer or investment adviser may delay a disbursement or transaction of funds or securities from an account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner if all of the following apply:

(a) The dealer or investment adviser reasonably believes that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted in connection with the disbursement or transaction.

(b) Not later than 3 business days after the date on which the delay was first placed, the dealer or investment adviser notifies in writing all parties authorized to transact business on the account and any trusted contact on the account, using the contact information provided for the account, with the exception of any party the dealer or investment adviser reasonably believes has engaged in, is engaging in, has attempted to engage in, or will attempt to engage in the suspected financial exploitation of the specified adult. The notice, which may be provided electronically, must provide the reason for the delay.

(c) Not later than 3 business days after the date on which the delay was first placed, the dealer or investment adviser notifies the office of the delay electronically on a form prescribed by commission rule. The form must be consistent with the purposes of this section and may include only the following information:

1. The date the notification is submitted to the office.

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2. The date on which the delay was first placed.

3. The following information about the specified adult:

a. Gender.

b. Age.

c. Zip code of residence address.

4. The following information about the dealer or investment adviser who placed the delay:

a. Name.

b. Title.

c. Firm name.

d. Business address.

5. A section with the following questions for which the only allowable responses are "Yes" or "No":

a. Is financial exploitation of a specified adult suspected in connection with a transaction or disbursement?

b. Are funds currently at risk of being lost?

The form must contain substantially the following statement in conspicuous type: "The office may take disciplinary action against any person making a knowing and willful misrepresentation on this form."

(d) The dealer or investment adviser immediately initiates an internal review of the facts and circumstances that caused the dealer or investment adviser to reasonably believe that the financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted.

(4) A delay on a disbursement or transaction under subsection (3) expires 15 business days after the date on which the delay was first placed. However, the dealer or investment

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adviser may extend the delay for up to 10 additional business days if the dealer's or investment adviser's review of the available facts and circumstances continues to support such dealer's or investment adviser's reasonable belief that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted. A dealer or investment adviser that extends a delay shall notify the office on a form prescribed by commission rule not later than 3 business days after the date on which the extension was applied. The notice must identify the dealer or investment adviser that extended the delay and the date on which the delay was originally made. The length of the delay may be shortened or extended at any time by a court of competent jurisdiction. This subsection does not prevent a dealer or investment adviser from terminating a delay after communication with the parties authorized to transact business on the account and any trusted contact on the account.

(5) A dealer or investment adviser must make available to the office, upon request, all records relating to a delay placed by the dealer or investment adviser pursuant to this section, as prescribed by commission rule.

(6) A dealer, an investment adviser, or an associated person who in good faith and exercising reasonable care complies with this section is immune from any administrative or civil liability that might otherwise arise from such delay in a disbursement or transaction in accordance with this section. This subsection does not supersede or diminish any immunity granted under chapter 415.

(7) Before placing a delay on a disbursement or transaction

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pursuant to this section, a dealer or an investment adviser shall do all of the following:

(a) Develop training policies or programs reasonably designed to educate associated persons on issues pertaining to financial exploitation.

(b) Conduct training for all associated persons at least annually and maintain a written record of all trainings conducted.

(c) Develop, maintain, and enforce written procedures regarding the manner in which suspected financial exploitation is reviewed internally, including, if applicable, the manner in which suspected financial exploitation is required to be reported to supervisory personnel.

(8) Absent a reasonable belief of financial exploitation as provided in this section, this section does not alter a dealer's, an investment adviser's, or an associated person's obligation to comply with instructions from a client to buy or sell securities, disburse funds or transfer securities from an account, close an account, or transfer an account to another dealer, investment adviser, or associated person.

(9) This section does not create new rights for or impose new obligations on a dealer, an investment adviser, or an associated person under other applicable law. This section does not limit the right of a dealer, an investment adviser, or an associated person to otherwise refuse or place a delay on a disbursement or transaction under other applicable law or under an applicable customer agreement.

Section 3. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 12, 2020

I respectfully request that **Senate Bill #1672**, relating to Protection of Vulnerable Investors, be placed on the:

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

A handwritten signature in black ink, appearing to read "Doug Broxson".

Senator Doug Broxson
Florida Senate, District 1

THE FLORIDA SENATE
APPEARANCE RECORD

03/02/2020

Meeting Date

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

1672

Bill Number (if applicable)

Topic Protection of Vulnerable Investors

Amendment Barcode (if applicable)

Name Warren Husband

Job Title _____

Address PO Box 10909

Phone (850) 205-9000

Street

Tallahassee

FL

32302

Email _____

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Securities Industry & Financial Markets 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)

3/2/2020

Meeting Date

1672

Bill Number (if applicable)

Topic vulnerable Investor

Amendment Barcode (if applicable)

Name Abigail Vail

Job Title Chief of Staff

Address 101 E. Gaines St.
Street

Phone 850-410-9601

Tallahassee FL 32399
City State Zip

Email abby.vail@flofr.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Office of Financial Regulation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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/SR 1572

INTRODUCER: Infrastructure and Security Committee and Senator Stewart

SUBJECT: Climate Change

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Price	Miller	IS	Fav/CS
2. Schreiber	Rogers	EN	Favorable
3. Price	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SR 1572 expresses the Legislature's support for the adoption of policies that will prepare this state for the environmental and economic impact of climate change, sea-level rise, and flooding, and recognizes the important role that resiliency and infrastructure will play in fortifying this state.

The resolution states that the Legislature intends to adopt:

- Policies focusing on resiliency efforts and appropriate infrastructure which prepare Florida for the environmental and economic impact of climate change, sea-level rise, and flooding; and
- Policies relating to clean and renewable energy, including the provision of adequate electric vehicle charging stations.

Legislative resolutions have no force of law and are not subject to the approval or veto powers of the Governor.

II. Present Situation:

Sea-Level Rise and Coastal Flooding

With 1,350 miles of coastline and relatively low elevations, Florida is particularly vulnerable to coastal flooding.¹ There are three primary ways that climate change² influences coastal flooding: sea-level rise, storm surge intensity, and rainfall intensity and frequency.³

Sea-level rise is an observed increase in the average local sea level or global sea level trend.⁴ The two major causes of global sea-level rise are thermal expansion caused by the warming of the oceans (water expands as it warms) and the loss of land-based ice (ice sheets and glaciers) due to melting.⁵ Since 1880, the average global sea level has risen about eight to nine inches, and the rate of global sea-level rise has been accelerating.⁶ The National Oceanic and Atmospheric Administration (NOAA) utilizes tide gauges to measure changes in sea level, and provides data on local sea-level rise trends.⁷ Analysis of this data shows some low-lying areas in the southeastern U.S. experience higher local rates of sea-level rise than the global average.⁸

Florida's coastal communities are experiencing high-tide flooding events, sometimes referred to as "sunny day" or "nuisance" flooding, with increasing frequency because sea-level rise increases the height of high tides.⁹ The areas of the state most at risk from sea-level rise include the 35 coastal counties that contain approximately 76 percent of Florida's population.¹⁰ In the

¹ Florida Division of Emergency Management, *Enhanced State Hazard Mitigation Plan, State of Florida*, 107-108, 162 (2018) [hereinafter *SHMP*], available at https://www.floridadisaster.org/globalassets/dem/mitigation/mitigate-fl--shmp/shmp-2018-full_final_approved.6.11.2018.pdf (last visited January 23, 2020). This measurement of Florida's coastline increases to over 8,000 miles when considering the intricacies of Florida's coastline, including bays, inlets, and waterways.

² *Id.* at 204-205, 231, 243, 393. In addition to sea-level rise, storms, and flooding, topics related to the effects of climate change in Florida include, but are not limited to: extreme heat, drought, wildfires, and changing ecosystems.

³ *Id.* at 107.

⁴ DEP, *Florida Adaptation Planning Guidebook*, Glossary (2018) [hereinafter *DEP Guidebook*], available at <https://floridadep.gov/sites/default/files/AdaptationPlanningGuidebook.pdf>; see NASA, Facts, *Vital Signs: Sea Level*, <https://climate.nasa.gov/vital-signs/sea-level/> (last visited January 23, 2020).

⁵ *DEP Guidebook*, at Glossary; NOAA, *Climate Change: Ocean Heat Content*, <https://www.climate.gov/news-features/understanding-climate/climate-change-ocean-heat-content> (last visited January 23, 2020). More than 90 percent of the warming that has happened on Earth over the past 50 years has occurred in the ocean; IPCC, *The Ocean and Cryosphere in a Changing Climate*, SPM-8, SPM-10, SPM-19, SPM -21, SPM-23, 1-14, 4-3, 4-4, 4-14 (Sept. 2019) [hereinafter *IPCC Ocean and Cryosphere*], available at https://report.ipcc.ch/srocc/pdf/SROCC_FinalDraft_FullReport.pdf (last visited January 23, 2020). Uncertainty regarding projected sea-level rise by 2100 is mainly determined by ice sheets, especially in Antarctica and Greenland, which are losing ice at increasing rates. The sum of glacier and ice sheet contributions is now the dominant source of global mean sea-level rise.

⁶ U.S. Global Change Research Program, *Fourth National Climate Assessment*, 757 (2018)[hereinafter *NCA4*], available at https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf (last visited January 23, 2020); *IPCC Ocean and Cryosphere*, at SPM-10, 4-3.

⁷ NOAA, *What is a Tide Gauge?*, <https://oceanservice.noaa.gov/facts/tide-gauge.html> (last visited January 23, 2020); NOAA, *Tides and Currents, Sea Level Trends*, <https://tidesandcurrents.noaa.gov/sltrends/> (last visited January 23, 2020); see *DEP Guidebook*, at 8, 16.

⁸ *NCA4*, at 757.

⁹ *SHMP*, at 108, 101, available at https://www.floridadisaster.org/globalassets/dem/mitigation/mitigate-fl--shmp/shmp-2018-full_final_approved.6.11.2018.pdf; NOAA, *High-Tide Flooding*, <https://toolkit.climate.gov/topics/coastal-flood-risk/shallow-coastal-flooding-nuisance-flooding> (last visited January 23, 2020).

¹⁰ *DEP Guidebook*, at III, available at <https://floridadep.gov/sites/default/files/AdaptationPlanningGuidebook.pdf> (last visited January 23, 2020).

United States, sea-level rise and flooding threaten an estimated \$1 trillion in coastal real estate value, and analyses estimate that there is a chance Florida could lose more than \$300 billion in property value by 2100.¹¹ Sea-level rise affects the salinity of both surface water and groundwater through saltwater intrusion, posing a risk particularly for shallow coastal aquifers.¹² Sea-level rise also pushes saltwater further upstream in tidal rivers and streams, raises coastal groundwater tables, and pushes saltwater further inland at the margins of coastal wetlands.¹³

Storm surge intensity and the intensity and precipitation rates of hurricanes are generally projected to increase,¹⁴ and studies suggest the overall extent of destruction from hurricanes is also rising.¹⁵ Higher sea levels will cause storm surges to travel farther inland and impact more properties than in the past.¹⁶ Stronger storms and sea-level rise are likely to lead to increased coastal erosion.¹⁷

Increases in evaporation rates and water vapor in the atmosphere increase rainfall intensity and extreme precipitation events, and the sudden onset of water can overwhelm stormwater infrastructure.¹⁸ As sea levels and groundwater levels rise, low areas drain more slowly, and the combined effects of rising sea levels and extreme rainfall events are increasing the frequency and magnitude of coastal and lowland flood events.¹⁹

¹¹ NCA4, at 324, 758; Zillow, *Climate Change and Housing: Will a Rising Tide Sink All Homes?* (2017), <https://www.zillow.com/research/climate-change-underwater-homes-12890/> (last visited January 23, 2020) (stating that by 2100 \$883 billion in U.S. homes are at risk of being underwater with the total value of potentially underwater properties in Florida at \$413 billion); Union of Concerned Scientists, *New Study Finds 1 Million Florida Homes Worth \$351 Billion Will Be At Risk From Tidal Flooding* (2018), <https://www.ucsusa.org/about/news/1-million-florida-homes-risk-tidal-flooding> (last visited January 23, 2020).

¹² SHMP, at 106, available at https://www.floridadisaster.org/globalassets/dem/mitigation/mitigate-fl--shmp/shmp-2018-full_final_approved.6.11.2018.pdf (last visited January 23, 2020).

¹³ *Id.* at 108.

¹⁴ *Id.* at 106, 141; IPCC Ocean and Cryosphere, at 6-21, available at https://report.ipcc.ch/srocc/pdf/SROCC_FinalDraft_FullReport.pdf; NCA4, at 95, 97, 116-117, 1482, available at https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf (last visited January 23, 2020).

¹⁵ See Aslak Grinsted et. al., *Normalized US Hurricane Damage Estimates Using Area of Total Destruction, 1900-2018*, Proceedings of the National Academy of Sciences Nov. 2019, 116 (48) 23942-23946, available at <https://www.pnas.org/content/116/48/23942> (last visited January 23, 2020).

¹⁶ NCA4, at 758; SHMP, at 107; see also NOAA, *Florida Marine Debris Emergency Response Guide: Comprehensive Guidance Document* (Jan. 2019), available at https://marinedebris.noaa.gov/sites/default/files/publications-files/FL_Marine_Debris_Emergency_Response_Guide_2019.pdf (last visited January 23, 2020).

¹⁷ NCA4, 331, 340-341, 833, 1054, 1495; SHMP, at 108, 221; IPCC, *Climate Change and Land*, 4-44-4-45 (Aug. 2019), available at <https://www.ipcc.ch/site/assets/uploads/2019/08/Fullreport-1.pdf> (last visited January 23, 2020).

¹⁸ SHMP, at 99, 106, 116, 141, 181; NCA4, at 88, 762-763; see Florida Senate, Committee on Infrastructure and Security, *Meeting Packet for October 14, 2019*, 16-20, 23, available at http://www.flsenate.gov/Committees/Show/IS/MeetingPacket/4649/8266_MeetingPacket_4649_2.pdf (last visited January 23, 2020).

¹⁹ SHMP, at 106; NCA4, at 763.

Sea-Level Rise Projections

Below is a table of projections for future sea-level rise, globally and in regions of Florida:

Sea-Level Rise Projections				
Source	Scale	Years	Low (feet)	High (feet)
Intergovernmental Panel on Climate Change ²⁰	Global	2046-2065	0.79	1.05
		2081-2100	1.28	2.32
		2100	1.41	2.76
U.S. Global Change Research Program ²¹	Global	2030	0.3	0.6
		2050	0.5	1.2
		2100	1	4.3
Southeast Florida Regional Climate Change Compact Sea Level Rise Work Group ²² (SFRCCC)	Southeast Florida	2030	0.5	0.83
		2060	1.17	2.83
		2100	2.58	6.75
Tampa Bay Climate Science Advisory Panel ²³	Tampa Bay Region	2050	1	2.5
		2100	2	8.5

As seen in these projections, there are considerable variations in estimates of future sea-level rise. In addition, certain research indicates that current sea-level rise projections significantly underestimate future coastal exposure to impacts associated with rising sea levels.²⁴ Although some local governments and state agencies have adopted sea-level rise estimates for planning purposes, the State of Florida has no officially-established estimates of projected sea-level rise for use by state agencies in developing, planning, and implementing their respective duties and responsibilities.²⁵ Senate Bill 7016 (2020) relating to the Statewide Office of Resiliency, would

²⁰ IPCC Ocean and Cryosphere, at SPM-7, 4-4, CCB9-21, AI-23. These projected ranges are based on climate models using “representative concentration pathways (RCPs),” which are scenarios of future emissions and concentrations of the full suite of greenhouse gases and aerosols and chemically active gases, as well as land use/land cover.

²¹ NCA4, at 406, 758, available at https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf (last visited January 23, 2020).

²² Southeast Florida Regional Climate Change Compact Sea Level Rise Work Group, *Unified Sea Level Rise Projection, Southeast Florida*, 4-5 (2015), available at <https://southeastfloridaclimatecompact.org/wp-content/uploads/2015/10/2015-Compact-Unified-Sea-Level-Rise-Projection.pdf> (last visited January 23, 2020). These projections are compared to the mean sea level in 1992; see SFRCCC, *Unified Sea Level Rise Projections*, <https://southeastfloridaclimatecompact.org/resources/unified-sea-level-rise-projections/> (last visited January 23, 2020). The SFRCCC will soon release updated projections.

²³ Tampa Bay Climate Science Advisory Panel, *Recommended Projections of Sea Level Rise in the Tampa Bay Region*, 1, 7 (Apr. 2019), available at http://www.tbrpc.org/wp-content/uploads/2019/05/CSAP_SLR_Recommendation_2019.pdf (last visited January 23, 2020).

²⁴ See Scott A. Kulp & Benjamin H. Strauss, *New Elevation Data Triple Estimates of Global Vulnerability to Sea-Level Rise and Coastal Flooding*, *Nature Communications* 10, 4844 (Oct. 2019), available at <https://www.nature.com/articles/s41467-019-12808-z.pdf> (last visited January 23, 2020).

²⁵ Senate Committee on Infrastructure and Security, *Bill Analysis and Fiscal Impact Statement for Senate Bill 7016* (January 22, 2020), available at <http://www.flsenate.gov/Session/Bill/2020/7016/Analyses/2020s07016.pre.ap.PDF> (last visited January 24, 2020).

create a task force process to develop consensus baseline projections of expected coastal sea-level rise and flooding impacts.²⁶

State, Regional, and Local Programs

Many state, regional, and local programs and policies are in place that address issues relating to sea-level rise and coastal flooding. Examples include the following:

- The Department of Environmental Protection's (DEP) Office of Resilience and Coastal Protection implements numerous programs related to sea-level rise and coastal issues, including the Coastal Construction Control Line Program and the Beach Management Funding Assistance Program.²⁷
- The DEP's Florida Resilient Coastlines Program helps prepare coastal communities and habitats for the effects of climate change, especially sea-level rise, by offering technical assistance and funding to communities dealing with coastal flooding, erosion, and ecosystem changes.²⁸
- Other state agencies are working on coastal resilience in Florida, including the following examples. The Department of Transportation plans for resilience to prepare Florida's transportation system for potential hazards.²⁹ The Department of Economic Opportunity assists communities with adaptation planning and works with the DEP on the Community Resiliency Initiative.³⁰ The Fish and Wildlife Conservation Commission is Florida's lead agency on addressing the impacts of climate change on fish and wildlife, including adaptation strategies for Florida's coastal ecosystems.³¹ The Department of Agriculture and Consumer Services develops Florida's energy policy and works on climate change issues.³² The Division of Emergency Management in the Executive Office of the Governor maintains a statewide emergency management program, and its roles include administering federal mitigation grant programs and serving as Florida's state coordinating agency for the National Flood Insurance Program.³³
- The water management districts address flood protection as a core part of their respective missions, and many of their activities are related to resilience efforts. For example, the St. John's River Water Management District provides resources and cost-sharing to increase community resilience.³⁴ The South Florida Water Management District is implementing

²⁶ Senate Bill 7016 (2020), available at <http://www.flsenate.gov/Session/Bill/2020/7016/?Tab=BillText> (last visited January 24, 2020).

²⁷ DEP, *Beaches*, <https://floridadep.gov/rcp/beaches> (last visited January 23, 2020).

²⁸ DEP, *Florida Resilient Coastlines Program*, <https://floridadep.gov/rcp/florida-resilient-coastlines-program> (last visited January 23, 2020).

²⁹ DOT, *Florida Transportation Plan (FTP): Resilience*, <http://www.floridatransportationplan.com/resilience.htm> (last visited January 23, 2020); DOT, *Florida Transportation Plan (FTP): Resilience Subcommittee Members*, http://www.floridatransportationplan.com/resilience_committee.htm (last visited January 23, 2020).

³⁰ DEO, *Adaptation Planning*, <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/adaptation-planning> (last visited January 23, 2020).

³¹ FWC, *What FWC is Doing*, <https://myfwc.com/conservation/special-initiatives/climate-change/fwc/> (last visited January 23, 2020); FWC, *A Guide to Climate Change Adaptation for Conservation*, 6-81-6-108, 9-35-9-51 (2016), available at <https://myfwc.com/media/5864/adaptation-guide.pdf> (last visited January 23, 2020).

³² DACS, *Office of Energy*, <https://www.fdacs.gov/Divisions-Offices/Energy> (last visited January 23, 2020).

³³ DEM, *Mitigation*, <https://www.floridadisaster.org/dem/mitigation/> (last visited January 23, 2020); DEM, *State Flood Plain Management Program*, <https://www.floridadisaster.org/dem/mitigation/floodplain/> (last visited January 23, 2020).

³⁴ St. John's River Water Management District, *Sea-Level Rise*, <https://www.sjrwmdd.com/localgovernments/sea-level-rise/#projects> (last visited January 23, 2020).

comprehensive plans for addressing sea-level rise, including a flood protection level of service program, incorporating sea-level rise projections into planning, conducting vulnerability assessments, and assisting local governments.³⁵

- In 2010, through a proactive regional collaboration to address climate change, the four counties of Broward, Miami-Dade, Monroe, and Palm Beach formed the Southeast Florida Regional Climate Change Compact.³⁶ The Compact's innovative work includes developing a Regional Climate Action Plan and developing a Unified Sea-Level Rise Projection.³⁷ Many local governments in southeast Florida have incorporated the Compact's projections into their planning documents and policies.³⁸
- Florida's local governments in coastal areas must have in their comprehensive plans a coastal management element that uses principles to reduce flood risk and eliminate unsafe development in coastal areas.³⁹ In certain coastal areas, local governments are authorized to establish an "adaptation action area" designation in their comprehensive plan, to develop policies and funding priorities that improve coastal resilience and plan for sea-level rise.⁴⁰

In January of 2019, Governor DeSantis issued Executive Order 19-12, creating the Office of Resilience and Coastal Protection to help prepare Florida's coastal communities and habitats for impacts from sea-level rise by providing funding, technical assistance, and coordination among state, regional, and local entities.⁴¹ In August of 2019, the Governor appointed Florida's first Chief Resilience Officer, which will report to the Executive Officer of the Governor and collaborate with state agencies, local communities, and stakeholders to prepare for the impacts of sea-level rise and climate change.⁴²

Renewable Energy and Electric Vehicle Infrastructure

Renewable energy is energy produced from a method that uses one or more of certain fuels or energy sources, including hydrogen, biomass, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power.⁴³ Currently, renewable energy accounts for 5.5

³⁵ Akintunde Owosina, South Florida Water Management District, Governing Board Meeting, June 13, 2019, Chief, Hydrology and Hydraulics Bureau, *Impact of Sea Level Rise on the SFWMD Mission, Focus on Flood Protection*, 2, 6-10 (June 13, 2019), available at <https://apps.sfwmd.gov/webapps/publicMeetings/viewFile/21964> (last visited January 23, 2020).

³⁶ Regional Climate Leadership Summit, *Southeast Florida Regional Climate Change Compact* (2010), available at <http://southeastfloridacclimatecompact.org/wp-content/uploads/2014/09/compact.pdf>; SFRCCC, *What is the Compact?*, <http://southeastfloridacclimatecompact.org/about-us/what-is-the-compact/> (last visited January 23, 2020).

³⁷ SFRCCC, *Regional Climate Action Plan*, <http://southeastfloridacclimatecompact.org/regional-climate-action-plan/> (last visited January 23, 2020).

³⁸ See SFRCCC, *ST-1: Incorporate Projections Into Plans*, <http://southeastfloridacclimatecompact.org/recommendations/incorporate-projections-into-plans/> (last visited January 23, 2020).

³⁹ See ss. 380.24, 163.3177(6)(g), and 163.3178(2)(f), F.S.; see Ch. 2015-69, Laws of Fla.

⁴⁰ See ss. 163.3177(6)(g)10. and 163.3164(1), F.S.; see Ch. 2011-139, Laws of Fla.

⁴¹ State of Florida, Office of the Governor, *Executive Order Number 19-12*, 5 (2019), available at <https://www.flgov.com/wp-content/uploads/2019/01/EO-19-12-.pdf> (last visited January 23, 2020).

⁴² Governor Ron DeSantis, News Releases, *Governor Ron DeSantis Announces Dr. Julia Nesheiwat as Florida's First Chief Resilience Officer* (Aug. 1, 2019), <https://flgov.com/2019/08/01/governor-ron-desantis-announces-dr-julia-nesheiwat-as-floridas-first-chief-resilience-officer/> (last visited January 23, 2020).

⁴³ See s. 377.803(4), F.S.

percent of Florida's overall electric generation.⁴⁴ The Department of Agriculture and Consumer Services' Office of Energy is responsible for developing and implementing Florida's energy policies, programs, and projects.⁴⁵ In 2019, the Office of Energy released the Florida Energy and Climate Plan, and the plan's nine focus areas include recommended initiatives involving energy efficiency, renewable energy, and resiliency.⁴⁶

In 2016, Volkswagen settled with the United States government resolving claims that it violated the Clean Air Act by selling diesel vehicles that falsely passed emissions tests for nitrogen oxides, and this resulted in the Environmental Mitigation Trust for State Beneficiaries.⁴⁷ Florida will receive over \$166 million overall from the Mitigation Trust Fund.⁴⁸ DEP has established the Diesel Emissions Mitigation Program (DEMP), which will use money from the settlement, along with money from an EPA state program, to fund projects that reduce mobile source emissions such as nitrogen oxides, particulate matter, and organic hazardous air pollutants.⁴⁹ DEP's Beneficiary Mitigation Plan includes the following estimated percentage breakdown for project-specific funding: 70% for School, Transit, and Shuttle Buses; 15% (maximum) for Light-Duty Zero Emission Vehicles Supply Equipment; and 15% for use in conjunction with the Diesel Emissions Reductions Act (DERA).⁵⁰ In connection with this funding, Governor DeSantis has announced the expansion of electric vehicle infrastructure in Florida.⁵¹

III. Effect of Proposed Changes:

The CS/SR contains "Whereas" clauses stating that:

- The State of Florida has 1,350 miles of low-elevation coastline, and 75 percent of this state's population are living in coastal counties that generate a significant portion of this state's economic output;⁵²
- The residents and the economy of this state, and the State of Florida itself, would benefit from the development of an established estimated consensus projection of the anticipated

⁴⁴ DACS, *2019 Office of Energy Annual Report*, 5 (2019),

<https://www.fdacs.gov/ezs3download/download/90056/2572665/Media/Files/Energy-Files/2019-OOE-Annual-Report.pdf>.

⁴⁵ Section 570.67, F.S.; DACS, *Office of Energy*, <https://www.fdacs.gov/Divisions-Offices/Energy> (last visited Feb. 7, 2020).

⁴⁶ DACS, *Office of Energy, Florida Energy and Climate Plan: Powering Change* (2019), available at

<https://www.fdacs.gov/ezs3download/download/89011/2560887/Media/Files/Energy-Files/Florida%20Energy%20and%20Climate%20Plan.pdf>.

⁴⁷ DEP, *Volkswagen Settlement - Mitigation Trust*, <https://floridadep.gov/air/air/content/volkswagen-settlement-mitigation-trust> (last visited Feb. 7, 2020).

⁴⁸ *Id.*

⁴⁹ DEP, *Diesel Emissions Mitigation Program - DEMP*, <https://floridadep.gov/air/air-director/content/diesel-emissions-mitigation-program-demp> (last visited Feb. 7, 2020).

⁵⁰ DEP, *State of Florida Beneficiary Mitigation Plan*, 3 (Oct. 2019), available at <https://floridadep.gov/sites/default/files/Florida%27s%20Beneficiary%20Mitigation%20Plan.pdf>; see DEP, *Diesel Emissions Reduction Act (DERA) in Florida*, <https://floridadep.gov/air/air-director/content/diesel-emissions-reduction-act-dera-florida> (last visited Feb. 7, 2020).

⁵¹ Governor Ron DeSantis, News Releases, *Governor Ron DeSantis Announces Plan for Expansion of Florida's Electric Vehicle Infrastructure*, <https://www.flgov.com/2019/07/24/governor-ron-desantis-announces-plan-for-expansion-of-floridas-electric-vehicle-infrastructure/> (last visited Feb. 7, 2020); Governor Ron DeSantis, News Releases, *Governor Ron DeSantis Announces Finalization of Plan to Strengthen Florida's Electric Vehicle Infrastructure*, <https://www.flgov.com/2019/10/09/governor-ron-desantis-announces-finalization-of-plan-to-strengthen-floridas-electric-vehicle-infrastructure/> (last visited Feb. 7, 2020).

⁵² *Supra* note 1.

sea-level rise and flooding impacts to these communities in developing future projects, plans, and programs;

- Clean and renewable energy is a tool that combats climate change, and the provision of adequate electric vehicle charging stations along our main transportation infrastructure will make a cleaner fuel source more readily available and reduce carbon dioxide emissions; and
- Appropriate infrastructure will continue to fortify and protect this state.

The resolution states that the Legislature intends to adopt:

- Policies focusing on resiliency efforts and appropriate infrastructure which prepare Florida for the environmental and economic impact of climate change, sea-level rise, and flooding; and
- Policies relating to clean and renewable energy, including the provision of adequate electric vehicle charging stations.

Legislative resolutions have no force of law and are not subject to the approval or veto powers of the Governor.

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 Senate resolution does not amend the Florida Statutes. If enacted, it will become an undesignated chapter law codified in the Laws of Florida.

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 January 26, 2020:

The committee substitute revises the “whereas” clauses contained in the Senate Resolution to focus on the benefit to the state and its residents of established estimated consensus projections of sea-level rise and flooding with respect to developing future projects, plans, and programs in coastal communities; and on clean and renewable energy with respect to reducing carbon dioxide emissions as a tool for combating climate change, including the provisions of adequate electric vehicle charging stations along Florida’s main infrastructure.

The Senate Resolution is also revised to provide the Legislature’s intent to adopt policies focusing on resiliency efforts and appropriate infrastructure which prepare Florida for the environmental and economic impact of climate change, sea-level rise, and flooding and policies relating to clean and renewable energy, including the provision of adequate electric vehicle charging stations.

B. Amendments:

None.

By the Committee on Infrastructure and Security; and Senator Stewart

596-02655-20

20201572c1

Senate Resolution

A resolution expressing the Legislature's support for the adoption of policies that will prepare Florida for the environmental and economic impact of climate change, sea-level rise, and flooding, and recognizing the important role that resiliency and infrastructure will play in fortifying this state.

WHEREAS, the State of Florida has 1,350 miles of low-elevation coastline, and 75 percent of this state's population are living in coastal counties that generate a significant portion of this state's economic output, and

WHEREAS, the residents and the economy of this state, and the State of Florida itself, would benefit from the development of an established estimated consensus projection of anticipated sea-level rise and flooding impacts to these communities in developing future projects, plans, and programs, and

WHEREAS, clean and renewable energy is a tool that combats climate change, and the provision of adequate electric vehicle charging stations along our main transportation infrastructure will make a cleaner fuel source more readily available and reduce carbon dioxide emissions, and

WHEREAS, appropriate infrastructure will continue to fortify and protect this state, NOW, THEREFORE,

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

That the Legislature intends to adopt policies focusing on resiliency efforts and appropriate infrastructure which prepare

Page 1 of 2

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

596-02655-20

20201572c1

Florida for the environmental and economic impact of climate change, sea-level rise, and flooding and policies relating to clean and renewable energy, including the provision of adequate electric vehicle charging stations.

Page 2 of 2

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: February 11, 2020

I respectfully request that **Senate Resolution #: 1572** relating to Climate Change be placed on the:

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

A handwritten signature in cursive script that reads "Linda Stewart".

Senator Linda Stewart
Florida Senate, District 13

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

THE FLORIDA SENATE

APPEARANCE RECORD

03/2/2020

Meeting Date

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

SR: 1572

Bill Number (if applicable)

Topic Climate Change

Amendment Barcode (if applicable)

Name Katrina Erwin

Job Title Program Coordinator

Address 124 Marriott Dr

Phone 305-528-2328

Street

Tallahassee

City

FL

State

32304

Zip

Email Katrina@CLEOInstitute.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing CLEO Institute

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2 March 2020
Meeting Date

1572
Bill Number (if applicable)

Topic Climate Change Amendment Barcode (if applicable)

Name Melina Rayna Svanhild Forley Barrett

Job Title Legislative Director

Address 8689 SE 69 Ter Phone 352-226-1477
Street

Trenton FL 32693 Email _____
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/2020
Meeting Date

1572
Bill Number (if applicable)

Topic Climate Change

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title _____

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Organize Florida + New Florida Majority

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3/7/2020

Meeting Date

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

1572

Bill Number (if applicable)

Topic CLIMATE CHANGE

Amendment Barcode (if applicable)

Name JONATHAN WEBBER

Job Title Deputy Director

Address 1700 N. MONROE ST. # 11-286

Phone 954-593-4449

Street

TALLAHASSEE

FL

32303

City

State

Zip

Email JWEBBER@FCUSTERSOFS

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA CONSERVATION VOTERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/20
Meeting Date

1572
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 10422 CREST ST
Street

Phone 941-323-2404

TLH FL 32301
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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-2-20

Meeting Date

1572

Bill Number (if applicable)

Topic

Climate Change

Amendment Barcode (if applicable)

Name

Barbara Deane

Job Title

MS

Address

625 E Brevard St

Street

Jal

City

FL 32308

State

Zip

Phone

251-4280

Email

barbaradeane@johnson.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

FL NOW

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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)

03/08/2020
Meeting Date

1572
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Nataly Malco Lopez

Job Title Student

Address 509B W JEFFERSON

Phone _____

Tallahassee

Email _____

City State Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

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 1802

INTRODUCER: Governmental Oversight and Accountability Committee; Criminal Justice Committee;
and Senator Pizzo

SUBJECT: Public Meetings/Urban Core Gun Violence Task Force

DATE: February 28, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Cellon</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1802 creates a narrowly tailored public meetings exemption from the requirements of s. 286.011, F.S., and s. 24(b), Article I of the State Constitution for the portions of the meetings of the Urban Core Gun Violence Task Force (Task Force) during which exempt or confidential and exempt information is discussed. The bill provides for the recordation and transcription of any portion of an exempt meeting and makes such recordings and transcripts confidential and exempt from disclosure under s. 119.07(1), F.S., s. 24(a), Art. I of the State Constitution

CS/SB 652, which creates the Task Force, grants authority to the Task Force to request and be provided with access to any information or records pertaining to crime and gun violence in urban core neighborhoods and communities in order to fulfill its duties. It is likely that at least some of the information and records to which the Task Force has access may be otherwise exempt or confidential and exempt, including confidential investigative files.

CS/SB 652 provides that information or records that the Task Force receives shall retain such exempt or confidential and exempt status, and that the Task Force may not disclose any such information or records. The public meetings exemption will allow the Task Force to discuss the exempt or confidential and exempt information while maintaining the protected status of that information.

This bill provides a statement of the public necessity for the exemption. It is narrowly tailored to include only the portions of meetings at which the protected information is discussed. The bill requires a two-thirds vote of the members present and voting for final passage.

There is no anticipated fiscal impact from this bill.

The bill becomes effective on the same date that CS/SB 652 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. At this point, CS/SB 652, if enacted, takes effect July 1, 2020.

II. Present Situation:

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.² This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.³

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the “Government in the Sunshine Law,”⁴ or the “Sunshine Law,”⁵ 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.⁶ The board or commission must provide the public reasonable notice of such meetings.⁷ 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.⁸ Minutes of a public meeting must be promptly recorded and open to public inspection.⁹ Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.¹⁰ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.¹¹

¹ FLA. CONST., art. I, s. 24(b).

² *Id.*

³ 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.”

⁴ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

⁵ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

⁶ Section 286.011(1)-(2), F.S.

⁷ *Id.*

⁸ Section 286.011(6), F.S.

⁹ Section 286.011(2), F.S.

¹⁰ Section 286.011(1), F.S.

¹¹ Section 286.011(3), F.S.

The Legislature may create an exemption to open meetings requirements by passing a general law by at least a two-thirds vote of each house of the Legislature.¹² 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.¹³ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹⁴

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records exemptions,¹⁵ with specified exceptions.¹⁶ 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.¹⁷ The Act provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁸

Urban Core Gun Violence

In American urban centers with significant minority populations, like New Orleans, Detroit, and Baltimore, the homicide rate is up to 10 times higher than the national average—between 30 and 40 murders per 100,000 people.¹⁹ One study calculated that young black men living in a high-crime area of Rochester, NY, had a murder rate of 520 per 100,00, over 100 times higher than the national average.²⁰ Firearm homicide is the leading cause of death for black males ages 15–34.²¹

Urban cores can be defined as areas that have high population densities (7,500 or more per square mile or 2,900 per square kilometer or more) and high transit, walking and cycling work trip market shares (20 percent or more). Urban cores also include non-exurban sectors with median house construction dates of 1945 or before.²²

¹² FLA. CONST., art. I, s. 24(c).

¹³ *Id.*

¹⁴ *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.

¹⁵ 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.).

¹⁶ 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.

¹⁷ Section 119.15(3), F.S.

¹⁸ Section 119.15(6)(b), F.S.

¹⁹ Giffords Law Center to Prevent Gun Violence, *Healing Communities in Crisis, Lifesaving Solutions to the Urban Gun Violence Epidemic*, p. 11, available at <https://lawcenter.giffords.org/wp-content/uploads/2019/01/Healing-Communities-in-Crisis.pdf> (last visited January 23, 2020).

²⁰ *Id.* at 12.

²¹ *Id.*

²² Wendell Cox, *Urban Cores, Core Cities and Principal Cities*, Newgeography, August 1, 2014, available at <http://www.newgeography.com/content/004453-urban-cores-core-cities-and-principal-cities> (last visited January 23, 2020).

CS/SB 652 - the creation of the Urban Core Gun Violence Task Force

CS/SB 652 creates the Urban Core Gun Violence Task Force within the Florida Department of Law Enforcement (FDLE), which is tasked with investigating system failures and the causes of high crime rates and gun violence incidents in urban core neighborhoods and communities. The Task Force is expected to develop recommendations for solutions, programs, services, and strategies for improved interagency communications between local and state government agencies which will help facilitate the reduction of crime and gun violence in urban core neighborhoods and communities.

The Task Force will convene no later than September 1, 2020, and will be comprised of 10 members who will serve at the pleasure of the officer who appointed him or her. At least five of the members shall be women and at least six of the members shall be members of racial minority groups. The appointments will be made as follows:

- Two members will be appointed by the President of the Senate;
- Two members will be appointed by the Minority Leader of the Senate;
- Two members will be appointed by the Speaker of the House of Representatives;
- Two members will be appointed by the Minority Leader of the House of Representatives; and
- Two members will be appointed by the Governor.

The Governor will appoint the Chair from among the 10 members. Additionally, the chair of the Task Force will assign staff from the FDLE and the Department of Juvenile Justice (DJJ) to assist the Task Force in performing its duties.

The General Counsel of the FDLE will serve as the general counsel for the task force.

The Task Force has the authority to request and be provided with access to *any* information or records pertaining to crime and gun violence in urban core neighborhoods and communities. Because of the nature of the Task Force's responsibilities it is likely that at least some of the information and records to which the Task Force has access may be otherwise exempt or confidential and exempt.

CS/SB 652 provides that any information or records obtained by the Task Force which are exempt or confidential and exempt will retain such exempt or confidential and exempt status. Additionally, the Task Force may not disclose any such information or records. Any discussion at an open meeting of the Task Force related to the protected information or records would violate the exempt or confidential and exempt status of the information or records. Therefore, an exemption from the public meetings laws is necessary in order to maintain the exempt or confidential and exempt status of certain information or records the Task Force receives and discusses during the fulfillment of its duties.

III. Effect of Proposed Changes:

The bill creates a public meetings exemption from the requirements of s. 286.011, F.S., and s. 24(b), Article I of the State Constitution for the portions of the meetings of the Urban Core

Gun Violence Task Force during which exempt or confidential and exempt information is discussed.

The bill provides that all exempt portions of a meeting of the Urban Core Gun Violence Task Force must be recorded and transcribed. The recordings and transcripts are confidential and exempt from disclosure under s. 119.01(1), F.S. and s. 24(a), Art. I of the State Constitution unless a court of competent, after an in camera review, determines that the meeting was not restricted to the discussion of exempt or confidential and exempt information as obtained by the Urban Core Gun violence Task Force.

The bill sets forth the public necessity for the exemption by stating the following Legislative findings:

- The purpose of the Task Force is to investigate system failures and the causes of high crime rates and gun violence incidents in urban core neighborhoods and communities;
- The Task Force shall develop recommendations for solutions, programs, services, and strategies for improved interagency communications between local and state government agencies which will help facilitate the reduction of crime and gun violence in urban core neighborhoods and communities;
- In order to fulfill its directive, the Task Force must be able to discuss exempt or confidential and exempt information that it receives as part of its investigation;
- The public meetings exemption will allow the task force to review and discuss exempt or confidential and exempt information that will be useful in forming meaningful recommendations for system improvements and improved interagency communications;
- As such, it is necessary that those portions of meetings wherein exempt or confidential and exempt information is discussed be made exempt from public meetings requirements;
- If such portions of the meeting were not closed, the public records exemptions would be negated;
- Thus, the Legislature finds that the public meeting exemption is a public necessity in order to ensure the effective and efficient administration of the Urban Core Gun Violence Task Force.

The bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill becomes effective on the same date that CS/SB 652 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

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

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the open meeting requirements. This bill enacts a new exemption for the portions of the meetings of the Urban Core Gun Violence Task Force during which exempt or confidential and exempt information is discussed, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the open meeting requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the open meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect exempt or confidential and exempt information to which the Urban Core Gun Violence Task Force has access. This bill exempts only the portions of the meetings of the Task Force during which the exempt or confidential and exempt information is discussed by the Task Force from the open meetings 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.6872 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 Governmental Oversight and Accountability on February 10, 2020:

The committee substitute adds language to provide for the recordation and transcription of those portions of the Task Force meetings that are made exempt under the bill.

CS by Criminal Justice on January 28, 2020:

The committee substitute amends the directory clause of the bill to redesignate certain subsections and to add a subsection to the language contained in s. 943.6872, F.S., as created by CS/SB 652.

- B. Amendments:

None.

By the Committees on Governmental Oversight and Accountability;
and Criminal Justice; and Senator Pizzo

585-03387-20

20201802c2

A bill to be entitled

An act relating to public meetings; amending s. 943.6872, F.S.; providing an exemption from public meetings requirements for portions of the Urban Core Gun Violence Task Force meetings at which exempt or confidential and exempt information is discussed; providing for future legislative review and repeal of the exemption; requiring the recording and transcription of exempt portions of such meetings; providing an exemption from public records requirements for such recordings and transcripts; providing an exception; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Present subsections (6) and (7) of section 943.6872, Florida Statutes, as created by SB 652 or similar legislation, 2020 Regular Session, are redesignated as subsections (7) and (8), respectively, and a new subsection (6) is added to that section, to read:

(6) (a) Any portion of a meeting of the Urban Core Gun Violence Task Force at which exempt or confidential and exempt information is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the

Page 1 of 3

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

585-03387-20

20201802c2

Legislature.

(b) No portion of an exempt meeting under paragraph (a) may be off the record. All exempt portions of such meeting shall be recorded and transcribed. Such recordings and transcripts are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in-cameral review, determines that the meeting was not restricted to the discussion of exempt or confidential and exempt information as obtained by the Urban Core Gun Violence Task Force.

Section 2. The Legislature finds that it is a public necessity that any portion of a meeting of the Urban Core Gun Violence Task Force at which exempt or confidential and exempt information is discussed be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The purpose of the task force is to investigate system failures and the causes of high crime rates and gun violence incidents in urban core neighborhoods and communities. In addition, the task force shall develop recommendations for solutions, programs, services, and strategies for improved interagency communications between local and state government agencies which will help facilitate the reduction of crime and gun violence in urban core neighborhoods and communities. In order to fulfill its directive, the task force must be able to discuss exempt or confidential and exempt information that it receives as part of its investigation. The public meetings exemption will allow the task force to review and discuss exempt or confidential and exempt information that will be useful in forming meaningful recommendations for system improvements and improved interagency

Page 2 of 3

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

585-03387-20

20201802c2

59 communications. As such, it is necessary that those portions of
60 meetings wherein exempt or confidential and exempt information
61 is discussed be made exempt from public meetings requirements.
62 If such portions of the meeting were not closed, the public
63 records exemptions would be negated. Thus, the Legislature finds
64 that the public meeting exemption is a public necessity in order
65 to ensure the effective and efficient administration of the
66 Urban Core Gun Violence Task Force.

67 Section 3. This act shall take effect on the same date that
68 SB 652 or similar legislation takes effect, if such legislation
69 is adopted in the same legislative session or an extension
70 thereof and becomes a law.



The Florida Senate

Committee Agenda Request

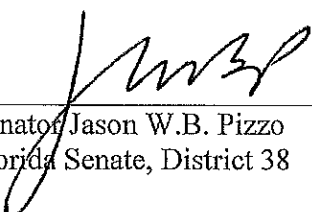
To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 10, 2020

I respectfully request that **CS/CS/SB 1802**, relating to Public Meetings/Urban Core Gun Violence Task Force, be placed on the:

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



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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/2020

Meeting Date

1802

Bill Number (if applicable)

Topic

Urban Core Gun Violence

Amendment Barcode (if applicable)

Name

Dr. Danielle Thomas

Job Title

Legislation Chair

Address

17478 Orlando Central Pkwy

Phone

407 725 7604

Street

Orlando

FL

32809

City

State

Zip

Email

legislation@floridaptf.org

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Florida PTA

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/2020
Meeting Date

1802
Bill Number (if applicable)

Topic gun violence Task Force

Amendment Barcode (if applicable)

Name Ida V. ESKamani

Job Title _____

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Organize Florida + New Florida Majority

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3/2/20

Meeting Date

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

SB 1802

Bill Number (if applicable)

Topic Public Meetings / Urban Core Gun

Amendment Barcode (if applicable)

Name Larisa Svechin

Job Title Vice Mayor - Sunny Isles Bch

Address 18070 Colline Ave

Street

Phone 917511565

SIB

City

FL

State

33160

Zip

Email LSvechin@SIBFL.net

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

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

3/2/20

Meeting Date

AB62

Bill Number (if applicable)

Topic Urban Core Gun Violence

Amendment Barcode (if applicable)

Name Lisa Henning

Job Title Legislative Director

Address 245 Office Plaza Dr

Phone 850-766-8808

Tallahassee FL 32301
City State Zip

Email lphlegislative@adeare

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fraternal Order of Police

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

03/02/2020

Meeting Date

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

1802

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Nataly Chalco Lopez

Job Title Student

Address 509 B W Jefferson

Phone _____

Street
Tallahassee

Email _____

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-28-20
Meeting Date

1802
Bill Number (if applicable)

Topic Urban Violence Task Force

Amendment Barcode (if applicable)

Name Barbara Deane

Job Title MS

Address 625 E Brenda St
Street

Phone 257-4280

Jalapa FL 32308
City State Zip

Email barbadeane70

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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 4

INTRODUCER: Judiciary Committee and Senator Flores

SUBJECT: Relief of Dontrell Stephens by the Palm Beach County Sheriff's Office

DATE: February 28, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cibula</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Cibula</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 4, a claim bill, alleges that Dontrell Stephens was shot four times by a Palm Beach County Duty Sheriff who mistook Mr. Stephens' cellphone for a gun. Mr. Stephens is now paralyzed. The claim bill further states that after a civil trial for damages, a judgment was entered against the sheriff's department in the amount of \$22,431,892.05 plus postjudgment interest and costs of \$260,000. Of this judgment, the sheriff's department has paid \$200,000 in accordance with the state's sovereign immunity waiver.

As compensation for Mr. Stephens' injuries, the claim bill authorizes and directs the Palm Beach County Sheriff's Office to:

appropriate from funds of the Palm Beach County Sheriff's Office not otherwise encumbered and to draw a warrant in the sum of \$4.5 million as follows: up to \$3 million payable to Evett L. Simmons, as guardian of the property of Dontrell Stephens, to purchase a life care plan for Dontrell Stephens as compensation for injuries and damages sustained; and \$1.5 million to pay attorney fees, lobbying fees, and costs relating to this claim.

The bill further waives and cancels any state medical liens on the funds provided by the claim bill.

II. Present Situation:

Doctrine of Sovereign Immunity: Overview

Sovereign immunity is defined as: “A government’s immunity from being sued in its own courts without its consent.”¹ The doctrine had its origin with the judge-made law of England. During English feudal times, the King was the sovereign. Today, for the purposes of this discussion, the term “sovereign” refers to Florida state agencies and subdivisions including local governments.

Article X, section 13 of the State Constitution authorizes the Legislature to enact laws that permit suits against the state. The Legislature has, to some extent, permitted tort suits against the state and has limited the collectability of judgments against the state to \$200,000 per person and \$300,000 per incident. A person seeking to recover amounts in excess of the limits may request that the Legislature enact a claim bill.

In medieval England “one could not sue the king in his own courts; hence the phrase ‘the king can do no wrong.’”² The basis of the existence of the doctrine of sovereign immunity in the United States was explained as follows:

A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.³

Although one could not sue the king, one could petition the king for relief.⁴

Under s. 2.01, F.S., Florida has adopted the common law of England as it existed on July 4, 1776.⁵ This adoption of English common law included the doctrine of sovereign immunity. The doctrine of sovereign immunity was in existence centuries before the Declaration of Independence.⁶

The Legislature was first expressly authorized to waive the state’s sovereign immunity under Article IV, section 19 of the Constitution of 1868.⁷ The Legislature again was expressly authorized to waive the state’s sovereign immunity under Article X, section 13 of the Constitution of 1968. This authorization to waive sovereign immunity states:

Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

¹ BLACK’S LAW DICTIONARY (8th ed. 2004).

² *Cauley v. City of Jacksonville*, 403 So. 2d 379, 381 (Fla. 1981).

³ *Id.* (quoting *Kawananakoa v. Polyblank*, 205 U.S. 349, 353 (1907)).

⁴ *Id.*

⁵ English common law that is inconsistent with state or federal law is not included.

⁶ *North Carolina Dept. of Transp. v. Davenport*, 432 S.E.2d 303, 305 (N.C. 1993).

⁷ Section 19, Art. VI, State Const. (1868), states, “Provision may be made by general law for bringing suit against the State as to all liabilities now existing or hereafter originating.”

Although the first general waiver of the state’s sovereign immunity was not adopted until 1969, “one . . . could always petition for legislative relief by means of a claims bill.”⁸ The first claim bill was passed by the Legislative Council of the Territory of Florida in 1833.⁹ The claim bill authorized payment to a person who supplied labor and building materials for the first permanent Capitol building.¹⁰

Florida’s Current Statutory Sovereign Immunity Waiver

Section 768.28(1), F.S., allows for suits in tort against the State and its agencies and subdivisions for damages resulting from the negligence of government employees acting in the scope of employment. This liability exists only where a private person would be liable for the same conduct. Section 768.28 applies only to “injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee’s office or employment.”¹¹

Section 768.28(5), F.S., caps tort recovery from a governmental entity at \$200,000 per person and \$300,000 per accident.¹² “Although an ‘excess’ judgment may be entered, the statutory caps make it impossible, absent a special claim bill passed by the legislature, for a claimant to collect more than the caps provide.”¹³

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken in the scope of employment, unless the damages result from the employee’s acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.¹⁴ A government entity is not liable for any damages resulting for actions by an employee outside the scope of his or her employment, and is not liable for damages resulting from actions committed by the employee in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.¹⁵

Claim Bills

A plaintiff may recover an amount in excess of the caps described in s. 768.28(5), F.S., by way of a claim bill. “A claim bill is not an action at law, but rather is a legislative measure that directs the Chief Financial Officer of Florida, or if appropriate, a unit of local government, to pay a specific sum of money to a claimant to satisfy an equitable or moral obligation.”¹⁶ Such

⁸ *Cauley*, 403 So. 2d at note 5.

⁹ D. Stephen Kahn, *Legislative Claim Bills: A Practical Guide to a Potent(ial) Remedy*, THE FLORIDA BAR JOURNAL, 23 (April, 1988).

¹⁰ *Id.*

¹¹ *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting s. 768.28(1), F.S.).

¹² Section 768.28(5), F.S.

¹³ *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla.2005).

¹⁴ Section 768.28(9)(a), F.S.

¹⁵ *Id.*

¹⁶ *Wagner v. Orange Cty.*, 960 So. 2d 785, 788 (Fla. 5th DCA 2007).

obligations typically arise from the negligence of officers or employees of the State or a local governmental agency.¹⁷

Legislative claim bills are used either after procurement of a judgment in an action at law or as a mechanism to avoid an action at law altogether.¹⁸ The amount awarded is based on the Legislature's concept of fair treatment of a person who has been injured or damaged but who is without a complete judicial remedy or who is not otherwise compensable.¹⁹ "Unlike civil judgments, private relief acts are not obtainable by right upon the claimant's proof of his entitlement. Private relief acts are granted strictly as a matter of legislative grace."²⁰

The beneficiary of a claim bill recovers by virtue of its enactment, regardless of whether the governmental tortfeasor purchased liability insurance for the purpose of paying an excess judgment.²¹ However, where the governmental tortfeasor has liability insurance in excess of the statutory cap, and the claimant receives compensation in excess of that statutory cap through a claim bill, the claim bill is paid with funds of the insured, not general revenue.²²

A government entity may, without a claim bill, settle claim against it for an amount in excess of the caps in s. 768.28, F.S., if that amount is within the limits of insurance coverage.²³

III. Effect of Proposed Changes:

This claim bill alleges that Dontrell Stephens was shot four times by a Palm Beach County Duty Sherriff who mistook Mr. Stephens' cellphone for a gun. Mr. Stephens is now paralyzed. The claim bill further states that after a civil trial for damages, a judgment was entered against the sheriff's department in the amount of \$22,431,892.05 plus postjudgment interest and costs of \$260,000. Of this judgment, the sheriff's department has paid \$200,000 in accordance with the state's sovereign immunity waiver.

As compensation for Mr. Stephens' injuries, the claim bill authorizes and directs the Palm Beach County Sheriff's Office to:

appropriate from funds of the Palm Beach County Sheriff's Office not otherwise encumbered and to draw a warrant in the sum of \$4.5 million as follows: up to \$3 million payable to Evett L. Simmons, as guardian of the property of Dontrell Stephens, to purchase a life care plan for Dontrell Stephens as compensation for injuries and damages sustained; and \$1.5 million to pay attorney fees, lobbying fees, and costs relating to this claim.

The bill further waives and cancels any state medical liens on the funds provided by the claim bill.

¹⁷ *Id.*

¹⁸ *City of Miami v. Valdez*, 847 So. 2d 1005 (Fla. 3d DCA 2003).

¹⁹ *Wagner*, 960 So. 2d at 788 (citing Kahn, *Legislative Claim Bills*, Fla. B. Journal (April 1988)).

²⁰ *United Servs. Auto. Ass'n v. Phillips*, 740 So. 2d 1205, 1209 (Fla. 2d DCA 1999).

²¹ *Servs. Auto Ass'n v. Phillips*, 740 So. 2d 1205 (Fla. 2d DCA 1999).

²² *Fla. Mun. Ins. Trust v. Village of Golf*, 850 So. 2d 544 (Fla. 4th DCA 2003).

²³ *Michigan Millers Mut. Ins. Co. v. Burke*, 607 So. 2d 418, 421-22 (Fla. 1992); Section 768.28(5), F.S.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This claim bill authorizes and directs the Palm Beach County Sheriff's Office "to appropriate from funds of the Palm Beach County Sheriff's Office not otherwise encumbered and to draw a warrant in the sum of \$22,431,892.05 plus post-judgment interest as ordered in the final judgment, along with remaining costs in the amount of \$60,000, payable to Evett L. Simmons, as guardian of the property of Dontrell Stephens."

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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 Judiciary on February 19, 2020:

The committee substitute reduces the amount of the claim and payment in the claim bill to \$4.5 million.

- 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 Senator Flores

590-03957-20

20204c1

A bill to be entitled

An act for the relief of Dontrell Stephens through
Evelt L. Simmons, as guardian of his property, by the
Palm Beach County Sheriff's Office; providing for an
appropriation to compensate him for personal injuries
and damages sustained as the result of the negligence
of a deputy of the office; providing a limitation on
the payment of compensation, fees, and costs;
providing an effective date.

WHEREAS, on September 13, 2013, Dontrell Stephens, then age
20, was shot four times by Palm Beach County Deputy Sheriff
Adams Lin during an encounter in West Palm Beach, and

WHEREAS, the last of the bullets fired at Mr. Stephens
entered his back, severing his spinal cord and rendering him
permanently paraplegic, and

WHEREAS, during testimony at trial, Deputy Sheriff Lin
stated that he mistook a cellphone for a handgun, and such
testimony was found to be not credible and was unanimously
rejected by the jury, and

WHEREAS, Mr. Stephens' testimony, corroborated by video
from Deputy Sheriff Lin's dashboard camera and physical evidence
at the scene, establishes that the only offense committed by Mr.
Stephens was a noncriminal bicycle infraction, that he was
unarmed, and that he posed no reasonable threat to Deputy
Sheriff Lin, and

WHEREAS, Mr. Stephens currently resides in a homeless
shelter and relies exclusively on public assistance and hospital
emergency room services to meet his extensive health care needs,

Page 1 of 3

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

590-03957-20

20204c1

and

WHEREAS, Mr. Stephens will require a lifetime of medical,
therapeutic, rehabilitative, and nursing care, and his future
life expectancy exceeds 50 years, and

WHEREAS, following a trial that lasted from January 25,
2016, until February 4, 2016, the jury in the case, brought on
behalf of Mr. Stephens against Ric Bradshaw in his capacity as
Sheriff of Palm Beach County, awarded Mr. Stephens compensatory
damages resulting in the entry of a final judgment in the amount
of \$22,431,892.05, plus postjudgment interest and costs, and

WHEREAS, in an opinion rendered on January 10, 2018, with
rehearing en banc denied on September 10, 2018, the United
States Court of Appeals for the 11th Circuit affirmed the
factual findings and the judgment of the trial court in the
case, and

WHEREAS, in the 5 years since being paralyzed, Mr. Stephens
has incurred more than \$1.4 million in unpaid expenses for his
care and treatment, and

WHEREAS, in accordance with the statutory limits of
liability set forth in s. 768.28, Florida Statutes, Ric
Bradshaw, in his capacity as Sheriff of Palm Beach County, has
paid \$200,000 toward the total amount of this claim, 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 Palm Beach County Sheriff's Office is

Page 2 of 3

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

590-03957-20

20204c1

59 authorized and directed to appropriate from funds of the Palm
60 Beach County Sheriff's Office not otherwise encumbered and to
61 draw a warrant in the sum of \$4.5 million as follows: up to \$3
62 million payable to Evett L. Simmons, as guardian of the property
63 of Dontrell Stephens, to purchase a life care plan for Dontrell
64 Stephens as compensation for injuries and damages sustained; and
65 \$1.5 million to pay attorney fees, lobbying fees, and costs
66 relating to this claim.

67 Section 3. The amount paid by the Palm Beach County
68 Sheriff's Office pursuant to s. 768.28, Florida Statutes, and
69 the amount awarded under this act are intended to provide the
70 sole compensation for all present and future claims arising out
71 of the factual situation described in this act which resulted in
72 injuries suffered by Dontrell Stephens. The total amount paid
73 for attorney fees relating to this claim may not exceed 25
74 percent of the amount awarded under this act.

75 Section 4. Excluding the federal portions of any liens,
76 Medicaid or otherwise, which the claimant must pay, it is the
77 intent of the Legislature that the lien interests relating to
78 the treatment and care of Dontrell Stephens are hereby waived
79 and extinguished.

80 Section 5. 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)

March 2, 2020

Meeting Date

4

*Bill Number (if applicable)*Topic Dontrell Stephens Claim Bill*Amendment Barcode (if applicable)*Name Jason Unger

Job Title _____

Address 301 S. Bronough Street #600Phone 577-9090*Street*TLHFL32301Email junger@gray-robinson.com*City**State**Zip*Speaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing Palm Beach County Sheriff's OfficeAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.****This form is part of the public record for this meeting.***

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/SRs 214 & 222

INTRODUCER: Judiciary Committee; Infrastructure and Security Committee; and Senators Rodriguez, Simpson, and others

SUBJECT: Philosophies that Espouse Superiority

DATE: February 28, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Miller	IS	Fav/CS Combined
2.	Stallard	Cibula	JU	Fav/CS
3.	Proctor	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SRs 214 & 222 rejects and condemns any philosophy that incites one group of people against another on the basis of race, color, national origin, sex, religion, or disability.

Accordingly, the resolution rejects and condemns the philosophies embrace by white nationalists and white supremacists. Finally, the resolution affirms that these philosophies are contradictory to the values that define the people of Florida and the United States.

Legislative resolutions have no force of law and are not subject to the approval or veto powers of the Governor.

II. Present Situation:

Targeted Mass Violence

Florida has been the site of several mass shootings that include Pulse Nightclub in Orlando, Marjory Stoneman Douglas High School in Parkland, Fort Lauderdale-Hollywood International Airport, Jacksonville Landing, as well as a SunTrust Bank in Sebring.¹ Many of these acts of

¹ Press Release, Executive Office of the Governor, *Governor Ron DeSantis Directs FDLE to Prioritize Threat Assessment Strategy* (Feb. 13, 2019), available at <https://www.flgov.com/2019/02/13/governor-ron-desantis-directs-fdle-to-prioritize-threat-assessment-strategy/> (last visited Jan. 22, 2020).

targeted mass violence appear to have been motivated by violent extremism based on a variety of supremacy philosophies.

White Nationalism

White nationalist groups espouse white supremacist or white separatist ideologies.² The term “white supremacist extremism” (WSE) describes people or groups who commit criminal acts in the name of white supremacist ideology. At its core, white supremacist ideology purports that the white race ranks above all others. WSE draws on the constitutionally protected activities of a broad swath of racist hate-oriented groups active in the United States ranging from the Ku Klux Klan to racist skinheads. Some of these groups have elaborate organizational structures, dues-paying memberships, and media wings. Additionally, many individuals espouse extremist beliefs without having formal membership in any specific organization.³

A large proportion of white supremacists dualistically divide the world between whites and all other peoples who are seen as enemies.⁴ Particular animus is directed toward Jews and African Americans.⁵

Scholars indicate that white supremacists believe in racial separation and that society discriminates against them. To them, whites have lost “ground to other groups and ... extreme measures are required to reverse the trend.”⁶ All of this has been encapsulated in a slogan known as the “Fourteen Words”: “We must secure the existence of our race and a future for white children.” This was coined by David Lane, a member of a violent terrorist group active in the 1980s. The Fourteen Words have been described as “the most popular white supremacist slogan in the world.”⁷

Incel

The term ‘incel’ was originally coined by an individual who started a website in the mid/late 1990s, entitled ‘Alana’s Involuntary Celibacy Project’ in order to discuss their sexual inactivity with others. The site was intended to foster an inclusive community to help people struggling to form relationships, but has since been co-opted by the current iteration of the incel movement.⁸

² Southern Poverty Law Center, *White Nationalist*, <https://www.splcenter.org/fighting-hate/extremist-files/ideology/white-nationalist> (last visited Jan. 22, 2019).

³ Lisa N. Sacco and Jerome P. Bjelopera, Congressional Research Office, *Domestic Terrorism: An Overview*, Report R44921, Aug. 21, 2017, available at <https://crsreports.congress.gov/product/pdf/R/R44921>.

⁴ *Id.*, citing Chip Berlet and Stanislav Vysotsky, “Overview of U.S. White Supremacist Groups,” *Journal of Political and Military Sociology*, vol. 34, no. 1 (June 2006), p. 13.

⁵ *Id.*, citing Leonard Zeskind, *Blood and Politics: The History of the White Nationalist Movement from the Margins to the Mainstream* (New York: Farrar, Straus, and Giroux, 2009), p. 40.

⁶ *Id.*, citing Rory McVeigh, “Structured Ignorance and Organized Racism in the United States,” *Social Forces*, vol. 82, no. 3 (March 2004), pp. 895-936.

⁷ *Id.*, citing Anti-Defamation League, *Guidebook*, p. 16. Lane died in 2007 while serving 190 years in prison for his involvement with a terrorist group named the Order. See “Founder of Terrorist Group Dies in Prison,” *Terre Haute Tribune-Star*, May 29, 2007, <http://tribstar.com/local/x1155692948/Founder-of-terrorist-group-dies-in-prison>. Among other writings, Lane also drafted an influential racist ideological tract titled “The 88 Precepts.”

⁸ Shannon Zimmerman, Luisa Ryan and David Durie-Smith, *Recognizing the Violent Extremist Ideology of ‘Incels’* (September 2018), available at <https://www.wiisglobal.org/wp-content/uploads/2018/09/Policybrief-Violent-Extremists-Incels.pdf>.

Although there is little in the way of authoritative published research in this area, the current incel movement appears to be a violent political ideology based upon misogyny, social marginalization, entitlement, male and white supremacy.⁹ Incel ideology is predicated on the notion that feminism has ruined society, therefore there is a need for a ‘gender revolt’ in order to reclaim a particular type of manhood.¹⁰ Incels believe their entitled access to women’s bodies is thwarted by women’s preference for more physically desirable men, and often frame this pattern of behavior as a form of theft. These individuals are frustrated at a world they see as denying them power and sexual control over women’s bodies. In their eyes, they are victims of oppressive feminism, an ideology which must be overthrown, even if by violence.¹¹

III. Effect of Proposed Changes:

The resolution contains “Whereas” clauses stating that:

- Recent acts of domestic terror, including acts of mass violence, have shocked and saddened our nation;
- This murderous violence was perpetrated by individuals who embraced philosophies that espouse the superiority of one group of people over another on the basis of race, color, national origin, sex, or religion;
- These philosophies are embraced by groups which include white nationalists, white supremacists, “incels,” and others; and
- These philosophies are contradictory to the values, constitutional protections, and moral fiber of the United States of America and the State of Florida.

The resolution rejects and condemns any philosophy that incites one group of people against another on the basis of race, color, national origin, sex, religion, or disability.

Accordingly, the resolution rejects and condemns the philosophies embrace by white nationalists and white supremacists and the resolution affirms that these philosophies are contradictory to the values that define the people of Florida and the United States.

Legislative resolutions have no force of law and are not subject to the approval or veto powers of the Governor.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁹ *Id.*

¹⁰ Debbie Ging, *Alphas, betas, and incels: Theorizing the Masculinities of the Manosphere*, in *Men and Masculinities* (Dublin City University, Glasnevin, 2017).

¹¹ *Supra*, note 8.

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 Senate resolution does not amend the Florida Statutes. If approved, it will be recorded in the Journals of the Senate.

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 February 19, 2020:

The committee substitute rejects philosophies that “incite” (rather than “espouse the superiority of”) one group of people against another on bases such as race, color, or religion. Moreover, the committee substitute expressly rejects the philosophies embraced by white supremacists and white nationalists.

CS by Infrastructure and Security on January 13, 2020:

- Combined SR 214 and SR 222, and expanded the resolution to reject and condemn any philosophy that espouses the superiority of one group of people over another on the basis of race, color, national origin, sex, or religion; and
- Revised the whereas clauses to state:
 - Recent acts of domestic terror, including acts of mass violence, have shocked and saddened our nation;
 - This murderous violence was perpetrated by individuals who embraced philosophies that espouse the superiority of one group of people over another on the basis of race, color, national origin, sex, or religion;
 - These philosophies are embraced by groups which include white nationalists, white supremacists, “incels”, and others; and
 - These philosophies are contradictory to the values, constitutional protections, and moral fiber of the United States of America and the State of Florida.

B. Amendments:

None.

By the Committees on Judiciary; and Infrastructure and Security;
and Senators Rodriguez, Simpson, Cruz, Stewart, Benacquisto,
Bradley, Hutson, Mayfield, Diaz, Wright, Perry, Harrell,
Albritton, and Hooper

590-03958-20 2020214c2

1 Senate Resolution
2 A resolution rejecting and condemning any philosophy
3 that espouses the superiority of one group of people
4 over another which is hateful, dangerous, or a morally
5 corrupt expression of intolerance, and affirming that
6 such philosophies are contradictory to the values that
7 define the people of Florida and the United States.
8
9 WHEREAS, recent acts of domestic terror, including acts of
10 mass violence, have shocked and saddened our nation, and
11 WHEREAS, this murderous violence was perpetrated by
12 individuals who embraced philosophies that espouse the
13 superiority of one group of people over another on the basis of
14 race, color, national origin, sex, religion, or disability, and
15 WHEREAS, these philosophies are embraced by groups which
16 include white nationalists, white supremacists, "incels", and
17 others, and
18 WHEREAS, these philosophies are contradictory to the
19 values, constitutional protections, and moral fiber of the
20 United States of America and the State of Florida, NOW,
21 THEREFORE,
22
23 Be It Resolved by the Senate of the State of Florida:
24
25 That the Florida Senate rejects and condemns any philosophy
26 that incites one group of people against another on the basis of
27 race, color, national origin, sex, religion, or disability, and
28 BE IT FURTHER RESOLVED that the Florida Senate rejects and
29 condemns the philosophies embraced by white nationalists and

Page 1 of 2

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

590-03958-20 2020214c2

30 white supremacists, and
31 BE IT FURTHER RESOLVED that the Florida Senate affirms that
32 such philosophies are contradictory to the values that define
33 the people of Florida and the United States.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, Vice Chair
Appropriations Subcommittee on Agriculture,
Environment and General Government
Ethics and Elections
Rules

SENATOR JOSE JAVIER RODRIGUEZ
37th District

February 24th, 2020

Chair Benacquisto
Committee on Rules
404 S. Monroe Street
Tallahassee, FL 32399-1100
Sent via email to benacquisto.lizabeth@flsenate.gov

Chair Benacquisto,

I respectfully request that you place SR214: Philosophies that Espouse Superiority on the agenda of the Rules Committee 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.

Thank you,

A handwritten signature in black ink, appearing to read "JR", is written over a horizontal line.

Senator José Javier Rodríguez
District 37

CC:

John B. Phelps, Staff Director
Cynthia Fuchth, Administrative Assistant
Joshua Goergen, Legislative Assistant to Senator
Timothy Morris, Legislative Assistant to Senator
Matthew Hunter, Legislative Assistant to Senator

REPLY TO:

☐ 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 854-0365
☐ 220 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/2020
Meeting Date

214+222
Bill Number (if applicable)

Topic Resolution Against White Supremacy

Amendment Barcode (if applicable)

Name Ida V. ESKamani

Job Title _____

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Immigrant Coalition

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20
Meeting Date

218/232
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 104-2 CREST ST

Phone 941-323-2404

Street

TLH
City

FL
State

32301
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

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

03/02/2020

Meeting Date

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

214 / 222

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Nataly Chalco Lopez

Job Title Student

Address 509 B W Jefferson

Phone

Street

Tallahassee

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2 March 2020
Meeting Date

214 + 222
Bill Number (if applicable)

Topic Philosophies that espouse Superiority

Amendment Barcode (if applicable)

Name Melina Rayna Svanhild Farley-Barratt

Job Title Legislative Director

Address 3689 SE 69 Ter
Street

Phone 352-226-7477

Trenton FL
City State

32693
Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-2-20
Meeting Date

214E, 222
Bill Number (if applicable)

Topic Philosophies that Espouse Superiority
Name Barbara DeBane

Amendment Barcode (if applicable)

Job Title Ms
Address 125 E Brevard St
Street
Tallahassee FL 32308
City State Zip

Phone 251-4280
Email barbinderane1@earthlink.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/2020

Meeting Date

214

Bill Number (if applicable)

Topic

Philosophies that Espouse Superiority

Amendment Barcode (if applicable)

Name

Dr. Danielle Thomas

Job Title

Legislation Chair

Address

1747 Orlando Central Pkwy

Phone

407855 7604

Street

Orlando

FL

32809

City

State

Zip

Email

legislation@floridapt.org

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Florida PTA

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20

Meeting Date

214

Bill Number (if applicable)

Topic Condemning White Supremacy

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director

Address 4343 West Flagler St.

Phone 786-363-4436

Street

Miami

FL

33134

Email kgross@aclufl.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Civil Liberties Union 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)

3/2
Meeting Date

214
Bill Number (if applicable)

Topic HATE GROUPS - 214

Amendment Barcode (if applicable)

Name JEFF BINKLEY

Job Title _____

Address 1354 MILE POST DRIVE

Phone 770-335-6534

ATLANTA GA 30334

City State Zip

Email jeff@binkleygroup.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Mumma's Voice

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/2020

Meeting Date

214

Bill Number (if applicable)

Topic philosophies that espouse superiority

Amendment Barcode (if applicable)

Name JONATHAN Webber

Job Title Deputy Director

Address 1700 N. Monroe St. #11-286

Phone 954-593-4449

Street

Tallahassee

FL

32303

City

State

Zip

Email JWEBBER@FLVOTERS.ORG

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA CONSERVATION VOTERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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 664

INTRODUCER: Rules Committee; Commerce and Tourism Committee; Judiciary Committee; and Senator Lee, and others

SUBJECT: Verification of Employment Eligibility

DATE: March 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Fav/CS
2.	Harmsen	McKay	CM	Fav/CS
3.	Stallard	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 664 requires private employers having at least 50 employees to use E-Verify or a substantially equivalent system to verify that new hires are authorized to work in the United States. Smaller employers have another option; they may verify employment eligibility using the Form I-9, as required under current law, but must retain copies of documents used to verify employment eligibility for at least 3 years.

Additionally, the bill requires public employers and certain of their contractors and subcontractors to begin using E-Verify to verify the employment eligibility of their employees by July 1, 2021. The bill's contractor/subcontractor requirements apply to those that have at least 10 employees in Florida and contracts of at least \$35,000 in value.

The private-employer requirement takes effect January 1, 2021. If a private employer fails to comply with the bill's registration or verification requirements, it might face a \$500 fine and be required to comply within 30 days. If an employer fails to comply by this deadline, licensing agencies must suspend the employer's business licenses until the employer complies. Additional enforcement provisions:

- Authorize the Department of Economic Opportunity to conduct random audits;
- Require private employers to give verification documents to federal and state authorities upon request; and

- Authorize a person to file a complaint with the department if he or she believes in good faith that an employer employs an unauthorized alien.

Finally, the bill provides immunity from civil or criminal liability for an employer's reliance on an approved electronic employment verification system. For instance, an employer who relies on E-Verify's indication that a person is unauthorized may not be sued for refusing to hire the person. Conversely, if E-Verify indicates that an employee is authorized to work in the United States, there is a rebuttable presumption that the employer did not knowingly employ an unauthorized alien.

II. Present Situation:

Overview

Both federal and Florida law prohibit a person from employing a person who is not authorized to work in the United States. Additionally, federal law requires certain employers to use E-Verify and requires most employers to verify the eligibility of new hires using employee-provided documents.

E-Verify is an Internet-based system through which an employer can verify that a newly hired employee is authorized to work in the United States.¹ E-Verify is

operated by U.S. Citizenship and Immigration Services, part of the Department of Homeland Security (DHS), in partnership with the Social Security Administration. E-Verify is free and easy to use. E-Verify provides an automated link to government records to help employers confirm the employment eligibility of new hires.²

Florida Law

A person may not knowingly employ, hire, recruit, or refer an alien for private or public employment within the state if the alien is not authorized to work under "the immigration laws" or by the United States Attorney General.³ A first offense of this prohibition is a noncriminal violation punishable by a fine of up to \$500; each subsequent offense is a second degree misdemeanor,⁴ punishable by up to 60 days in jail⁵ and a fine not to exceed \$500.⁶

Moreover, pursuant to Executive Order 11-116, state agencies that are under the direction of the Governor must use E-Verify for all newly hired employees. The order also requires an agency to include in its contracts a provision that requires a contractor to use E-Verify for all new hires for

¹ U.S. Citizenship and Immigration Services, *How do I use E-Verify?* <https://www.e-verify.gov/sites/default/files/everify/guides/E4en.pdf> (last visited Feb. 18, 2020).

² *Id.*

³ Section 448.09(1), F.S.

⁴ Section 448.09(2), F.S.

⁵ Section 775.082(4)(b), F.S.

⁶ Section 775.083(1)(e), F.S.

the duration of the contract. These same requirements must be included in a subcontractor's contract who performs work under the contractor.⁷

Federal Law

Under the Immigration Reform and Control Act of 1986 (IRCA),⁸ it is illegal for any U.S. employer to knowingly:

- Hire, recruit, or refer for a fee an alien knowing he or she is unauthorized to work;
- Continue to employ an alien knowing he or she has become unauthorized; or
- Hire, recruit or refer for a fee, any person (citizen or alien) without following the record keeping requirements of the IRCA.⁹

The IRCA established a procedure that employers must use to verify that employees are authorized to work in the United States.¹⁰ The procedure requires employees to present documents that establish his or her identity and eligibility to work,¹¹ and requires employers to complete a Form I-9 for each new employee hired.¹² The IRCA provides sanctions to be imposed on employers who knowingly employ aliens who are not authorized to work.¹³ Federal law contains no criminal sanction for working without authorization, although document fraud is a civil violation.¹⁴ The United States Citizenship and Immigration Services (USCIS) enforces these provisions.¹⁵

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA),¹⁶ which, among other provisions, created various employment eligibility verification programs, including the Basic Pilot program. Originally, the Basic Pilot program (now referred to as E-Verify) was available in five of the seven states that had the highest populations of unauthorized aliens and was initially authorized for only 4 years. However, Congress has consistently extended the program's life. It expanded the program in 2003, making it available in all 50 states. In 2008, the federal government began requiring any entity that maintained or applied for federal contracts to use E-Verify.¹⁷

⁷ Exec. Order No. 11-116 (May 2011), available at <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2011/11-116-suspend.pdf>.

⁸ Public Law 99-603, 100 Stat. 3359.

⁹ 8 U.S.C. s. 1324a.

¹⁰ *Id.*

¹¹ An employer may rely on a U.S. passport; resident alien card, alien registration card, or other document designated by the Attorney General that contains a photograph and other personal identifying information, authorizes employment in the U.S., and is tamper resistant. Alternative, an employer may review a combination of documents that establish the individual's identity, e.g., a social security number, and a document that establishes the individual's identity, e.g., a driver's license.

¹² *Id.*

¹³ *Id.* s. 1324a(a)(1)-(2).

¹⁴ *Id.* s. 1324c.

¹⁵ *Id.* s. 1324a.

¹⁶ Public Law 104-208.

¹⁷ Department of Homeland Security and USCIS, *History and Milestones [of E-Verify]*, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=84979589cdb76210VgnVCM100000b92ca60aRCRD&vgnnextchannel=84979589cdb76210VgnVCM100000b92ca60aRCRD> (last visited Feb. 18, 2020).

Using E-Verify

The Process, in Context

E-Verify is the last step in a larger eligibility-verification process. This process begins when an employee accepts an offer of employment.¹⁸ Between this point and the employee's first day on the job, he or she must complete Section 1 of the Form I-9, which requires providing his or her name, address, Social Security Number, and citizenship status under penalty of perjury.¹⁹ By the end of the third day on the job, the *employer* is required to complete Section 2, which states under penalty of perjury that he or she has reviewed certain employee-provided documents that establish the employee's eligibility.²⁰ Most employers are not required to continue the verification of employment eligibility process beyond this step. However, for those who choose to use or are required to use E-Verify, the process continues.

Before using E-Verify for the first time, an employer must enroll via the DHS's website.²¹ At the end of the enrollment process, the employer must sign a Memorandum of Understanding that provides the terms of agreement between the employer and the DHS.²²

Once enrolled, an employer opens a "case" for the employee on the E-Verify system and enters basic information from the employee's Form I-9 (name, address, SSN) into the case.²³ Then, E-Verify compares the submitted information to records that are available to the DHS and the Social Security Administration, and usually within seconds, issues one of several possible results to the employer.²⁴ A result of "Employment Authorized" indicates that the employee may work in the United States. However, in a given case, the system might issue one of several other results:

- **Verification In Process** – This case was referred to the DHS for further verification.
- **Tentative Nonconfirmation (TNC)** – Information did not match records available to the SSA or the DHS. Additional action is required.
- **Case in Continuance** – The employee has visited an SSA field office or contacted the DHS, but more time is needed to determine a final case result.
- **Close Case and Resubmit** – The SSA or the DHS requires that the employer close the case and create a new case for this employee. This result may be issued when the employee's U.S. passport, passport card, or driver's license information is incorrect.²⁵
- **Final Nonconfirmation** – There is no further action to be taken by any party and that E-Verify will not confirm that the employee is authorized to work in the United States.²⁶

¹⁸ United States Citizenship and Immigration Services, *Complete and Correct Form I-9*, <https://www.uscis.gov/i-9-central/complete-and-correct-form-i-9>, (last visited Feb. 18, 2020).

¹⁹ See 8 C.F.R. § 274a.2(b)(1)(i)(A).

²⁰ See 8 C.F.R. § 274a.2(b)(1)(ii).

²¹ Department of Homeland Security and USCIS, *The Enrollment Process*, <https://www.e-verify.gov/employers/enrolling-in-e-verify/the-enrollment-process> (last visited Feb. 18, 2020).

²² *The E-Verify Memorandum for Employers*, available at <https://www.e-verify.gov/sites/default/files/e-verify/memos/MOUforEVerifyEmployer.pdf> (last visited Feb. 18, 2020).

²³ Department of Homeland Security and USCIS, *ABOUT E-Verify*, <https://www.e-verify.gov/about-e-verify> (last visited Feb. 18, 2020).

²⁴ *Id.*

²⁵ Department of Homeland Security and USCIS, *Verification Process*, <https://www.e-verify.gov/employers/verification-process> (last visited Feb. 18, 2020).

²⁶ *Id.*

If the result is TNC, the employer must notify the employee, who must take further action to verify his or her eligibility.²⁷ If the result is Verification in Process or Case in Continuance, the E-Verify system needs more time to process the case.²⁸

Results in FY 2019

In FY 2019, E-Verify processed 38,930,405 cases, 98.51% of which were automatically confirmed as “work authorized” and another 0.23% were confirmed after an initial “mismatch.”²⁹

In the remaining 1.27% of cases, the employees were not found to be authorized to work in the United States.³⁰ The vast majority of this 1.27% (0.97%) were cases that were not resolved by the end of FY 2019 for various reasons, including because the case was awaiting further action by either the employer or employee at the end of the fiscal year or because the employer closed the case as “self-terminated.”³¹

Accuracy

The most recent independent report of E-Verify’s accuracy appears to have been done 2012 by the firm Westat.³² The report relied on data from 2009 and before.³³

Westat found that E-Verify was 94% accurate in its final disposition of cases—E-Verify confirmed 94% of employees who were in fact authorized to work in the United States; 94% of the Final Nonconfirmations (FNCs) issued were for people who were in fact not authorized to work in the United States. As such, according to Westat, 6% of people who were in fact authorized to work in the United States received a FNC from E-Verify.³⁴

User Satisfaction

According to the Department of Homeland Security’s most recent customer service report, which was published in 2018 regarding users’ experiences in 2017, employers rated their experience of “using E-Verify” at “90,” based on subcategories such as “ease of use” and “speed of response.”³⁵ These same users rated their overall satisfaction with E-Verify at “85.”³⁶

²⁷ *Id.*

²⁸ *Id.*

²⁹ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *E-Verify Performance*, <https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-performance> (last visited Feb. 18, 2020).

³⁰ *Id.*

³¹ *Id.*

³² Westat, *Evaluation of the Accuracy of E-Verify Findings*, (July, 2012) available at <https://www.e-verify.gov/sites/default/files/everify/data/FindingsEVerifyAccuracyEval2012.pdf> (last visited Feb. 18, 2020).

³³ *Id.*

³⁴ *Id.*

³⁵ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Annual Customer Satisfaction Survey 2017*, (Mar. 2018), available at <https://www.e-verify.gov/sites/default/files/everify/data/EVerifyCustomerSatisfactionSurvey2017.pdf> (last visited Feb. 18, 2020).

³⁶ *Id.* This rating is in line with prior years’ ratings, which have fluctuated between 85 and 87 since 2011.

In 2017, 13 percent of employers contacted E-Verify by phone for customer service.³⁷ These employers rated their experience at “89.”³⁸ And 96 percent of those who contacted customer service reported having their issue resolved, usually on the first call (89 percent).³⁹

Operational Disturbances

During the January 2019, partial federal government shut down, the E-Verify system was unavailable. As a result, employers were unable to enroll in E-Verify, contact customer support representatives, create an E-Verify case, or view or take action on a case, among other functions.⁴⁰ The DHS issued guidance that extended the 3-day rule to permit employers additional time to submit new employee information to E-Verify, and gave employees additional time to resolve a TNC.⁴¹

Mandatory Use of E-Verify in Other States

At least 19 other states require the use of E-Verify by public employers, contractors or subcontractors of public employers, or private employers.

The following states require private employers, as well as public employers and their contractors and subcontractors, to use E-Verify:

- North Carolina⁴²
- Mississippi⁴³
- Georgia⁴⁴
- Arizona⁴⁵
- Alabama⁴⁶
- Utah⁴⁷
- South Carolina⁴⁸

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ National Law Review, *When the Government Shuts Down: The Impact on E-Verify, I-9's, and Visas*, (Jan. 25, 2019), <https://www.natlawreview.com/article/when-government-shuts-down-impact-e-verify-i-9-s-and-visas> (last visited Feb. 18, 2020).

⁴¹ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *E-Verify Resumes Operation*, (Jan. 27, 2019), <https://www.e-verify.gov/e-verify-resumes-operation> (last visited Feb. 17, 2020). Due to the lapse in federal funding, the E-Verify system was not in operation from December 22, 2018 to January 26, 2019. E-Verify restarted on Sunday, January 27, 2019. U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *January 2019, E-Verify Incidents*, (Apr. 23, 2019), <https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-enhancements/january-2019> (last visited Feb. 18, 2020).

⁴² N.C.G.S. § 160A-169.1 (municipalities); 153A-99.1 (counties); 143-48.5, 143-133.3 (public contractors); 64-26 (private employers that have more than 25 employees); 126-7.1 (state agencies).

⁴³ Miss. Code § 71-11-3.

⁴⁴ Ga. Code § 13-10-91 (public employers and contractors); 36-60-6 (private employers that have more than 10 employees).

⁴⁵ Ariz. Rev. Stat. § 41-4401 (public contractors); 23-214 (private and public employers).

⁴⁶ Ala. Code § 31-13-15.

⁴⁷ Utah Code § 63G-12-301 (private employers having 15 or more employees, unless the employee has a guest worker permit), 63G-12-302 (public employers and contractors). Under both statutes, the employers may use E-Verify or another federal verification program.

⁴⁸ S.C. Code § 41-8-20 (private employers); 8-14-20 (public employers and contractors).

The following states require only public employers and their contractors to use E-Verify:

- Indiana⁴⁹
- Nebraska⁵⁰
- Missouri⁵¹
- Colorado⁵²
- Oklahoma⁵³
- Texas⁵⁴
- Virginia⁵⁵

Some states' approaches do not fall squarely into the above categories. For example, Tennessee requires only private employers that have 50 or more employees to use E-Verify.⁵⁶ Pennsylvania requires public contractors and private *construction* employers to use E-Verify.⁵⁷ In Michigan, only contractors of the Michigan Department of Transportation must use E-Verify.⁵⁸ Finally, West Virginia requires contractors whose employees work on the Capitol grounds to use E-Verify.⁵⁹

III. Effect of Proposed Changes:

The bill requires private employers⁶⁰ having at least 50 employees to use E-Verify or a substantially equivalent system to verify that new hires are authorized to work in the United States. Smaller private employers have an additional option to verify the employment eligibility of their employees. These smaller employers may use the Form I-9, as required under federal law, and must retain the documents used to verify employment eligibility for at least 3 years.

Additionally, the bill requires public employers and certain of their contractors and subcontractors to use E-Verify, beginning July 1, 2021. Particularly, the bill's contractor/subcontractor requirements apply to those that have at least 10 employees in Florida and have contracts of at least \$35,000 in value.

The private-employer requirement takes effect January 1, 2021. If a private employer fails to comply with the bill's registration or verification requirements, it might face a \$500 fine and be required to comply within 30 days. If an employer continues to fail to comply by this deadline,

⁴⁹ Ind. Code § 22-5-1.7-11.1.

⁵⁰ Nev. Rev. St. § 4-114.

⁵¹ Miss. Stat. § 285.530.

⁵² Colo. Rev. Stat. § 8-17.5-102.

⁵³ 25 Okl. St. § 1313 (public employers and contractors must use E-Verify or another federal verification program).

⁵⁴ Tex. Nat. Res. Code § 81.072 (public contractors); Tex. Gov. Code § 673.002 (state agencies)

⁵⁵ Va. Code § 40.1-11.2 (state agencies), 2.2-4308.2 (public contractors).

⁵⁶ Tenn. Code § 50-1-703.

⁵⁷ 43 Penn. Stat. § 167.3 (public contractors); 43 Penn. Stat. § 168.3 (private construction employers).

⁵⁸ Act 200, Public Acts of 2012, Sec. 381.

⁵⁹ W. Va. Code, § 15-2D-3.

⁶⁰ The bill specifically provides that a few types of people or entities are not "employers," and are thus exempt from using an electronic employment verification system. These include a homeowner who hires "casual labor" to be performed at the home, and a homeowner who hires a licensed independent contractor to perform "a specified portion of labor or services." The bill also exempts employee leasing companies to the extent they operate under a contract that puts the primary burden for compliance with the bill on the client company.

licensing agencies must suspend the employer's business licenses until the employer complies. Additional enforcement provisions:

- Authorize the Department of Economic Opportunity to conduct random audits; and
- Require private employers to give verification documents to federal and state authorities upon request.

Additionally, the bill reiterates current law's prohibition on knowingly employing an unauthorized alien, and the bill authorizes a person to file a complaint with the department if he or she believes in good faith that an employer employs an unauthorized alien.⁶¹ Upon receipt of a valid complaint substantiated by evidence, the department must notify the employer and direct it to notify all named employees. Moreover, the department must request the federal government to verify the eligibility of the employees, and the department must rely on the federal government's determination. If the employee is unauthorized, the department must notify United States Immigration and Customs Enforcement Agency of the employees' identities and addresses.

The bill provides immunity from civil or criminal liability for an employer's reliance on an approved electronic employment verification system. For instance, an employer who relies on E-Verify's indication that a person is unauthorized may not be sued for refusing to hire the person. Conversely, if E-Verify indicates that an employee is authorized to work in the United States, there is a rebuttable presumption that the employer did not knowingly employ an unauthorized alien

Finally, the bill requires the department to adopt rules to define an alternative electronic employment authorization system, if any, that is substantially equivalent to or more effective than E-Verify at identifying unauthorized aliens and persons authorized to work in the United States.

The bill takes effect July 1, 2020, but phases in use requirements through July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

⁶¹ A person who knowingly files a false or frivolous complaint commits a second degree misdemeanor.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that an employer does not currently use an employment verification system, the bill could increase costs to employers. Though the federal government does not charge a fee for the use of E-Verify, using E-Verify or another employment verification system could increase the labor involved in onboarding an employee, especially if the initial response for that employee is not “Employment Authorized.”

C. Government Sector Impact:

The DEO is required to enforce the suspension of the license of an employer that fails to register with an employment verification system. This enforcement may occur at the local government level and at specific state agencies. This additional enforcement duty will likely result in additional costs to the DEO.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 287.058 of the Florida Statutes.

This bill creates sections 287.137 and 448.093 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 March 2, 2020:

- Requires the public employers, contractors, and subcontractors that the bill required to use E-Verify or *another employment verification system* to use E-Verify exclusively.

- Expands the definition of public employer, thus requiring more public entities to comply with the bill's verification requirements.
- Removes one of the three options that private employers had to comply with the bill's requirement that the employers verify the eligibility of new hires.
- Requires all private employers to take some actions beyond the minimum requirements of federal law to verify the employment eligibility of their employees.
- Requires private employers having at least 50 employees to use an employment verification system and limits qualifying systems to E-Verify or a substantially equivalent electronic system.
- Requires private employers having fewer than 50 employees to verify employment eligibility by using E-Verify, an electronic employment verification system, or a Form I-9 while retaining copies of the supporting documents for at least 3 years.
- Requires all private employers to give verifying documents to state and federal authorities upon request.
- Authorizes the Department of Economic Opportunity to conduct "random" audits of a private employer's verification documents.
- Requires the department to submit a violation notice to an employer who does not register with E-Verify or verify employment using a Form I-9.
- Requires employer, upon receiving notice, to comply and provide affidavit to the department stating compliance within 30 days after receiving the notice.
- Requires licensing agencies to suspend business licenses of a private employer who does not timely provide the affidavit (licenses restored upon compliance).
- Authorizes the department to fine a private employer \$500 for failure to register with E-Verify or use the Form I-9, as applicable.
- Authorizes a person who has a good faith belief that a private employer employs an unauthorized alien to file a complaint, thus triggering a required investigation by the department.

CS/CS by Commerce and Tourism on February 18, 2020:

- Clarifies that employee thresholds in the bill are based on only those employees in Florida;
- Requires agricultural employers to use an employment verification system;
- Revises the employee threshold and implementation dates as follows:
 - Public employers and their contractors and subcontractors must register with and use a system by July 1, 2021, and
 - Private employers of 100 or more employees must register with a system by July 1, 2021, and
 - Private employers of 20 or more employees must register with a system by January 1, 2022.
- Reduces the contract value threshold which subjects a contractor or subcontractor who works with a public employer to the verification requirements from \$195,000 and \$65,000 per contract, respectively, to \$35,000 per contract;
- Requires all state contracts valued in excess of \$35,000 to include a provision that requires a contractor or subcontractor who performs work pursuant to the contract to register with and use an employment verification system for all of its new employees hired in Florida during the term of the contract; and

- Provides for alternate employment verification systems, including a system that the employer certifies is substantially equivalent to E-Verify or a system that complies with IRCA.

CS by Judiciary on February 11, 2020:

The committee substitute:

- Authorizes the DEO to designate an alternative (non-E-Verify) employment verification system;
- Phases in the required use of an employment verification system by private employers, based on number of employees (largest employers first);
- Exempts agricultural employers from the use of an employment verification system;
- Requires contractors and subcontractors having a contract with a department, agency, political subdivision of the state to use an employee verification system only if they meet certain thresholds, including contract value;
- Alters the penalties for failing to use an employment verification system;
- Removes penalties provided in the bill for knowingly employing an unauthorized alien (these penalties were additional to those already provided in law);
- Removes the bill's requirement that DEO act on complaints that an employer had failed to use E-Verify;
- Removes the bill's provisions expressly authorizing an employer or employee to seek an injunction against the bill's enforcement provisions;
- Removes the bill's provisions making it an unfair trade practice to terminate an authorized employee while employing an unauthorized alien; and
- Removes several of the bill's provisions regarding parties to public contracts, including the:
 - Required termination of a contract by a party who believes another party is not using E-Verify.
 - Prohibition on a contractor's entering into a public contract for one year if the contractor fails to use E-Verify.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2020	.	
	.	
	.	
	.	

The Committee on Rules (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (1) of section 287.058, Florida
Statutes, is amended to read:

287.058 Contract document.—

(1) Every procurement of contractual services in excess of
the threshold amount provided in s. 287.017 for CATEGORY TWO,
except for the providing of health and mental health services or
drugs in the examination, diagnosis, or treatment of sick or



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injured state employees or the providing of other benefits as required by chapter 440, shall be evidenced by a written agreement embodying all provisions and conditions of the procurement of such services, which shall, where applicable, include, but not be limited to, a provision:

(a) That bills for fees or other compensation for services or expenses be submitted in detail sufficient for a proper preaudit and postaudit thereof.

(b) That bills for any travel expenses be submitted in accordance with s. 112.061. A state agency may establish rates lower than the maximum provided in s. 112.061.

(c) Allowing unilateral cancellation by the agency for refusal by the contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt from s. 24(a) of Art. I of the State Constitution and s. 119.07(1).

(d) Specifying a scope of work that clearly establishes all tasks the contractor is required to perform.

(e) Dividing the contract into quantifiable, measurable, and verifiable units of deliverables that must be received and accepted in writing by the contract manager before payment. Each deliverable must be directly related to the scope of work and specify a performance measure. As used in this paragraph, the term "performance measure" means the required minimum acceptable level of service to be performed and criteria for evaluating the successful completion of each deliverable.

(f) Specifying the criteria and the final date by which such criteria must be met for completion of the contract.



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(g) Specifying that the contract may be renewed for a period that may not exceed 3 years or the term of the original contract, whichever is longer, specifying the renewal price for the contractual service as set forth in the bid, proposal, or reply, specifying that costs for the renewal may not be charged, and specifying that renewals are contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds. Exceptional purchase contracts pursuant to s. 287.057(3)(a) and (c) may not be renewed.

(h) Specifying the financial consequences that the agency must apply if the contractor fails to perform in accordance with the contract.

(i) Addressing the property rights of any intellectual property related to the contract and the specific rights of the state regarding the intellectual property if the contractor fails to provide the services or is no longer providing services.

(j) Requiring a contractor or any subcontractor performing a portion of the contract to register with and use E-Verify to the extent required by s. 287.137 for all new employees hired in this state during the term of the contract.

In lieu of a written agreement, the agency may authorize the use of a purchase order for classes of contractual services if the provisions of paragraphs (a)-(j) ~~(a)-(i)~~ are included in the purchase order or solicitation. The purchase order must include, but need not be limited to, an adequate description of the services, the contract period, and the method of payment. In lieu of printing the provisions of paragraphs (a)-(c) and (g) in



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the contract document or purchase order, agencies may incorporate the requirements of paragraphs (a)-(c) and (g) by reference.

Section 2. Section 287.137, Florida Statutes, is created to read:

287.137 Verification of work authorization status; public employers.-

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

(a) "Contractor" means a person or an entity that has more than 10 employees in this state and has entered into, or is attempting to enter into, a contract with a public employer to provide labor, supplies, or services to such employer.

(b) "Employee" has the same meaning as provided in s. 448.093.

(c) "E-verify" means the Internet-based electronic employment verification system operated by the United States Department of Homeland Security.

(d) "Public employer" means an agency or a subdivision of the state, regional, county, local, special district, or municipal government, whether executive, judicial, or legislative, or any public school, community college, or state university, which employs persons who perform labor or services for that employer in exchange for salary, wages, or other remuneration or enters into, or attempts to enter into, a contract with a contractor for an amount that will, or is expected to, exceed the CATEGORY TWO threshold amount provided in s. 287.017.

(e) "Subcontractor" means a person or an entity that has more than 10 employees in this state and provides labor,



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supplies, or services to or for a contractor or another subcontractor pursuant to a contract that will, or is expected to, exceed the CATEGORY TWO threshold amount provided in s. 287.017.

(f) "Unauthorized alien" means a person who is not authorized under federal law to be employed in the United States, as described in 8 U.S.C. s. 1324a(h) (3). The term shall be interpreted consistently with that section and any applicable federal rules or regulations.

(2) On or after July 1, 2021:

(a) Every public employer, contractor, and subcontractor shall register with and use E-Verify to verify the work authorization status of all new employees and identify whether an employee is an unauthorized alien.

(b) A public employer or a contractor or subcontractor in this state may not enter into a contract under this section unless each party to the contract registers with and uses E-Verify.

Section 3. Section 448.093, Florida Statutes, is created to read:

448.093 Definitions; use of electronic employment verification system required for private employers; business licensing enforcement.—

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

(a) "Agency" means an agency, a department, a board, or a commission of this state or a county or municipality which issues a license to operate a business in this state.

(b) "Department" means the Department of Economic Opportunity.



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(c) "Electronic employment verification system" means:

1. An Internet-based system operated by the United States Department of Homeland Security (E-Verify) which allows participating employers to electronically verify the employment eligibility of newly hired employees; or

2. A system substantially equivalent to E-Verify which verifies whether an employee is an unauthorized alien as certified by an employer, under penalty of perjury, on a form provided by the department.

(d) "Employee" means an individual whose work is performed under the direction and supervision of the employer and whose employer withholds tax pursuant to the Federal Insurance Contributions Act (FICA) or federal income tax from the individual's compensation, or whose employer issues an Internal Revenue Service W-2 form, but not an Internal Revenue Service Form 1099, to an individual for purposes of documenting compensation. The term includes all individuals or entities that do not meet the definition of an independent contractor under federal laws or regulations to perform a specified portion of labor or services.

(e) "Employer" means a person or an entity in this state which employs an employee. The term does not include any of the following:

1. A government employer.

2. The occupant or owner of a private residence who hires:

a. Casual labor, as defined in s. 443.036, to be performed entirely within the private residence; or

b. A licensed independent contractor, as defined in federal laws or regulations, to perform a specified portion of labor or



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services.

3. An employee leasing company licensed pursuant to part XI of chapter 468 which enters into a written agreement or understanding with a client company which places the primary obligation for compliance with this section upon the client company. In the absence of a written agreement or understanding, the term includes an employee leasing company.

(f) "Knowingly employ an unauthorized alien" has the same meaning as in 8 U.S.C. s. 1324a. The term shall be interpreted consistently with 8 U.S.C. s. 1324a and any applicable federal rules or regulations.

(g) "License" means a franchise, a permit, a certificate, an approval, a registration, a charter, or any similar form of authorization required by state law and issued by an agency for the purpose of operating a business in this state. The term includes, but is not limited to:

1. An article of incorporation.

2. A certificate of partnership, a partnership registration, or an article of organization.

3. A grant of authority issued pursuant to state or federal law.

4. A transaction privilege tax license.

(h) "Unauthorized alien" means a person who is not authorized under federal law to be employed in the United States, as described in 8 U.S.C. s. 1324a(h)(3). The term shall be interpreted consistently with that section and any applicable federal rules or regulations.

(2) VERIFICATION OF EMPLOYMENT ELIGIBILITY; FINE FOR VIOLATION; SUSPENSION OF BUSINESS LICENSE.—



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186 (a) An employer shall, after making an offer of employment
187 which has been accepted by an individual, use an electronic
188 employment verification system to verify such individual's
189 employment eligibility. Verification must occur within the
190 period stipulated by applicable federal rules or regulations.
191 However, an employer is not required to verify the employment
192 eligibility of a continuing employee hired before the date of
193 the employer's registration with an electronic employment
194 verification system.

195 (b) Employers having at least 50 employees in this state
196 must use an electronic employment verification system or
197 otherwise be in compliance with this section by no later than
198 January 1, 2021.

199 (c) As an alternative to registering with an electronic
200 employment verification system, employers having fewer than 50
201 employees may operate a system that complies with 8 U.S.C. s.
202 1324a, and must also maintain complete copies of all records
203 used to establish an employee's identity and employment
204 authorization for at least 3 years after the employer receives
205 the records or 1 year after the employee ceases to provide
206 services to the employer, whichever is later.

207 1. Copies of all records maintained by employers pursuant
208 to this paragraph or paragraph (b) must be provided to any state
209 or federal government agency upon request.

210 2. Beginning January 1, 2021, the department may conduct
211 random audits of employment files of those employers that do not
212 register with the E-Verify system.

213 (d) If an employer does not register with an electronic
214 employment verification system or otherwise comply with the



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requirements of paragraph (c), the department must submit a
notice of violation to the employer, who must then register with
an electronic employment verification system or otherwise comply
with paragraph (c) and provide an affidavit stating such fact to
the department within 30 calendar days after the notice of
violation is mailed. If the employer does not become compliant
and provide the required affidavit within 30 calendar days
following the mailing of the notice of violation, the
appropriate licensing agency must suspend all applicable
licenses held by the employer until the employer becomes
compliant and provides the department with the required
affidavit.

(e) If the department determines that an employer has not
registered with an electronic employment verification system or
complied with the requirements of paragraph (c), the department
may impose a fine of up to \$500 per violation of this
subsection.

(3) EMPLOYMENT OF UNAUTHORIZED ALIENS; IMMUNITY;
COMPLAINTS.-

(a) An employer may not knowingly employ an unauthorized
alien.

(b) An employer registered with and using an electronic
employment verification system may not be held civilly liable in
a cause of action for the employer's:

1. Hiring of an unauthorized alien if the information
obtained from the electronic employment verification system
indicated that the person's work authorization status was not
that of an unauthorized alien; or

2. Refusal to employ a person if the information obtained



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from the electronic employment verification system indicated that the person's work authorization status was that of an unauthorized alien.

(c) An employer who in good faith registers with and uses an electronic employment verification system is considered to have complied with the requirements of 8 U.S.C. s. 1324a(b) and may not be held liable for any damages and is immune from any legal cause of action brought by any person or entity, including former employees, for the use of and reliance upon any incorrect information obtained from the electronic employment verification system, including any incorrect information obtained as a result of an isolated, sporadic, or accidental technical or procedural failure, when determining final action on a person's work authorization status.

(d) For purposes of this subsection, compliance with subsection (2) creates a rebuttable presumption that an employer did not knowingly employ an unauthorized alien in violation of s. 448.09.

(e) A person who has a good faith belief that an employer knowingly employs, or has knowingly employed within the last 90 calendar days, an unauthorized alien may file a complaint with the department.

1. A complaint may not be based on race, color, or national origin, pursuant to state or federal law.

2. A person who knowingly files a false or frivolous complaint under this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(f) Upon receipt of a valid complaint substantiated by



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evidence of a violation of paragraph (a), the department must
notify the employer of the complaint and direct the employer to
notify any employees named in the complaint. The department
shall also determine whether the employer is registered with an
electronic employment verification system or otherwise compliant
with the requirements of paragraph (2)(c).

(g) The department shall request that the Federal
Government verify, pursuant to 8 U.S.C. s. 1373(c), the
citizenship or immigration status of any employee named in the
complaint, and the department must rely upon such verification.
The department may not independently make a final determination
as to whether an employee is an unauthorized alien.

(h) Upon finding that an employer has violated paragraph
(a), the department must notify the United States Immigration
and Customs Enforcement Agency of the identity of the
unauthorized alien and, if known, the physical address at which
the unauthorized alien resides.

(4) RULEMAKING.—

(a) The department shall adopt rules to define an
electronic employment verification system, if any, that is
substantially equivalent to or more effective than the E-Verify
system with respect to identifying unauthorized aliens and those
persons eligible to work in the United States. The rules must
identify the types of databases, methodologies, and evidence of
identity and employment eligibility that qualify an electronic
employment verification system as substantially equivalent to or
more effective than the E-Verify system.

(b) The department may adopt rules to:

1. Specify the manner of notifying licensing agencies,



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pursuant to paragraph (2)(d), of violations by employers;

2. Govern the administration of fines authorized under
paragraph (2)(e); and

3. Provide for procedures for complaints filed pursuant to
subsection (3).

Section 4. If any provision of this act or its application
to any person or circumstance is held invalid, the invalidity
does not affect other provisions or applications of the act
which can be given effect without the invalid provision or
application, and to this end the provisions of this act are
severable.

Section 5. This act shall take effect July 1, 2020.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to the verification of employment
eligibility; amending s. 287.058, F.S.; requiring
written agreements for the procurement of specified
contractual services to include a statement regarding
the requirement that a contractor or subcontractor
register with and use E-Verify; creating s. 287.137,
F.S.; defining terms; requiring public employers and
certain contractors and subcontractors to register
with and use E-Verify by a specified date; prohibiting
public employers, contractors, and subcontractors from
entering into a contract unless each party to the



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contract registers with and uses E-Verify; creating s.
448.093, F.S.; defining terms; requiring employers who
meet specified criteria to register with and use an
electronic employment verification system to verify
the employment eligibility of new employees; requiring
employers who employ more than a specified number of
employees to use an electronic employment verification
system by a certain date; authorizing certain
employers to use an alternative system that meets
specified criteria to confirm an employee's identity,
subject to certain requirements; authorizing the
Department of Economic Opportunity to conduct random
audits of employment files of certain employers;
requiring the department to take certain action
against a noncompliant employer; requiring the
appropriate licensing agency to suspend a noncompliant
employer's license until certain conditions are met;
authorizing the imposition of fines for violations of
the act; prohibiting an employer from knowingly
employing an unauthorized alien; providing civil
immunity for an employer registered with and using an
employment verification system; providing specified
immunity and nonliability for an employer who complies
in good faith with the requirements of the act;
creating a rebuttable presumption for certain
employers that the employer did not knowingly employ
an unauthorized alien; authorizing certain persons
with knowledge of a violation to file a complaint with
the department, subject to certain limitations;



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providing a penalty for persons who knowingly file
false or frivolous complaints; prescribing procedures
for the disposition of such complaints; requiring the
department to notify the Federal Government of the
identity of an unauthorized alien; requiring the
department to define by rule employment verification
systems substantially equivalent to the E-Verify
system; providing requirements for such rules;
authorizing the department to adopt additional rules
in administering the act; providing for severability;
providing an effective date.

By the Committees on Commerce and Tourism; and Judiciary; and
Senators Lee, Gruters, Harrell, and Simmons

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1 A bill to be entitled
2 An act relating to the verification of employment
3 eligibility; amending s. 287.058, F.S.; requiring
4 written agreements for the procurement of specified
5 contractual services to include a statement regarding
6 the requirement that a contractor or subcontractor
7 register with and use an employment verification
8 system; creating s. 287.137, F.S.; defining terms;
9 requiring public employers and certain contractors and
10 subcontractors to register with and use an employment
11 verification system by a specified date; prohibiting
12 public employers, contractors, and subcontractors from
13 entering into a contract unless each party to the
14 contract registers with and uses an employment
15 verification system; creating s. 448.093, F.S.;
16 defining terms; requiring employers who meet specified
17 criteria to register with and use an employment
18 verification system to verify the employment
19 eligibility of new employees; prescribing an
20 implementation schedule for the employment
21 verification requirement; authorizing the imposition
22 of fines for violations of the act; requiring a
23 violating employer to submit certain affidavits to the
24 Department of Economic Opportunity; requiring the
25 department to order the appropriate licensing agency
26 to suspend an employer's license under certain
27 circumstances; providing civil immunity for an
28 employer registered with and using an employment
29 verification system; providing specified immunity and

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

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30 nonliability for an employer who complies in good
31 faith with the requirements of the act; creating a
32 rebuttable presumption for certain employers that the
33 employer did not knowingly employ an unauthorized
34 alien; requiring the department to define by rule
35 employment verification systems substantially
36 equivalent to the E-Verify system; providing
37 requirements for such rules; providing an effective
38 date.
39
40 Be It Enacted by the Legislature of the State of Florida:
41
42 Section 1. Subsection (1) of section 287.058, Florida
43 Statutes, is amended to read:
44 287.058 Contract document.—
45 (1) Every procurement of contractual services in excess of
46 the threshold amount provided in s. 287.017 for CATEGORY TWO,
47 except for the providing of health and mental health services or
48 drugs in the examination, diagnosis, or treatment of sick or
49 injured state employees or the providing of other benefits as
50 required by chapter 440, shall be evidenced by a written
51 agreement embodying all provisions and conditions of the
52 procurement of such services, which shall, where applicable,
53 include, but not be limited to, a provision:
54 (a) That bills for fees or other compensation for services
55 or expenses be submitted in detail sufficient for a proper
56 preaudit and postaudit thereof.
57 (b) That bills for any travel expenses be submitted in
58 accordance with s. 112.061. A state agency may establish rates

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lower than the maximum provided in s. 112.061.

(c) Allowing unilateral cancellation by the agency for refusal by the contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt from s. 24(a) of Art. I of the State Constitution and s. 119.07(1).

(d) Specifying a scope of work that clearly establishes all tasks the contractor is required to perform.

(e) Dividing the contract into quantifiable, measurable, and verifiable units of deliverables that must be received and accepted in writing by the contract manager before payment. Each deliverable must be directly related to the scope of work and specify a performance measure. As used in this paragraph, the term "performance measure" means the required minimum acceptable level of service to be performed and criteria for evaluating the successful completion of each deliverable.

(f) Specifying the criteria and the final date by which such criteria must be met for completion of the contract.

(g) Specifying that the contract may be renewed for a period that may not exceed 3 years or the term of the original contract, whichever is longer, specifying the renewal price for the contractual service as set forth in the bid, proposal, or reply, specifying that costs for the renewal may not be charged, and specifying that renewals are contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds. Exceptional purchase contracts pursuant to s. 287.057(3)(a) and (c) may not be renewed.

(h) Specifying the financial consequences that the agency

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must apply if the contractor fails to perform in accordance with the contract.

(i) Addressing the property rights of any intellectual property related to the contract and the specific rights of the state regarding the intellectual property if the contractor fails to provide the services or is no longer providing services.

(j) Requiring a contractor or any subcontractor performing a portion of the contract to register with and use an employment verification system to the extent required by s. 287.137 for all new employees hired in this state during the term of the contract.

In lieu of a written agreement, the agency may authorize the use of a purchase order for classes of contractual services if the provisions of paragraphs (a)-(j) ~~(a)-(i)~~ are included in the purchase order or solicitation. The purchase order must include, but need not be limited to, an adequate description of the services, the contract period, and the method of payment. In lieu of printing the provisions of paragraphs (a)-(c) and (g) in the contract document or purchase order, agencies may incorporate the requirements of paragraphs (a)-(c) and (g) by reference.

Section 2. Section 287.137, Florida Statutes, is created to read:

287.137 Verification of work authorization status; public employers.-

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

(a) "Contractor" means a person or an entity that has more

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than 10 employees in this state and has entered into, or is attempting to enter into, a contract with a public employer to provide labor, supplies, or services to such employer.

(b) "Employee" has the same meaning as provided in s. 448.093.

(c) "Employment verification system" has the same meaning as provided in s. 448.093.

(d) "Public employer" means a department, an agency, or a political subdivision of this state which enters into, or attempts to enter into, a contract with a contractor for an amount that will, or is expected to, exceed the CATEGORY TWO threshold amount provided in s. 287.017.

(e) "Subcontractor" means a person or an entity that has more than 10 employees in this state and provides labor, supplies, or services to or for a contractor or another subcontractor pursuant to a contract that will, or is expected to, exceed the CATEGORY TWO threshold amount provided in s. 287.017.

(f) "Unauthorized alien" means a person who is not authorized under federal law to be employed in the United States, as described in 8 U.S.C. s. 1324a(h)(3). The term shall be interpreted consistently with that section and any applicable federal rules or regulations.

(2) On or after July 1, 2021:

(a) Every public employer, contractor, and subcontractor shall register with and use an employment verification system to verify the work authorization status of all new employees and identify whether an employee is an unauthorized alien.

(b) A public employer or a contractor or subcontractor in

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this state may not enter into a contract under this section unless each party to the contract registers with and uses an employment verification system.

Section 3. Section 448.093, Florida Statutes, is created to read:

448.093 Definitions; use of employment verification system required for private employers; business licensing enforcement.—

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

(a) "Agency" means an agency, a department, a board, or a commission of this state or a county or municipality which issues a license to operate a business in this state.

(b) "Department" means the Department of Economic Opportunity.

(c) "Employee" means an individual whose work is performed under the direction and supervision of the employer and whose employer withholds tax pursuant to the Federal Insurance Contributions Act (FICA) or federal income tax from the individual's compensation, or whose employer issues an Internal Revenue Service W-2 form, but not an Internal Revenue Service Form 1099, to an individual for purposes of documenting compensation. The term does not include a licensed independent contractor as defined in federal laws or regulations.

(d) "Employer" means a person or an entity in this state which employs an employee. The term does not include:

1. A government employer.

2. The occupant or owner of a private residence who hires:

a. Casual labor, as defined in s. 443.036, to be performed entirely within the private residence; or

b. A licensed independent contractor, as defined in federal

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laws or regulations, to perform a specified portion of labor or services.

3. An employee leasing company licensed pursuant to part XI of chapter 468 which enters into a written agreement or understanding with a client company which places the primary obligation for compliance with this section upon the client company. In the absence of a written agreement or understanding, the term includes an employee leasing company.

(e) "Employment verification system" means:

1. An Internet-based system operated by the United States Department of Homeland Security which allows participating employers to electronically verify the employment eligibility of newly hired employees;

2. A system to verify whether an employee is an unauthorized alien that an employer certifies, under penalty of perjury, on a form provided by the department as a substantially equivalent electronic employment verification system to that specified in subparagraph 1.; or

3. A system that complies with 8 U.S.C. 1324a and the employer maintains complete copies of all records used to establish an employee's identity and employment authorization for at least 3 years after the employer receives the records or 1 year after the employee ceases to provide services to the employer, whichever is later.

(f) "Knowingly employ an unauthorized alien" has the same meaning as in 8 U.S.C. s. 1324a. The term shall be interpreted consistently with 8 U.S.C. s. 1324a and any applicable federal rules or regulations.

(g) "License" means a franchise, a permit, a certificate,

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an approval, a registration, a charter, or any similar form of authorization required by state law and issued by an agency for the purpose of operating a business in this state. The term includes, but is not limited to:

1. An article of incorporation.

2. A certificate of partnership, a partnership registration, or an article of organization.

3. A grant of authority issued pursuant to state or federal law.

4. A transaction privilege tax license.

(h) "Unauthorized alien" means a person who is not authorized under federal law to be employed in the United States, as described in 8 U.S.C. s. 1324a(h)(3). The term shall be interpreted consistently with that section and any applicable federal rules or regulations.

(2) VERIFICATION OF EMPLOYMENT ELIGIBILITY; FINE FOR VIOLATION; SUSPENSION OF BUSINESS LICENSE.—

(a) An employer shall, after making an offer of employment which has been accepted by an individual, use an employment verification system to verify such individual's employment eligibility. Verification must occur within the period stipulated by applicable federal rules or regulations. However, an employer is not required to verify the employment eligibility of a continuing employee hired before the date of the employer's registration with an employment verification system.

(b) The requirement to use an employment verification system shall be phased in as follows:

1. Employers having at least 500 employees in this state must use an employment verification system beginning January 1,

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2021.

2. Employers having at least 100 employees in this state must use an employment verification system beginning July 1, 2021.

3. Employers having at least 20 employees in this state must use an employment verification system beginning January 1, 2022.

(c) If an employer does not register with an employment verification system, the department may impose a fine of up to \$500 on the employer, who must then register with an employment verification system and provide an affidavit stating such fact to the department within 30 days. If the employer does not register with and provide the required affidavit within 30 days after the imposition of the fine becomes final, the department must order the appropriate agency to suspend all applicable licenses held by the employer until the employer registers with an employment verification system and provides the department with the required affidavit.

(3) EMPLOYMENT OF UNAUTHORIZED ALIENS; IMMUNITY.—

(a)1. An employer registered with and using an employment verification system may not be held civilly liable in a cause of action for the employer's:

a. Hiring of an unauthorized alien if the information obtained from the employment verification system indicated that the person's work authorization status was not that of an unauthorized alien; or

b. Refusal to hire a person if the information obtained from the employment verification system indicated that the person's work authorization status was that of an unauthorized

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alien.

2. An employer who in good faith registers with and uses an employment verification system is considered to have complied with the requirements of 8 U.S.C. s. 1324a(b) and may not be held liable for any damages and is immune from any legal cause of action brought by any person or entity, including former employees, for the use of and reliance upon any incorrect information obtained from the employment verification system, including any incorrect information obtained as a result of an isolated, sporadic, or accidental technical or procedural failure, when determining final action on a person's work authorization status.

(b) For purposes of this subsection, compliance with subsection (2) creates a rebuttable presumption that an employer did not knowingly employ an unauthorized alien in violation of s. 448.09.

(4) RULEMAKING.—The department shall adopt rules to define an employment verification system, if any, that is substantially equivalent to or more effective than the E-Verify system with respect to identifying unauthorized aliens and those persons eligible to work in the United States. The rules must identify the types of databases, methodologies, and evidence of identity and employment eligibility that qualify an employment verification system as substantially equivalent to or more effective than the E-Verify system.

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



The Florida Senate

Committee Agenda Request

To: Senator Benacquisto, Chair
Rules Committee

Subject: Committee Agenda Request

Date: February 20, 2020

I respectfully request that **Senate Bill #664**, relating to Verification of Employment Eligibility, be placed on the:

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

A handwritten signature in black ink that reads "Tom Lee".

Senator Tom Lee
Florida Senate, District 20

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/03/2020

Meeting Date

CS/CS/664

Bill Number (if applicable)

885440

Topic CS/CS/CS 664

Amendment Barcode (if applicable)

Name David Barkey

Job Title Sr. & Southeastern Area Counsel

Address 5295 Town Center Road, Ste. 300

Phone 561-988-2912

Street

Boca Raton

FL

33486

City

State

Zip

Email dbarkey@adl.org

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

Representing ADL (Anti-Defamation League)

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

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

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

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)

3/2/2020

Meeting Date

SB 664

Bill Number (if applicable)

Topic Verification of Employment Eligibility

Amendment Barcode (if applicable)

Name Isabel Ruano

Job Title

Address 2631 Yalmouth Lane

Street

Tallahassee

City

State

32309

Zip

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

2 March 2020
Meeting Date

664
Bill Number (if applicable)

Topic Verification of Employment Amendment Barcode (if applicable)

Name Melina Rayna Svanhild Farley Barratt

Job Title Legislative Director

Address 8669 SE 69 Ter

Phone 352-226-7477

Trenton FL 32693
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3-2-20

Meeting Date

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

664

Bill Number (if applicable)

Topic

E-Verify

Amendment Barcode (if applicable)

Name

Barbara DeBane

Job Title

MS

Address

1625 E Brevard ST

Phone

251-4280

Street

Tallahassee

FL

32308

City

State

Zip

Email

barbadebane@yahoo.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

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

Representing

FL NOW

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-2
Meeting Date

664
Bill Number (if applicable)

Topic e verify

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate

Address 201 W Park
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conference Catholic Bishops

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)

3/2/2020

Meeting Date

664

Bill Number (if applicable)

Topic Employment Verification

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Policy Director

Address P.O. Box 10788

Phone 334-224-4309

Street

Tallahassee

City

FL

State

32301

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Southern Poverty Law Action Fund

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)

3/2/20

Meeting Date

664

Bill Number (if applicable)

Topic E-Verify

Amendment Barcode (if applicable)

Name Kryan Michael

Job Title _____

Address 11210 Monument Landg Blvd.

Phone 904-536-5269

Street

Jax FL 32225

City

State

Zip

Email KryanMichael@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

3/2/19

Meeting Date

SB 664

Bill Number (if applicable)

Topic E-Verify

Amendment Barcode (if applicable)

Name Robert Michael Jr

Job Title

Address 71210 Montmart Landings Blvd

Street

Phone

904-923-6284

Fla 71 32225

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

03/03/2020

Meeting Date

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

CS/CS/664

*Bill Number (if applicable)*Topic CS/CS/CS 664*Amendment Barcode (if applicable)*Name David BarkeyJob Title Sr. & Southeastern Area CounselAddress 5295 Town Center Road, Ste. 300Phone 561-988-2912*Street*Boca RatonFL33486*City**State**Zip*Email dbarkey@adl.orgSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)Representing ADL (Anti-Defamation League)Appearing at request of Chair: ☐ Yes ☐ NoLobbyist 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)

3.2.2020

Meeting Date

SB 664

Bill Number (if applicable)

Topic Opposition to SB 664

Amendment Barcode (if applicable)

Name Alexis Davis

Job Title Policy Analyst, Social Worker

Address 155 Eileen Avenue

Phone 7278712997

Street

Altamonte Springs

FL

32714

Email davis@floridapolicy.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Policy Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/2020
Meeting Date

664
Bill Number (if applicable)

Topic EVerify

Amendment Barcode (if applicable)

Name Tda V. Eskamani

Job Title Public Policy

Address 126 N. Mill St
Street

Phone _____

Orlando _____
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Immigrant Coalition

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3/2/2020 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

SB 664
Bill Number (if applicable)

Topic Employment Verification

Amendment Barcode (if applicable)

Name Kathy B. Carvajal

Job Title Executive Director IMPAC Fund / ABC

Address 121 Alhambra Plaza Phone 786 210 9030

Coral Gables FL Email _____
City State Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing IMPAC Fund / American Business Immigrants Coalition

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

03/02/2020

Meeting Date

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

SB 664

Bill Number (if applicable)

Topic E Verify

Amendment Barcode (if applicable)

Name Nataly Chalco Lopez

Job Title student

Address 509 B W Jefferson St

Phone _____

Street

Tallahassee

FL

32304

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20

Meeting Date

SB 664

Bill Number (if applicable)

Topic Mandating E-Verify

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director

Address 4343 West Flagler St.

Phone 786-363-4436

Street

Miami

FL

33134

Email kgross@aclufl.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Civil Liberties Union of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-2-2020

Meeting Date

CS/CS/SB664
Bill Number (if applicable)

Topic E-verify

Amendment Barcode (if applicable)

Name Robert Windham

Job Title retired

Address 7 Bougainvillea Court
Street

Phone 850-598-4204

Miramar Beach FL 32550
City State Zip

Email wardeagle46rwr@cox.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20
Meeting Date

664
Bill Number (if applicable)

Topic E Veribey Amendment Barcode (if applicable)

Name ~~STEVE VERNON~~ STEVE

Job Title VERNON

Address 7631 Desert Inn Way Phone 941.321.0616

Lakewood Ranch, FL 34202
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 Alliance

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/19

Meeting Date

SB 6841

Bill Number (if applicable)

Topic E-verify

Amendment Barcode (if applicable)

Name Riyan Michael

Job Title _____

Address 11210 Monument Candy Blvd

Street

Phone 904-536-5269

Jax, FL 32225

City

State

Zip

Email Riyan Michael R. Smith

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)

3/2/2020

Meeting Date

6664

Bill Number (if applicable)

Topic Employment Verification

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Exec. Director

Address 579 E. Call St.

Phone 850-321-9386

Street

Tallahassee

City

FL

State

32301

Zip

Email fcfep@ayala.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FI Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate
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 1270

INTRODUCER: Community Affairs Committee; Governmental Oversight and Accountability Committee; and Senator Lee

SUBJECT: Fiduciary Duty of Care for Appointed Public Officials and Executive Officers

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Ponder	McVaney	GO	Fav/CS
2. Paglialonga	Ryon	CA	Fav/CS
3. Ponder	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1270 creates part IX of chapter 112, F.S., to establish an express fiduciary duty of care for appointed public officials' and executive officers acting on behalf of governmental entities.

The bill makes a statement of legislative findings providing that:

- Appointed public officials and executive officers acting on behalf of governmental entities owe a fiduciary duty to the entities they serve; and
- Codifying a fiduciary duty of care will require that appointed public officials and executive officers stay adequately informed of affairs, perform due diligence, perform reasonable oversight, and practice fiscal responsibility regarding decisions involving corporate and proprietary commitments on behalf of a governmental entity.

The bill provides definitions for relevant terms including, but not limited to, "appointed public official," "executive officer," and "governmental entity."

The bill establishes training requirements for each appointed public official and executive officer to begin on January 1, 2021. The bill specifies that a minimum of five hours of board governance training must be completed for each term served. The bill provides three exceptions to the training requirement for appointed public officials and executive officers (i) of governmental entities whose annual revenues are less than \$100,000; (ii) who hold elected office in another

capacity; or (iii) who complete board governance training involving fiduciary duties or responsibilities which is required under any other state law. The bill requires appointed public officials and executive officers to provide written certification of compliance with the board governance training.

The bill requires the Department of Business and Professional Regulation (DBPR), by January 1, 2021, to either (i) contract for or approve a board governance training program that includes an affordable web-based electronic media option; or (ii) publish a list of approved training providers. The bill grants rulemaking authority to the DBPR.

The bill requires the appointment of an executive officer or general counsel to be subject to approval by a majority vote of the governing body of the governmental entity. The bill specifies that all legal counsel employed by a governmental entity must represent the legal interest and position of the governing body of the governmental entity, unless such representation is directed by the governmental entity.

The bill will have an indeterminate fiscal impact on the private sector to the extent entities are selected by DBPR to provide training. The bill will have an indeterminate fiscal impact on the local and state government. The DPBR may experience a slightly negative impact in complying with the bill's board governance training program requirements. Additionally, local governments will experience an indeterminate negative impact to the extent its appointed public officials and executive officers are subject to the training requirement.

The bill will take effect on July 1, 2020.

II. Present Situation:

Chapter 112, F.S.

Chapter 112, F.S., contains general provisions governing public officers and employees. Part III of ch. 112, F.S., establishes a Code of Ethics for Public Officers and Employees that sets forth standards of conduct required for public officers and employees in the performance of their official duties.¹ To enforce the Code of Ethics, the legislature created the Commission on Ethics (Commission).²

Section 112.3145, F.S., requires state and local officers and specified state employees to file a statement of financial interest with the Commission. This section defines a "local officer" to include persons elected to office in any political subdivision of the state and every person who is appointed to fill a vacancy for an unexpired term in such an elective office.³

Additionally, the term includes *appointed* members of specified boards. Specifically, s. 112.3145(1)(a)2., F.S., provides that "public officer" means:

¹ Sections 112.311-112.3261, F.S.

² Section 112.320, F.S.

³ Section 112.3145(1)(a)1., F.S.

Any appointed member of any of the following boards, councils, commissions, authorities, or other bodies of any county, municipality, school district, independent special district, or other political subdivision of the state:

- a. The governing body of the political subdivision, if appointed;
- b. A community college or junior college district board of trustees;
- c. A board having the power to enforce local code provisions;
- d. A planning or zoning board, board of adjustment, board of appeals, community redevelopment agency board, or other board having the power to recommend, create, or modify land planning or zoning within the political subdivision, except for citizen advisory committees, technical coordinating committees, and such other groups who only have the power to make recommendations to planning or zoning boards;
- e. A pension board or retirement board having the power to invest pension or retirement funds or the power to make a binding determination of one's entitlement to or amount of a pension or other retirement benefit; or
- f. Any other appointed member of a local government board who is required to file a statement of financial interests by the appointing authority or the enabling legislation, ordinance, or resolution creating the board.

A “state officer” is defined to mean:

- Any elected public officer, excluding those elected to the U.S. Senate and House of Representatives, not covered elsewhere in this part and any person who is appointed to fill a vacancy for an unexpired term in such an elective office;
- An *appointed* member of each board, commission, authority, or council having statewide jurisdiction, excluding a member of an advisory body;
- A member of the Board of Governors of the State University System or a state university board of trustees, in Chancellor and Vice Chancellors of the State University System, and the president of a state university; or
- A member of the judicial nominating commission for any district court of appeal or any judicial circuit.⁴

Fiduciary Duty of Care

A Fiduciary Relationship and Breach of Fiduciary Duty

Black’s Law Dictionary defines “fiduciary relationship” as:

A relationship in which one person is under a duty to act for the benefit of another on matters within the scope of the relationship. • Fiduciary relationships—such as ... principal-agent ...—require an unusually high degree of care. Fiduciary relationships usu[ally] arise in one of four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that

⁴ Section 112.3145(1)(c), F.S.

has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.⁵

As explained by the Florida Supreme Court, a fiduciary relationship exists “where confidence is reposed by one party and trust is accepted by the other, or where confidence has been acquired or abused.”⁶ In Florida, a breach of fiduciary duty is considered a tort.⁷ To state a claim for breach of fiduciary duty, a plaintiff must show three elements: (1) the existence of a fiduciary duty, (2) the breach of that duty, and (3) damages resulting from the breach.⁸

A fiduciary relationship may be either express or implied.⁹ “Express fiduciary relationships are created by contract, such as principal/agent or can be created by legal proceedings, as in the case of a guardian/ward.”¹⁰ On the other hand, an implied in law fiduciary relationship may be found based on the “specific factual situation surrounding the transaction and the relationship of the parties.”¹¹ Under Florida law, for an implied fiduciary relationship to exist, “there must be substantial evidence showing some dependency by one party and some undertaking by the other party to advise, counsel, and protect the weaker party.”¹²

The most basic duty of a fiduciary is the duty of loyalty, which obligates the fiduciary to put the interests of the beneficiary first, ahead of the fiduciary’s self-interest, and to refrain from exploiting the relationship for the fiduciary’s personal benefit.¹³ In addition to a duty of loyalty, a fiduciary also owes a duty of care to carry out responsibilities in an informed and considered manner and to act as an ordinary prudent person would act in the management of his own affairs. For example, under s. 518.11(1)(a), F.S., a trustee has the duty to invest or manage assets of an estate prudently – “as a prudent investor would considering the purposes, terms, distribution requirements, and other circumstances of the trust.”¹⁴

⁵ BLACK’S LAW DICTIONARY, 744 (10th ed. 2014).

⁶ *Doe v. Evans*, 814 So. 2d 370 (Fla. 2002).

⁷ *Doe v. Evans*, 814 So.2d 370, 374 (Fla. 2002)(“ ‘[a] fiduciary who commits a breach of his duty as a fiduciary is guilty of tortious conduct to the person for whom he should act. . . [t]he liability is not dependent solely upon an agreement or contractual relation between the fiduciary and the beneficiary but results from the relation.’ ”) (quoting Restatement (Second) of Torts § 874 cmt. B(1979)).

⁸ *Gracey v. Eaker*, 837 So.2d 348, 353 (Fla.2002).

⁹ *Capital Bank v. MVB, Inc.*, 644 So.2d 515, 518 (Fla. 3d DCA 1994).

¹⁰ *MediaXposure Ltd. v. Harrington*, No. 8:11–CV–410–T–TGW, 2012 WL 1805493, at *6 (M.D.Fla.2012)

¹¹ *Id.* See e.g., *Fla. Software Svs., Inc. v. Columbia/HCA Healthcare Corp.*, 46 F.Supp.2d 1276, 1286 (M.D.Fla.1999) (stating that “Florida law recognizes fiduciary relationships arising out of joint ventures.”); *Askew v. Allstate Title & Abstract Co., Inc.*, 603 So.2d 29, 31 (Fla. 2d DCA 1992) (stating that “the title agent has a fiduciary duty to both the buyer and the seller”); *Cohen v. Hattaway*, 595 So.2d 105, 107 (Fla. 5th DCA 1992) (stating that “[c]orporate directors and officers owe a fiduciary obligation to the corporation and its shareholders and must act in good faith and in the best interest of the corporation.”).

¹² *Lanz v. Resolution Trust Corp.*, 764 F.Supp. 176, 179 (S.D.Fla.1991); See *Masztal v. City of Miami*, 971 So.2d 803, 809 (Fla. 3d DCA 2007).

¹³ See Restatement (Third) of Agency §8.01 (2006); see also *Capital Bank*, 644 So. 2d at 520.

¹⁴ See *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 475 (2003) (a fiduciary administering trust property owes a fundamental common law duty as trustee to preserve and maintain trust assets; “the standard of responsibility is ‘such care and skill as a man of ordinary prudence would exercise in dealing with his own property’”) (citations omitted).

Fiduciary Obligations owed by Public Officials

The origins of fiduciary duty for public or political officials dates back to English common law. At first, common law did not distinguish among associations; English common law did not treat the City of London different from the East India Company.¹⁵ Both were considered creatures of associational or corporate law, and were referred to as bodies politic, bodies corporate, or corporations.¹⁶ This English common law viewpoint was brought to the New World, and cities, like the Virginia Company of London, were established with this concept in mind.¹⁷ Since these English common law origins, U.S. association law has increasingly divided private and public associations and the concept of fiduciary duty, where the corporation is now deemed private (having more fiduciary duties) and the governmental entity public (having less fiduciary duty).¹⁸

Today, “[p]ublic officials inherently owe a fiduciary duty to the public to make governmental decisions in the public’s best interest.”¹⁹ Accordingly, a public official’s fiduciary duty is a general one rather than a specific one.²⁰ Stated differently, a public official owes a fiduciary duty to the constituents he or she serves generally, but not to each individual constituents he or she serves.²¹ Additionally, Florida recognizes that public officials occupy a fiduciary relationship with respect to public property in that such property is held in trust.²²

Proprietary/Corporate Functions vs. Governmental/Policy Functions

Public officials acting on behalf of governmental entities have two distinct categories of functions when serving residents in their official capacity. Propriety functions encompass actions when a governmental entity is behaving as a property owner or conducting commercial transactions. For example, Florida courts hold that the construction, maintenance, and repair of streets in a municipality is a corporate or proprietary function because the governmental entity is operating as a property owner.²³

Alternatively, when a governmental entity exercises powers regarding the location and installation of traffic control devices such as stop signs, automatic traffic lights, etc., courts hold that public officials are performing a governmental function by making a particular decision on traffic policy.²⁴ The difference between proprietary and governmental functions is important because the common law fiduciary duty of care does not arise from governmental functions. Policy decisions by public officials are largely shielded from judicial review through sovereign

¹⁵ William Blackstone famously grouped together as “lay corporations” towns, the “trading companies of London,” and colleges and universities. See 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *470-71.

¹⁶ *Id.* at *467

¹⁷ See Judith M. Diamondstone, Philadelphia’s Municipal Corporation, 1701-1776, 90 PA. MAG. HIST. & BIOGRAPHY 183, 183 (1966).

¹⁸ See *People v. Morris*, 13 Wend. 325, 337 (N.Y. Sup. Ct. 1835) (“The distinction between public and private corporations is strongly marked, and, as to all essential purposes, they correspond only in name.”).

¹⁹ *U.S. v. deVegter*, 198 F.3d 1324, 1328 (11th Cir. 1999).

²⁰ *Id.*

²¹ See *Maryelin Albertov v. Housing Authority of the City of Fort Lauderdale et al.*, 2018 WL 7108227 (Fla.Cir.Ct.) See also *Nussbaum v. Weeks*, 214 Cal. App. 3d 1580, 1598-99 (1990) (holding that the general manager of a water district, as a public official, owed a fiduciary duty to the residents of the water district generally, but not to each resident specifically).

²² See, e.g., *City of Coral Gables v. Hepkins*, 144 So. 385(Fla. 1932).

²³ See *Gordon v. City of West Palm Beach*, 321 So.2d 78 (Fla. 4th DCA 1975).

²⁴ *Id.*

immunity.²⁵ Whereas, proprietary decisions in governmental entity management have historically been subject to due care considerations²⁶ and requirements that officials act “as prudent persons ought to allow themselves in the management of their own affairs.”²⁷

Taxpayer Standing to Bring a Claim against a Governmental Entity

It is well settled in Florida that – absent a constitutional challenge – a taxpayer may bring suit against a governmental entity only upon a showing of special injury,²⁸ which is distinct from that suffered by other taxpayers.²⁹ Thus, a private citizen is precluded from filing a taxpayer complaint to challenge government action unless the private citizen alleges and proves a “special injury,” which is an injury that is different from that of the general public.³⁰ Thus, Florida law permits a very limited – if nonexistent – remedy for a breach of a duty of care in the public official context as opposed to private law. Even if a plaintiff could establish that a public official owed them a special fiduciary duty, they would still have to prove that the official caused them to suffer a special injury – that is the essence of the current breach of fiduciary duty claims for public officials.

Fiduciary Obligations owed by Private Trustees and Corporate Officials

The Uniform Trust Code stipulates that trustees must “administer the trust as a prudent person would.”³¹ Trust law defines prudence as “reasonable care, skill, and caution.”³² This requirement has been interpreted as a traditional negligence standard in tort law.³³ While reviewing the actions of a trustee, the prudence analysis prioritizes whether the decision-making processes used by a trustee are reasonable and whether the overall substance of the decision is reasonable as a whole.³⁴

Corporations and other business entities utilize a lower fiduciary duty of care than trust law. In the corporate context, as prescribed by the Model Business Corporation Act (MBCA)³⁵ (which Florida’s Business Corporation Act³⁶ mirrors), a breach of the fiduciary duty of care occurs when a corporate official acts with bad-faith, gross negligence, or recklessness.³⁷ This relaxed standard

²⁵ See OSBORNE M. REYNOLDS, JR., LOCAL GOVERNMENT LAW 815-16 (3d ed. 2009); *id.* at 816 n.11 (collecting cases).

²⁶ See 2 RESTATEMENT (THIRD) OF AGENCY § 8.08 (AM. LAW INST. 2006).

²⁷ *Tuggle v. Mayor of Atlanta*, 57 Ga. 114, 117 (1876).

²⁸ This has been termed the “Special injury rule” or “Rickman rule.”

²⁹ *Dep’t of Rev. v. Markham*, 396 So. 2d 1120, 1121 (Fla. 1981); *see also Rickman v. Whitehurst*, 74 So. 205, 207 (Fla. 1917) (Generally, for a taxpayer to have standing to challenge a government’s compliance with the law, the taxpayer must establish a “special damage to his individual interests, distinct from that of every other inhabitant”); *School Bd. of Volusia Co. v. Clayton*, 691 So. 2d 1066, 1068 (Fla. 1997) (requirement of special injury for taxpayer standing is “consistent with long established precedent”).

³⁰ *N. Broward Hosp. Dist. v. Fornes*, 476 So.2d 154 (Fla.1985); *Rickman v. Whitehurst*, 73 Fla. 152, 74 So. 205 (1917).

³¹ UNIF.TR.CODE § 804 (UNIF. LAW COMM’N 2000).

³² *Id.*

³³ See John H. Langbein, *The Contractarian Basis of the Law of Trusts*, 105 YALE L.J. 625, 656 (1995)

³⁴ 3 RESTATEMENT (THIRD) OF TRS. § 87 cmt. c (AM. LAW INST. 2007).

³⁵ MODEL BUS. CORP. ACT (AM. BAR ASS’N 2016); *see also Corp. Laws Comm., Am. Bar Ass’n Bus. Law Section, Model Business Corporation Act* (2016 Revision), 72 BUS. LAW. 421, 421 (2017) (reporting that the model act has been “substantially adopted by a majority of the states”).

³⁶ Chapter 607, F.S.

³⁷ *See, e.g., AmeriFirst Bank v. Bomar*, 757 F. Supp. 1365, 1376 (S.D. Fla. 1991) (requiring a

of care is largely due to the application of the business judgment rule. Under this doctrine, courts will not review decisions of corporate officials as being right or wrong, good or bad, because business operations and market transactions are inherently risky, and corporate officials are obligated to engage in this risk on behalf of a corporation to provide benefits to stakeholders.³⁸ Instead, the fiduciary duty of care in the corporate decision-making context is reviewed for the processes utilized, and the degree of diligence exercised by officials in coming to and effectuating a decision.³⁹

The Department of Business and Professional Regulation

The Florida DBPR, through various divisions, regulates and licenses businesses and professionals in Florida. The divisions established under DBPR include:

- The Division of Administration;
- The Division of Alcoholic Beverages and Tobacco;
- The Division of Certified Public Accounting;
- The Division of Drugs, Devices, and Cosmetics;
- The Division of Florida Condominiums, Timeshares, and Mobile Homes;
- The Division of Hotels and Restaurants;
- The Division of Pari-mutuel Wagering;
- The Division of Professions;
- The Division of Real Estate;
- The Division of Regulation;
- The Division of Technology; and
- The Division of Service Operations.⁴⁰

The Department, through its various divisions, oversees and administers certain training programs related to the professions it regulates. Additionally, under the Condominium Act, Chapter 718, and the Cooperative Act, Chapter 719, F.S., require the Division of Florida Condominiums, Timeshares and Mobile Homes (Division) to provide training and educational programs for condominium and cooperative association board members and unit owners.⁴¹ The training may include web-based electronic media and live training seminars in various locations throughout the state. The Division is permitted to review and approve education and training programs for board members and unit owners offered by providers and must maintain and make available a current list of approved programs and providers.⁴²

showing of “abuse of discretion, fraud, bad faith or illegality” to rebut the presumption of good faith).

³⁸ WILLIAM T. ALLEN ET AL., COMMENTARIES AND CASES ON THE LAW OF BUSINESS ORGANIZATION 263 (2d ed. 2007).

³⁹ See *Smith v. Van Gorkom*, 488 A.2d 858 (Del. Supr. 2009); “[i]n the famous case *Smith v. Van Gorkom*, a corporate board approved a sale of the corporation after a two-hour meeting, relying “solely upon” the oral presentations of three board members, an internal study of the merger, a legal opinion, and the board’s own experience. The Supreme Court of Delaware held that by not considering all material information reasonably available, the board had violated its fiduciary duty of care in that ‘specific context of a proposed merger.’” Max Schanzenbach and Nadav Shoked, *Reclaiming Fiduciary Law for the City*, 70 Stan. L. Rev. 565, 615, 616 (February 2018).

⁴⁰ Section 20.165, F.S.

⁴¹ See Sections 718.501 and 719.501, F.S.

⁴² Section 718.501(1)(j), F.S.

Elected and appointed members and directors of the board of a residential condominium association must certify in writing, within 90 days after being elected or appointed, to the secretary of the association that he or she:

- Has read the association’s declaration of condominium, articles of incorporation, bylaws and current written policies;
- That he or she will work to uphold such documents and policies to the best of his or ability; and
- That he or she will faithfully discharge his or her fiduciary responsibility to the association’s members.⁴³

To meet the requirements of an educational curriculum for a condominium educational curriculum for a condominium education program under s. 718.112(2)(d)4.b., F.S., the program must cover at least four of the following topics:

- Budgets and reserves.
- Elections.
- Financial reporting.
- Condominium operations.
- Records maintenance, including unit owner access to records.
- Dispute resolution.
- Bids and contracts.⁴⁴

Each condominium association which operates more than two units must pay the Division an annual fee of \$4 for each residential unit in the condominiums operated by the association.⁴⁵ The association is assessed a penalty of 10 percent of the amount due, if the fee is not paid by March 1.⁴⁶ Additionally, until the amount due, plus any penalty, is paid, the association will not have legal standing to maintain or defend any action in the courts.⁴⁷

III. Effect of Proposed Changes:

Section 1 creates part IX of chapter 112, F.S., consisting of s. 112.89, F.S., to be entitled “Fiduciary Duty of Care for Appointed Public Officials and Executive Officers.”

Section 2 creates s. 112.89, F.S., to establish a fiduciary duty of care for appointed public officials and executive officers acting to the applicable entity in accordance with law he or she serves. The bill makes a statement of legislative findings providing that:

- Appointed public officials and executive officers acting on behalf of governmental entities owe a fiduciary duty to the entities they serve; and
- Codifying a fiduciary duty of care will require that appointed public officials and executive officers stay adequately informed of affairs, perform due diligence, perform reasonable oversight, and practice fiscal responsibility regarding decisions involving corporate and proprietary commitments on behalf of a governmental entity.

⁴³ Section 718.112(2)(d)4.b., F.S.

⁴⁴ Rule 61B-19.001, F.A.C.

⁴⁵ Section 718.501(2)(a), F.S.

⁴⁶ *Id.*

⁴⁷ *Id.*

The bill includes the following definitions:

- “Appointed public official” means either a “local officer” as defined in s. 112.3145(1)(a)2., F.S., or a “state officer” as defined in ss. 112.3145(1)(c)2. and 3., F.S.;⁴⁸
- “Department” means the DBPR;
- “Executive officer” means the chief executive officer of a governmental entity to which an appointed public official is appointed; and
- “Governmental entity” means the entity, or a board, a council, a commission, an authority, or another body thereof, to which an appointed public official or an executive officer is appointed or hired.

The bill establishes an express fiduciary duty of care for each appointed public official and executive director owed to the applicable entity in accordance with law he or she serves. The bill specifies that each appointed public official and executive officer has the duty to:

- Act in accordance with the laws, ordinances, rules, policies, and terms governing his or her office or employment;
- Act with the care, competence, and diligence normally exercised by reasonably prudent persons in similar corporate and proprietary circumstances;
- Act only within the scope of his or her authority;
- Refrain from conduct that is likely to damage the financial or economic interests of the governmental entity;
- Use reasonable efforts to maintain documentation in accordance with applicable laws; and
- Maintain reasonable oversight of any delegated authority and discharge his or her duties with the care that a reasonably prudent person in a like business position would believe appropriate under the circumstances.

The bill provides that the duty to maintaining reasonable oversight includes (i) becoming reasonably informed in connection with any decision-making function and when devoting attention to any oversight function; and (ii) keeping reasonably informed concerning the affairs of the governmental entity concerning the performance of a governmental entity’s executive officers or other officers, agents, or employees. While this provision creates express fiduciary duties for appointed public officials and state officers, it does not create a private cause of action or enforcement mechanism.

This section also establishes training requirements. Each appointed public official and executive officer, beginning January 1, 2021, must complete a minimum of 5 hours of board governance training (Training) for each term served. For those holding office or employed by a governmental entity on January 1, 2021, he or she is required to complete 5 hours of training before the expiration of his or her term of service. If the appointed public official or appointed executive officer is appointed, reappointed, or hired after January 1, 2021, the bill specifies that he or she shall complete 5 hours of training within 180 days of the appointment, reappointment or hire. If an appointed public official or executive officer is employed under a contract that does not specify a termination date for employment, the public official or executive officer shall

⁴⁸ Approximately 16,785 individuals report under these provisions (approximately 15,195 reporting under subsection (1)(a)2); approximately 1,415 reporting under subsection (1)(c)2., and approximately 175 under subsection (1)(c)3.) Telephone Interview with Steven Zuilkowski, Attorney, Florida Commission on Ethics (Jan. 30, 2020).

complete the 5 hours of training by January 1, 2022, and once every 4 years, thereafter for the duration of their employment.

The bill requires DBPR, by January 1, 2021, to either (i) contract for or approve a Training program that includes an affordable web-based electronic media option; or (ii) publish a list of approved training providers. The bill provides that the Training programs, at a minimum, must include education materials and instruction related to:

- Generally accepted corporate board governance principles and best practices;
- Corporate board fiduciary duty of care legal analyses;
- Corporate board oversight and evaluation procedures;
- Governmental entity responsibilities;
- Executive officer responsibilities;
- Executive officer performance evaluations;
- Selecting, monitoring, and evaluating an executive management team;
- Reviewing and approving proposed investments, expenditures, and budget plans;
- Financial accounting and capital allocation principles and practices;
- New governmental entity member orientation; and
- The fiduciary duty of care and obligations imposed upon appointed public officials and executive officers pursuant to this section.

The bill allows governmental entities with annual revenues of less than \$300,000 to use in-house counsel or the in-house counsel for the unit of government that created the entity, to provide training as long as it comports with the minimum course content established by DBPR rule.

The bill sets forth training compliance requirements. Each appointed public official and the executive officer must certify, in writing or electronic form and under oath to DBPR that she or he has completed the Training, has read the laws and policies applicable to her position, will work to uphold such laws and policies, and will faithfully discharge his or her fiduciary responsibility. This certification must be submitted within 30 days of completing the Training.

The bill provides three exceptions to the training requirement for (i) appointed public officials and executive officers of governmental entities whose annual revenues are less than \$100,000; appointed officials who hold elected office in another capacity; or (iii) appointed public officials or executive officers who complete board governance training involving fiduciary duties or responsibilities which is required under any other state law.

The bill grants rulemaking authority to the DBPR.

The bill requires approval by a majority vote of the governing body of the governmental entity for the appointment of any executive officer or general counsel.

The bill provides standards for legal counsel requiring all legal counsel employed by a governmental entity must represent the legal interest and position of the governmental entity and not the interest of any individual or employee of the governmental entity, unless such representation is directed by the governmental entity. (emphasis added).

Section 3 provides that the bill will take effect on July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, subsection (a) of section 18 of the State 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.

Under this bill, there is a possibility cities and counties may incur costs relating to the board governance training. However, to the extent the bill applies to counties and municipalities, the mandate requirements do not apply to laws having an insignificant impact which, for Fiscal Year 2020-2021, is forecast at slightly over \$2.1 million.^{49,50,51} The fiscal impact of this bill on cities and counties is indeterminate. The bill's impact is largely dependent on the affordability of the DBPR training programs⁵² and the number of individuals within county and municipal governments that fit within the scope of the bill.

If costs imposed by the bill are determined to exceed \$2.1 million in the aggregate, the bill may be binding on cities and counties if the bill contains a finding of important state interest and meets one of the exceptions specified in State Constitution (e.g., applies to all persons similarly situated (i.e., cities, counties, and all other state and local governing entities with appointed officials) 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.

⁴⁹ FLA. CONST. art. VII, s. 18(d).

⁵⁰ 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 Dec. 20, 2019).

⁵¹ Based on the Florida Demographic Estimating Conference's December 3, 2019, population forecast for 2020 of 21,555,986. The conference packet is available at: <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Dec. 20, 2019).

⁵² The majority of the approved providers for the DBPR condominium board member training courses are provided at no fee. See DBPR website, *Approved Providers*, available at: <http://www.myfloridalicense.com/dbpr/lsc/documents/CondoCOOPListofApprovedProviders2015.pdf> (last visited Feb. 14, 2020).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will experience an indeterminate positive fiscal impact to the extent of DBPR contracts with private entities for the required training.

C. Government Sector Impact:

The DBPR will experience a negative fiscal impact as it uses resources to implement the provisions of the bill related to training and processes the certification of completed training. The DBPR's agency analysis of the bill states that additional staff may be required to review and approve training programs and maintain reporting data.⁵³

Also, governmental entities that fall under the bill's criteria may be required to expend funds in providing the training to its appointed public officials or executive officers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 112.89 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.)

⁵³ DBPR, *Senate Bill 1270 Agency Analysis* (Jan. 13, 2020) (on file with the Senate Committee on Community Affairs).

CS/CS by Community Affairs on February 17, 2020:

The committee substitute removes the reference to “*private business professionals*” when defining the fiduciary duty of care and restates the duty is to act with the care *normally exercised by a reasonably prudent person* in similar corporate and proprietary circumstances.

CS by Governmental Oversight and Accountability on February 10, 2020:

The committee substitute:

- Revises the definition of “executive officer.”
- Clarifies the applicable fiduciary duty of care standard.
- Amends the provision regarding the duty to maintain reasonable oversight to provide that it be discharged with the care that reasonably prudent person in a like business position would believe appropriate under the circumstances.
- Provides for training requirements for appointed public officials or executive officers employed by a governmental entity under a contract without a termination date.
- Makes technical changes to the minimum education materials to be included in the training program.
- Makes those appointed public officials or executive offers who complete board governance training involving fiduciary duties or responsibilities as required under any other state law exempt from the training requirements under the bill.
- Amends the legal counsel standards provision.

B. Amendments:

None.

By the Committees on Community Affairs; and Governmental Oversight and Accountability; and Senator Lee

578-03804-20

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A bill to be entitled

An act relating to the fiduciary duty of care for appointed public officials and executive officers; providing a directive to the Division of Law Revision to create part IX of ch. 112, F.S.; creating s. 112.89, F.S.; providing legislative findings and purpose; defining terms; establishing standards for the fiduciary duty of care for appointed public officials and executive officers of specified governmental entities; requiring training on board governance beginning on a specified date; requiring the Department of Business and Professional Regulation to contract for or approve such training programs or publish a list of approved training providers; specifying requirements for such training; authorizing training to be provided by in-house counsel for certain governmental entities; requiring appointed public officials and executive officers to certify their completion of the annual training; requiring the department to adopt rules; providing exceptions to the training requirement; specifying requirements for the appointment of executive officers and general counsels of governmental entities; specifying standards for legal counsel; providing an effective date.

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

Section 1. The Division of Law Revision is directed to create part IX of chapter 112, Florida Statutes, consisting of

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

578-03804-20

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s. 112.89, Florida Statutes, to be entitled "Fiduciary Duty of Care for Appointed Public Officials and Executive Officers."

Section 2. Section 112.89, Florida Statutes, is created to read:

112.89 Fiduciary duty of care.—

(1) LEGISLATIVE FINDINGS AND PURPOSE.—The Legislature finds that appointed public officials and executive officers acting on behalf of governmental entities owe a fiduciary duty to the entities they serve. The Legislature finds that codifying a fiduciary duty of care will require that appointed public officials and executive officers stay adequately informed of affairs, perform due diligence, perform reasonable oversight, and practice fiscal responsibility regarding decisions involving corporate and proprietary commitments on behalf of the entity they serve.

(2) DEFINITIONS.—

(a) "Appointed public official" means either a "local officer" as defined in s. 112.3145(1)(a)2. or a "state officer" as defined in s. 112.3145(1)(c)2. and 3.

(b) "Department" means the Department of Business and Professional Regulation.

(c) "Executive officer" means the chief executive officer of a governmental entity to which an appointed public official is appointed.

(d) "Governmental entity" means the entity, or a board, a council, a commission, an authority, or other body thereof, to which an appointed public official or an executive officer is appointed or hired.

(3) FIDUCIARY DUTY OF CARE.—Each appointed public official

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

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and executive officer owes a fiduciary duty of care to the applicable entity in accordance with law he or she serves and has a duty to:

(a) Act in accordance with the laws, ordinances, rules, policies, and terms governing his or her office or employment.

(b) Act with the care, competence, and diligence normally exercised by a reasonably prudent person in similar corporate and proprietary circumstances.

(c) Act only within the scope of his or her authority.

(d) Refrain from conduct that is likely to damage the financial or economic interests of the governmental entity.

(e) Use reasonable efforts to maintain documentation in accordance with applicable laws.

(f) Maintain reasonable oversight of any delegated authority and discharge his or her duties with the care that a reasonably prudent person in a like business position would believe appropriate under the circumstances, and must:

1. Become reasonably informed in connection with any decisionmaking function;

2. Become reasonably informed when devoting attention to any oversight function;

3. Keep reasonably informed concerning the affairs of the governmental entity; and

4. Keep reasonably informed concerning the performance of a governmental entity's executive officers or other officers, agents, or employees.

(4) TRAINING REQUIREMENT.—

(a) Beginning January 1, 2021, each appointed public official and executive officer shall complete a minimum of 5

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hours of board governance training for each term served.

1. An appointed public official or executive officer holding office or employed by an entity on January 1, 2021, shall complete the 5 hours of board governance training before the expiration of his or her term of service. If an appointed public official or executive officer is employed under a contract that does not specify a termination date for employment, the public official or executive officer shall complete the 5 hours of training by January 1, 2022, and once every 4 years thereafter for the duration of their employment.

2. An appointed public official or executive officer who is appointed, reappointed, or hired after January 1, 2021, shall complete the 5 hours of board governance training within 180 days after the date of his or her appointment, reappointment, or hire.

(b) By January 1, 2021, the department shall:

1. Contract for or approve a board governance training program that includes an affordable web-based electronic media option; or

2. Publish a list of approved board governance training providers on its website. A provider may include a Florida College System institution, a state university, a nationally recognized entity specializing in board governance education, or any other entity deemed qualified by the department as capable of providing the minimum training requirements specified in this subsection.

(c) The board governance training programs must provide, at a minimum, educational materials and instruction on the following:

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117 1. Generally accepted corporate board governance principles
 118 and best practices; corporate board fiduciary duty of care legal
 119 analyses; corporate board oversight and evaluation procedures;
 120 governmental entity responsibilities; executive officer
 121 responsibilities; executive officer performance evaluations;
 122 selecting, monitoring, and evaluating an executive management
 123 team; reviewing and approving proposed investments,
 124 expenditures, and budget plans; financial accounting and capital
 125 allocation principles and practices; and new governmental entity
 126 member orientation.

127 2. The fiduciary duty of care and obligations imposed upon
 128 appointed public officials and executive officers pursuant to
 129 this section.

130 (d) A governmental entity complies with the training
 131 requirement under this subsection by providing a department-
 132 approved program or contracting with a provider listed by the
 133 department under subparagraph (b)2. However, for governmental
 134 entities with annual revenues of less than \$300,000, board
 135 governance training may be provided by in-house counsel of the
 136 governmental entity or the unit of government that created the
 137 governmental entity, if applicable, so long as the training
 138 complies with the minimum course content established by
 139 department rule.

140 (e) Within 30 days after completion of the board governance
 141 training, each appointed public official and executive officer
 142 shall certify, in writing or electronic form and under oath, to
 143 the department that he or she:

- 144 1. Has completed the training required by this subsection;
 145 2. Has read the laws and relevant policies applicable to

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146 his or her position;

147 3. Will work to uphold such laws and policies to the best
 148 of his or her ability; and

149 4. Will faithfully discharge his or her fiduciary
 150 responsibility, as imposed by this section.

151 (f) The department shall adopt rules to implement this
 152 subsection.

153 (g) This subsection does not apply to appointed public
 154 officials and executive officers who:

155 1. Serve governmental entities whose annual revenues are
 156 less than \$100,000;

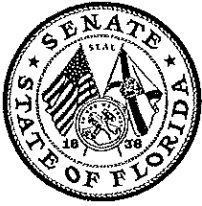
157 2. Hold elected office in another capacity; or

158 3. Complete board governance training involving fiduciary
 159 duties or responsibilities which is required under any other
 160 state law.

161 (5) APPOINTMENT OF EXECUTIVE OFFICERS AND GENERAL
 162 COUNSELS.—The appointment of any executive officer or general
 163 counsel is subject to approval by a majority vote of the
 164 governmental entity.

165 (6) STANDARDS FOR LEGAL COUNSEL.—All legal counsel employed
 166 by a governmental entity must represent the legal interests and
 167 positions of the governmental entity and not the interest of any
 168 individual or employee of the governmental entity, unless such
 169 representation is directed by the governmental entity.

170 Section 3. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Benacquisto, Chair
Rules Committee

Subject: Committee Agenda Request

Date: February 20, 2020

I respectfully request that **Senate Bill #1270**, relating to Fiduciary Duty of Care for Appointed Public Officials and Executive Officers, be placed on the:

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

A handwritten signature in black ink that reads "Tom Lee".

Senator Tom Lee
Florida Senate, District 20

THE FLORIDA SENATE

APPEARANCE RECORD

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

5/2/2020

Meeting Date

SB 1270

Bill Number (if applicable)

Topic Fiduciary Duty of Care for Appointed Public Officials

Amendment Barcode (if applicable)

Name STACIA BROWN AND EXECUTIVE OFFICERS

Job Title Deputy State Director

Address

Phone

Street

City

State

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2020

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

SB 1270

Meeting Date

Bill Number (if applicable)

Topic

Fiduciary Duties + governance training for

Amendment Barcode (if applicable)

Name

Laura Raybin Miller

Appointed
officers

Job Title

Commissioner - South Broward Hospital District

Address

3000 S Ocean Drive # 920

Phone

954 560-7845

Street

Hollywood FL 33019

Email

RaybinLC@fl.com

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/2020

Meeting Date

SB 1270

Bill Number (if applicable)

Topic Fiduciary Duty of care

Amendment Barcode (if applicable)

Name Rebecca O'Hara (Rebecca O'Hara)

Job Title Deputy General Counsel

Address PO Box 1757

Phone 800 222 9654

Street

Tallahassee

City

FL

State

32302

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)

3-2-20

~~2-19-20~~

Meeting Date

~~SB 1270~~ SB 1270

Bill Number (if applicable)

Topic

Saving Families, Adoption Records

Amendment Barcode (if applicable)

Name

Greg Pound

Job Title

Address

9116b Sunrise Dr.

Phone

Street

Largo

City

FL

State

33773

Zip

Email

Speaking:

☐

For

☐

Against

☒

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

Saving Families

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

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No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 1766

INTRODUCER: Judiciary Committee and Senators Lee and Perry

SUBJECT: Growth Management

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cibula	Cibula	JU	Fav/CS
2. Paglialonga	Ryon	CA	Favorable
3. Cibula	Phelps	RC	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1766 makes several changes to the Bert J. Harris, Jr., Private Property Rights Protection Act, which will facilitate the ability of property owners to obtain compensation or other relief from a governmental entity when their property is inordinately burdened by a law, rule, ordinance, or regulation.

These changes to the Bert Harris Act:

- Shorten the presuit process that is a prerequisite to a lawsuit under the Bert Harris Act from 150 to 90 days.
- Establish a presumption that a settlement offer made by a governmental entity during the presuit process protects the public interest.
- Give a property owner the option of having compensation for an inordinate burden determined by a judge instead of a jury as under current law.
- Allow a property owner to forego an application for a permit or other relief as a prerequisite to making a Bert Harris claim if a governmental entity acknowledges that a law or regulation limits the uses of the property.

The bill also clarifies the time in which a property owner must provide notice to a governmental entity that it has imposed a prohibited exaction, which is an improper condition on the proposed uses of a property. Finally, the bill requires the Department of Transportation, when disposing of surplus real property, to give the prior owner of the property the right of first refusal to purchase the property.

II. Present Situation:

Bert J. Harris, Jr., Private Property Rights Protection Act

The Bert Harris Act provides a cause of action for relief or compensation when a law, rule, regulation, or ordinance inordinately burdens real property without amounting to a taking.¹ An action of a governmental entity is an inordinate burden if it directly restricts or limits the use of real property in a way that permanently prevents the owner from attaining the reasonable, investment-backed expectation for the existing use of the property or to a specific use of the property.² A government act may also constitute an inordinate burden on a property if it causes a property owner to permanently bear “a disproportionate burden imposed for the good of the public, which in fairness should be borne by the public at large.”³

Presuit Process

“The Act was designed to promote settlement, and a claim under the Act requires a presuit procedure.”⁴ Under the presuit procedure, a property owner seeking compensation must present a written claim to the governmental entity before filing a lawsuit.⁵ For nonagricultural properties, the claim must be presented at least 150 days⁶ before filing a lawsuit, and for agricultural properties, the minimum notice period is 90 days. Along with the claim, the property owner must submit a “bona fide, valid appraisal that supports the claim and demonstrates the loss in fair market value to the real property.”⁷

Mandatory Settlement Offer

During the notice period, which may be extended by the parties, the governmental entity must make a written settlement offer to effectuate:

1. An adjustment of land development or permit standards or other provisions controlling the development or use of land.
2. Increases or modifications in the density, intensity, or use of areas of development.
3. The transfer of developmental rights.
4. Land swaps or exchanges.
5. Mitigation, including payments in lieu of onsite mitigation.
6. Location on the least sensitive portion of the property.
7. Conditioning the amount of development or use permitted.
8. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.
9. Issuance of the development order, a variance, special exception, or other extraordinary relief.

¹ Section 70.001(1), F.S.

² Section 70.001(1)(e), F.S.

³ *Id.*

⁴ *Charlotte County Park of Commerce, LLC v. Charlotte County*, 927 So. 2d 236, 237 (Fla. 2d. DCA 2006).

⁵ Section 70.001(4)(a), F.S.

⁶ The 150-day notice period was reduced from 180 days beginning on July 1, 2011. Chapter 2011-191, Laws of Fla.

⁷ Section 70.001(4)(a), F.S.

10. Purchase of the real property, or interest therein, by an appropriate governmental entity or payment of compensation.
11. No changes to the action of the governmental entity.⁸

Public-Interest Protection

If a settlement agreement results from the governmental entity's settlement offer, the settlement agreement may be implemented by any appropriate method. However, if the settlement agreement has the effect of a modification, variance, or special exception to an otherwise applicable rule, regulation, or ordinance, the agreement must protect the public interest served by the regulations at issue and provide appropriate relief to the property owner.⁹

If the settlement agreement effectively contravenes the application of a statute that would otherwise apply to a property, the parties must jointly file an action in the circuit court for approval of the agreement.¹⁰ The court must “ensure that the relief granted protects the public interest served by the statute at issue and is appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property.”¹¹

Implicit Public Participation Requirement

The Bert Harris Act does not expressly require or authorize public participation in the resolution of Bert Harris claims. However, the 2016 appellate court opinion in *Rainbow River Conservation, Inc., v. Rainbow River Ranch, LLC*, found that public participation is necessary for the protection of the public interest, at least in some cases.¹² The *Rainbow River* litigation stemmed from a comprehensive plan amendment by the City of Dunnellon which imposed additional restrictions on the future use of property along the Rainbow River.

At the trial-court level, nonparties intervened in the proceedings to oppose the proposed settlement agreement submitted to the court for approval.¹³ The intervenors argued that the settlement did not protect the public interests served by a statute and that the settlement provided far more relief to the property owners than necessary. The intervenors also sought an evidentiary hearing to resolve factual issues that were material to the court's decision on the agreement.

The intervenors' request for an evidentiary hearing was unnecessary, according to the property owners, because the court was required to accept the stipulation of the settling parties.¹⁴ The property owners seemed to further argue that the public interest was satisfied by the fact that the other parties, the City of Dunnellon and the Department of Economic Opportunity, agreed to the settlement.

When reversing the trial court's ruling, the appellate court in *Rainbow River*, stated that the Bert Harris Act grants courts “broad power to ‘enter any orders necessary to effectuate the purposes’”

⁸ Section 70.001(4)(c), F.S.

⁹ Section 70.001(4)(d)1., F.S.

¹⁰ Section 70.001(4)(d)2., F.S.

¹¹ *Id.*

¹² *Rainbow River Conservation, Inc., v. Rainbow River Ranch, LLC*, 189 So. 3d 312 (Fla. 5th DCA 2016).

¹³ *Id.* at 314.

¹⁴ *Id.*

of the Act.¹⁵ Expanding on this concept, the court explained that when approving a settlement that contravenes a statute, courts must provide some mechanism for “robust public input” to ensure the protection of the public interests.¹⁶ These mechanisms could include a requirement that a city conducts public hearings and consider the comments from those proceedings, and at least in the *Rainbow River* proceeding, likely requires a trial court to grant an evidentiary hearing to intervenors.

Statements of Allowable Uses

If the presuit process does not result in the settlement of a Bert Harris claim, the government entities involved must provide the property owner with a written statement of allowable uses for the property.¹⁷ Once issued or once the time for the issuance of the statement expires, the property owner may file a claim for compensation in the circuit court.

Trial—Roles of Judges and Juries

At trial, the judge must determine whether an existing use of the real property or a vested right to a specific use of the property existed and whether a governmental entity has inordinately burdened the property, considering any settlement offer or statement of allowable uses.¹⁸ A jury, however, determines the compensation due for a loss in value due to an inordinate burden.¹⁹

Ripeness—As Applied Challenges

Claims under the Bert Harris Act are limited to “as applied challenges,” meaning that some action of the government beyond the mere enactment of new regulation must apply to a parcel of real property.²⁰ The action of a governmental entity required to ripen a claim typically involves the formal denial of a written request for development or variance. Several appellate court opinions, which are discussed below, show how the as applied requirement works in practice.

The 2008 appellate court opinion in *M & H Profit, Inc., v. City of Panama City* explained that the city’s conduct was insufficient action to enable the developer, M & H, to bring an as applied challenge to a new ordinance.²¹ The facts of the case involved the developer’s purchase of a property that had no height or setback restrictions and on which the developer intended to build a 20-story residential condominium. About 6 weeks after the purchase, however, the city adopted an ordinance imposing a 120 ft. height restriction and additional setback requirements.

A few months after the ordinance was adopted, the developer met with the city planning manager for pre-application informal discussions about its development plans. Shortly after the discussions, the city planning manager stated by letter that it was clear that the proposed

¹⁵ *Id.* at 314. The source of the broad powers of the court under the Bert Harris Act is this statement in s. 70.001(7)(a), F.S.: “The circuit court may enter any orders necessary to effectuate the purposes of this section and to make final determinations to effectuate relief available under this section.”

¹⁶ *Id.* at 315.

¹⁷ Section 70.001(5), F.S.

¹⁸ Section 70.001(6)(a), F.S.

¹⁹ Section 70.001(6)(b), F.S.

²⁰ *M & H Profit, Inc., v. City of Panama City*, 28 So. 3d 71 (Fla. 1st DCA 2009).

²¹ *Id.*

condominium would not meet the height and setback requirements.²² The majority of the appellate court held that the adoption of the ordinance and the city planning manager's letter were insufficient actions to permit an as applied challenge under the Bert Harris Act.^{23, 24}

The 2018 appellate court decision in *GSK Hollywood Development Group, LLC, v. City of Hollywood*²⁵ has some similarities to the *M & H* decision on the issue of ripeness and as applied challenges. In *GSK*, a developer contacted the director of planning and zoning for the City of Hollywood before purchasing property to confirm the zoning regulations on the property. The director orally confirmed that the zoning was consistent with the developer's plan to build a 15-story condominium. The developer then purchased the property in 2002.

In 2004, the developer began discussing its conceptual development plans with city leaders. Shortly afterward, residents of a nearby condominium association voiced their opposition to the proposed condominium to the mayor.²⁶ The mayor, in emails, affirmed her support for the residents of the nearby condominium. Ultimately, the mayor was successful in having the city commission reduce the maximum heights of new buildings to 65 ft.

In response to the new height restrictions, the developer filed a lawsuit against the city under the Bert Harris Act.²⁷ The city argued that the developer's failure to submit an application to develop the property precluded its claim for compensation. The appellate court agreed, concluding that the developer's claim for compensation was not ripe because it did not seek a permit, variance, or other formal relief before filing its Bert Harris claim.²⁸ However, the court advised that "[i]f the Legislature intended to allow a claim in such a circumstance, it is for the Legislature to do so."²⁹

In another 2018 appellate court opinion on the issue of ripeness, *Golfrock v. Lee County*, Golfrock, a property owner, asked a court to enter a declaratory judgment that its Bert Harris claim was ripe because any further pursuit of its zoning request was futile as a matter of law.³⁰ Golfrock alleged that it would have been prohibitively expensive to pursue the zoning application further and that the denial of the application was "fait accompli," or inevitable.³¹

The court explained that the "final decision requirement [in the context of regulatory takings claims] 'responds to the high degree of discretion characteristically possessed by land-use boards in softening the strictures of the general regulations they administer.'"³² Moreover, the court indicated that economic losses in these types of cases "cannot be resolved in definitive terms

²² *Id.* at 73.

²³ *Id.* at 78.

²⁴ Justice Thomas in his dissenting opinion stated that he "would hold that the City's enactment of the ordinance, and the informal conceptual denial of the building plan, can form the basis of a cause of action under the Bert Harris Act." *Id.*

²⁵ *GSK Hollywood Development Group, LLC, v. City of Hollywood*, 246 So. 3d 501 (Fla. 4th DCA 2018).

²⁶ *Id.* at 503.

²⁷ *Id.*

²⁸ *Id.* at 506.

²⁹ *Id.*

³⁰ *Golfrock v. Lee County*, 247 So. 3d (Fla. 2d DCA 2018).

³¹ *Id.* at 39.

³² *Id.* (quoting *Palazzolo v. Rhode Island*, 533 U.S. 606, 620 (2001)).

until a court knows ‘the extent of permitted development’ on the land in question.”³³ The futility exception to the final decision requirement, according to the court, applies only once it is clear that the permitting agency lacks any discretion.³⁴ The court ultimately dismissed Golfrock’s complaint for declaratory relief because it did not state a cause of action.³⁵

Governmental Exactions

In 2015, the Legislature enacted s. 70.45, F.S., which created an action for injunctive relief and damages caused by a prohibited exaction. A prohibited exaction is a “condition imposed by a governmental entity on a property owner’s proposed use of real property that lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate.”³⁶

The statute was a response to the U.S. Supreme Court’s decision in *Koontz v. St. Johns River Water Management District*,³⁷ “to address uncertainty over whether Florida provides a cause of action for monetary damages for unconstitutional exactions.”³⁸ In *Koontz*, the water management district denied a property owner’s application for the permits to develop his land because he refused to agree to the district’s conditions. The conditions required the property owner to:

- Limit development on his 14.9 acre parcel to 1 acre and deed the district a conservation easement on the remaining 13.9 acres and add other costly improvements, or
- Develop 3.7 acres as planned and deed a conservation easement to the government on the remaining property and hire a contractor to improve district-owned land miles away.

The U.S. Supreme Court held that a governmental entity may not deny a land-use permit for failing to agree to the entity’s conditions unless there is an essential nexus and rough proportionality between the conditions and the proposed land use.

The *Koontz* Court further stated that the availability of monetary damages for an excessive demand when no taking has occurred is determined by the statutory cause of action on which the property owner relies, not on federal constitutional law.³⁹

When a property owner seeks damages under s. 70.45, F.S., for a prohibited exaction, the owner must comply with presuit procedures.⁴⁰ These procedures require the owner to submit a written notice to the relevant governmental entity of the intent to seek damages for a prohibited exaction. This notice must also identify the prohibited exaction, briefly explain why the owner believes the exaction is prohibited, and provide an estimate of the damages. The property owner must provide the notice to the relevant governmental entity within a short window:

³³ *Id.* (quoting *Palazzolo* at 618).

³⁴ *Id.*

³⁵ *Id.* at 38.

³⁶ Section 70.45(1)(c), F.S.

³⁷ *Koontz v. St. Johns River Water Management District*, 570 U.S. 595 (2013).

³⁸ Margaret L. Cooper, Ronald L. Weaver, Jonne M. Connor, The Florida Bar, *Statutory Property Rights Protection*, RPL FL CLE 13-1 (9th ed. 2018).

³⁹ *Id.* at 609.

⁴⁰ Section 70.45(3), F.S.

At least 90 days before filing an action under this section, but no later than 180 days after imposition of the prohibited exaction.⁴¹

The statute, however, does not further explain how to identify the point in time at which the exaction is imposed.

At trial, “the governmental entity has the burden of proving that the exaction has an essential nexus to a legitimate public purpose and is roughly proportionate to the impacts of the proposed use that the governmental entity is seeking to avoid, minimize, or mitigate.”⁴² The property owner must prove its damages. Damages from a prohibited exaction are the reduction in the fair market value of the real property or the amount of the fee or infrastructure costs that exceed what is permissible.⁴³

Acquisition and Disposition of Surplus Property

The Department of Transportation is authorized to dispose of property it has held for longer than 10 years if the property is not needed for the construction, operation, and maintenance of a transportation facility or is not located within a transportation corridor.⁴⁴ If the department decides to dispose of property, it may be disposed of through negotiations, sealed competitive bids, auctions, or any other means the department deems to be in its best interest. However, the property may not be sold for less than the department’s estimated value.

The statute authorizing the department to dispose of surplus property, further places some individuals higher in priority to receive or to be offered the property for purchase.⁴⁵ For example, the statute places a higher priority on returning a donated property to the original donor or the donor’s heirs than on offering the property to a local government in which the property is located.

Chapter 73, F.S., relating to eminent domain, also provides limitations on how property taken by eminent domain may be transferred or sold. Under s. 73.013(1)(f), F.S., for example, property taken by eminent domain and held less than 10 years must be offered to the prior owner for the amount the condemning authority paid for it before it can be offered to others.

III. Effect of Proposed Changes:

Bert Harris Act Revisions

This bill makes several changes to the Bert Harris Act which will facilitate the recovery of compensation or other relief resulting from laws, rules, regulations, and ordinances that are an inordinate burden on real property.

⁴¹ *Id.*

⁴² Section 70.45(4), F.S.

⁴³ Section 70.45(1)(a), F.S.

⁴⁴ Section 337.25(3) and (4).

⁴⁵ Section 337.25(4), F.S.

Presuit Notice Period

The Bert Harris Act requires a property owner to provide notice of the intent to seek compensation under the Act to the relevant governmental entity at least 150 days before filing a lawsuit if the property is nonagricultural. For agricultural properties, the presuit notice period is 90 days.

The bill sets 90 days as the presuit period for all properties, whether agricultural or nonagricultural.

Settlement Offers in the Public Interest

The Bert Harris Act requires a governmental entity receiving a claim to make a written settlement offer to the claimant to resolve the claim before a lawsuit is filed. The Act further requires that any settlement agreement both protect the public interests served by the underlying rules, regulations, or statutes and provide appropriate relief to the property owner from inordinate burdens.

The bill creates a presumption that settlement offers made by a governmental entity to resolve a Bert Harris claim protect the public interest. This change appears likely to limit the ability of nonparties to intervene or participate in the resolution of Bert Harris claims except in compelling circumstances.

Compensation Calculations

Currently, under the Bert Harris Act, a judge determines whether an action of a governmental entity is an inordinate burden on the existing use of real property or a vested right to a specific use of the property. A jury determines compensation for the loss in value due to the inordinate burden.

The bill gives a claimant the option of having compensation determined by the judge.

Ripeness of Claims

The Bert Harris Act, according to case law, provides relief to property owners after a government action has been applied to and has inordinately burdened a property. To initiate an applied challenge, a property owner typically must apply for and be denied a permit, variance, or other relief by a governmental entity.

The bill requires governmental entities, within 45 days after receipt of notice from a property owner, to explain in writing whether a particular law or regulation applies to the owner's property and to describe further the limitations imposed on the property by the law or regulation. If the governmental entity acknowledges that the law or regulation applies to the property and imposes new limitations on the uses of the property, an application for a development order, development permit, or building permit is deemed a waste of resources and unnecessary to bring a claim for compensation. However, a property owner has only 1 year after the receipt of the explanation from the governmental entity to pursue a Bert Harris claim.

Prohibited Exactions

Existing s. 70.45, F.S., allows a property owner to seek injunctive relief and damages when a governmental entity imposes a prohibited exaction on the owner's property. However, there is a small window of time during which the property owner must submit a notice of intent to seek relief from the exaction. This notice must be submitted "[a]t least 90 days before filing an action [for relief], but no later than 180 days after imposition of the prohibited exaction."

The bill defines the time of imposition of the exaction as the "time at which the property owner must comply with the prohibited exaction or condition of approval." This change appears likely to add some clarity as to when the time to submit a notice of intent ends.

Prospective Application of Changes to Chapter 70, F.S.

The bill provides that the changes relating to the Bert Harris Act and s. 70.45, F.S., relating to prohibited exactions, apply to claims from government actions occurring on or after July 1, 2020, the effective date of the bill.

Right of First Refusal for Surplus Property

The bill requires the Department of Transportation to offer surplus real property to its prior owner for the property's estimated value before offering the property to others. The prior owner must have at least 15 days to exercise this right of first refusal. After accepting the offer, the prior owner must be given at least 60 days to close on the property. Additionally, if the department intends to offer the property at better terms to others than the terms in the first offer to the prior owner, the property must be reoffered to the prior owner under the new terms.

This concept of giving a prior owner the right of first refusal to purchase property is somewhat similar to that required under s. 73.013, F.S., for property acquired by eminent domain and held for less than 10 years.

Effective Date

The bill takes effect on July 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill will facilitate compensation or other relief to the owner of real property that is inordinately burdened by a law, rule, regulation, or ordinance. Moreover, property owners may be able to avoid the expenses of applying for a permit or other relief that is almost certain to be denied.

C. Government Sector Impact:

Local governments will likely exercise caution when imposing new rules, regulations, and ordinances that affect real property. Local governments must also work more quickly to resolve Bert Harris claims during the shortened presuit process. By obviating the need for the denial or other relief as a prerequisite to a Bert Harris claim, more claims will likely be submitted. These claims will need to be resolved by local governments and other state permitting authorities.

VI. Technical Deficiencies:

To effectuate the removal of the 150-day-notice period, the bill should also strike the references to 150 days on lines 196, 208, and 209.

VII. Related Issues:

It is unclear what kind of governmental entity settlement offers are presumed to protect the public interest. The Legislature may wish to clarify which settlement offers are presumed to protect the public interest and whether the involvement of a circuit court is needed before the presumption applies.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 70.001, 70.45, and 337.25.

IX. Additional Information:

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

CS by Judiciary on February 4, 2020:

The committee substitute does not include the provisions of the original bill which would have entitled property owners to compensation or other relief when an owner of a similarly situated residential property becomes entitled to relief due to the same regulation or ordinance.

- B. **Amendments:**

None.

By the Committee on Judiciary; and Senators Lee and Perry

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A bill to be entitled

An act relating to growth management; amending s. 70.001, F.S.; revising notice of claim requirements for property owners; creating a presumption that certain settlement offers protect the public interest; specifying that property owners retain the option to have a court determine awards of compensation; authorizing property owners to bring claims against governmental entities in certain circumstances; providing that property owners are not required to submit formal development applications or proceed through formal application processes to bring claims in specified circumstances; amending s. 70.45, F.S.; defining the terms "imposed" and "imposition"; authorizing property owners to bring actions to declare prohibited exactions invalid; providing applicability; amending s. 337.25, F.S.; requiring the Department of Transportation to afford a right of first refusal to the previous property owner before disposing of property in certain circumstances; providing requirements relating to such rights of first refusal; providing an effective date.

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

Section 1. Subsections (4), (5), and (6) and paragraph (a) of subsection (11) of section 70.001, Florida Statutes, are amended to read:

70.001 Private property rights protection.—

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(4) (a) Not less than 90 ~~150~~ days before ~~prior to~~ filing an action under this section against a governmental entity, a property owner who seeks compensation under this section must present the claim in writing to the head of the governmental entity, ~~except that if the property is classified as agricultural pursuant to s. 193.461, the notice period is 90 days.~~ The property owner must submit, along with the claim, a bona fide, valid appraisal that supports the claim and demonstrates the loss in fair market value to the real property. If the action of government is the culmination of a process that involves more than one governmental entity, or if a complete resolution of all relevant issues, in the view of the property owner or in the view of a governmental entity to whom a claim is presented, requires the active participation of more than one governmental entity, the property owner shall present the claim as provided in this section to each of the governmental entities.

(b) The governmental entity shall provide written notice of the claim to all parties to any administrative action that gave rise to the claim, and to owners of real property contiguous to the owner's property at the addresses listed on the most recent county tax rolls. Within 15 days after the claim is presented, the governmental entity shall report the claim in writing to the Department of Legal Affairs, and shall provide the department with the name, address, and telephone number of the employee of the governmental entity from whom additional information may be obtained about the claim during the pendency of the claim and any subsequent judicial action.

(c) During the 90-day-notice period ~~or the 150-day-notice~~

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period, unless extended by agreement of the parties, the governmental entity shall make a written settlement offer to effectuate:

1. An adjustment of land development or permit standards or other provisions controlling the development or use of land.
2. Increases or modifications in the density, intensity, or use of areas of development.
3. The transfer of developmental rights.
4. Land swaps or exchanges.
5. Mitigation, including payments in lieu of onsite mitigation.
6. Location on the least sensitive portion of the property.
7. Conditioning the amount of development or use permitted.
8. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.
9. Issuance of the development order, a variance, a special exception, or any other extraordinary relief.
10. Purchase of the real property, or an interest therein, by an appropriate governmental entity or payment of compensation.
11. No changes to the action of the governmental entity.

If the property owner accepts a settlement offer, ~~either~~ before or after filing an action, the governmental entity may implement the settlement offer by appropriate development agreement; by issuing a variance, a special exception, or any other extraordinary relief; or by any other appropriate method, subject to paragraph (d).

- (d)1. When a governmental entity enters into a settlement

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agreement under this section which would have the effect of a modification, variance, or ~~a~~ special exception to the application of a rule, regulation, or ordinance as it would otherwise apply to the subject real property, the relief granted shall protect the public interest served by the regulations at issue and be the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property. Settlement offers made pursuant to paragraph (c) shall be presumed to protect the public interest.

2. When a governmental entity enters into a settlement agreement under this section which would have the effect of contravening the application of a statute as it would otherwise apply to the subject real property, the governmental entity and the property owner shall jointly file an action in the circuit court where the real property is located for approval of the settlement agreement by the court to ensure that the relief granted protects the public interest served by the statute at issue and is the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property.

This paragraph applies to any settlement reached between a property owner and a governmental entity regardless of when the settlement agreement was entered so long as the agreement fully resolves all claims asserted under this section.

(5) (a) During the 90-day-notice period ~~or the 150-day-notice period~~, unless a settlement offer is accepted by the property owner, each of the governmental entities provided notice pursuant to subsection (4) ~~paragraph (4) (a)~~ shall issue a

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written statement of allowable uses identifying the allowable uses to which the subject property may be put. The failure of the governmental entity to issue a statement of allowable uses during the applicable 90-day-notice period ~~or 150-day-notice period~~ shall be deemed a denial for purposes of allowing a property owner to file an action in the circuit court under this section. If a written statement of allowable uses is issued, it constitutes the last prerequisite to judicial review for the purposes of the judicial proceeding created by this section, notwithstanding the availability of other administrative remedies.

(b) If the property owner rejects the settlement offer and the statement of allowable uses of the governmental entity or entities, the property owner may file a claim for compensation in the circuit court, a copy of which shall be served contemporaneously on the head of each of the governmental entities that made a settlement offer and a statement of allowable uses that was rejected by the property owner. Actions under this section shall be brought only in the county where the real property is located.

(6) (a) The circuit court shall determine whether an existing use of the real property or a vested right to a specific use of the real property existed and, if so, whether, considering the settlement offer and statement of allowable uses, the governmental entity or entities have inordinately burdened the real property. If the actions of more than one governmental entity, considering any settlement offers and statement of allowable uses, are responsible for the action that imposed the inordinate burden on the real property of the

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property owner, the court shall determine the percentage of responsibility each such governmental entity bears with respect to the inordinate burden. A governmental entity may take an interlocutory appeal of the court's determination that the action of the governmental entity has resulted in an inordinate burden. An interlocutory appeal does not automatically stay the proceedings; however, the court may stay the proceedings during the pendency of the interlocutory appeal. If the governmental entity does not prevail in the interlocutory appeal, the court shall award to the prevailing property owner the costs and a reasonable attorney fee incurred by the property owner in the interlocutory appeal.

(b) Following its determination of the percentage of responsibility of each governmental entity, and following the resolution of any interlocutory appeal, the court shall impanel a jury to determine the total amount of compensation to the property owner for the loss in value due to the inordinate burden to the real property. The property owner retains the option to forego a jury and elect to have the court determine the award of compensation. The award of compensation shall be determined by calculating the difference in the fair market value of the real property, as it existed at the time of the governmental action at issue, as though the owner had the ability to attain the reasonable investment-backed expectation or was not left with uses that are unreasonable, whichever the case may be, and the fair market value of the real property, as it existed at the time of the governmental action at issue, as inordinately burdened, considering the settlement offer together with the statement of allowable uses, of the governmental entity

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or entities. In determining the award of compensation, consideration may not be given to business damages relative to any development, activity, or use that the action of the governmental entity or entities, considering the settlement offer together with the statement of allowable uses has restricted, limited, or prohibited. The award of compensation shall include a reasonable award of prejudgment interest from the date the claim was presented to the governmental entity or entities as provided in subsection (4).

(c)1. In any action filed pursuant to this section, the property owner is entitled to recover reasonable costs and attorney fees incurred by the property owner, from the governmental entity or entities, according to their proportionate share as determined by the court, from the date of the filing of the circuit court action, if the property owner prevails in the action and the court determines that the settlement offer, including the statement of allowable uses, of the governmental entity or entities did not constitute a bona fide offer to the property owner which reasonably would have resolved the claim, based upon the knowledge available to the governmental entity or entities and the property owner during the 90-day-notice period or the 150-day-notice period.

2. In any action filed pursuant to this section, the governmental entity or entities are entitled to recover reasonable costs and attorney fees incurred by the governmental entity or entities from the date of the filing of the circuit court action, if the governmental entity or entities prevail in the action and the court determines that the property owner did not accept a bona fide settlement offer, including the statement

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of allowable uses, which reasonably would have resolved the claim fairly to the property owner if the settlement offer had been accepted by the property owner, based upon the knowledge available to the governmental entity or entities and the property owner during the 90-day-notice period or the 150-day-notice period.

3. The determination of total reasonable costs and attorney fees pursuant to this paragraph shall be made by the court and not by the jury. Any proposed settlement offer or any proposed decision, except for the final written settlement offer or the final written statement of allowable uses, and any negotiations or rejections in regard to the formulation either of the settlement offer or the statement of allowable uses, are inadmissible in the subsequent proceeding established by this section except for the purposes of the determination pursuant to this paragraph.

(d) Within 15 days after the execution of any settlement pursuant to this section, or the issuance of any judgment pursuant to this section, the governmental entity shall provide a copy of the settlement or judgment to the Department of Legal Affairs.

(11) A cause of action may not be commenced under this section if the claim is presented more than 1 year after a law or regulation is first applied by the governmental entity to the property at issue.

(a) For purposes of determining when this 1-year claim period accrues:

1.a. A law or regulation is first applied upon enactment and notice as provided for in this sub-subparagraph ~~subparagraph~~

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if the impact of the law or regulation on the real property is clear and unequivocal in its terms and notice is provided by mail to the affected property owner or registered agent at the address referenced in the jurisdiction's most current ad valorem tax records. The fact that the law or regulation could be modified, varied, or altered under any other process or procedure does not preclude the impact of the law or regulation on a property from being clear or unequivocal pursuant to this ~~sub-subparagraph~~ ~~subparagraph~~. Any notice under this ~~sub-subparagraph~~ ~~subparagraph~~ shall be provided after the enactment of the law or regulation and shall inform the property owner or registered agent that the law or regulation may impact the property owner's existing property rights and that the property owner may have only 1 year from receipt of the notice to pursue any rights established under this section.

b. If the notice required in sub-subparagraph a. is not provided to the property owner, the property owner may at any time after enactment notify the governmental entity in writing that the property owner deems the impact of the law or regulation on the property owner's real property to be clear and unequivocal in its terms and, as such, restrictive of uses allowed on the property before the enactment. Within 45 days after receipt of a notice under this sub-subparagraph, the governmental entity in receipt of the notice must respond in writing to state whether the law or regulation is applicable to the real property in question and provide a description of the limitations imposed on the property by the law or regulation. If the governmental entity concludes that the law or regulation is applicable by imposing new limitations on the uses of the

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property, the property owner is not required to formally pursue an application for a development order, development permit, or building permit, as such will be deemed a waste of resources and shall not be a prerequisite to bringing a claim pursuant to paragraph (4)(a). However, any such claim must be filed within 1 year after the date of the property owner's receipt of the notice from the governmental entity of the limitations on use imposed on the real property.

2. Otherwise, the law or regulation is first applied to the property when there is a formal denial of a written request for development or variance.

Section 2. Paragraphs (c) through (e) of subsection (1) of section 70.45, Florida Statutes, are redesignated as paragraphs (d) through (f), respectively, a new paragraph (c) is added to that subsection, and subsections (2), (4), and (5) of that section are amended, to read:

70.45 Governmental exactions.—

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

(c) "Imposed" or "imposition" as it relates to a prohibited exaction or condition of approval refers to the time at which the property owner must comply with the prohibited exaction or condition of approval.

(2) In addition to other remedies available in law or equity, a property owner may bring an action in a court of competent jurisdiction under this section to declare a prohibited exaction invalid and recover damages caused by a prohibited exaction. Such action may not be brought until a prohibited exaction is actually imposed or required in writing as a final condition of approval for the requested use of real

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property. The right to bring an action under this section may not be waived. This section does not apply to impact fees adopted under s. 163.31801 or non-ad valorem assessments as defined in s. 197.3632.

(4) For each claim filed under this section, the governmental entity has the burden of proving that the challenged exaction has an essential nexus to a legitimate public purpose and is roughly proportionate to the impacts of the proposed use that the governmental entity is seeking to avoid, minimize, or mitigate. The property owner has the burden of proving damages that result from a prohibited exaction.

(5) The court may award attorney fees and costs to the prevailing party; however, if the court determines that the challenged exaction which is the subject of the claim lacks an essential nexus to a legitimate public purpose, the court shall award attorney fees and costs to the property owner.

Section 3. The amendments made by this act to ss. 70.001 and 70.45, Florida Statutes, apply to claims made in response to actions taken by governmental entities on or after July 1, 2020.

Section 4. Subsection (4) of section 337.25, Florida Statutes, is amended to read:

337.25 Acquisition, lease, and disposal of real and personal property.—

(4) The department may convey, in the name of the state, any land, building, or other property, real or personal, which was acquired under subsection (1) and which the department has determined is not needed for the construction, operation, and maintenance of a transportation facility. When such a determination has been made, property may be disposed of through

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negotiations, sealed competitive bids, auctions, or any other means the department deems to be in its best interest, with due advertisement for property valued by the department at greater than \$10,000. A sale may not occur at a price less than the department's current estimate of value, except as provided in paragraphs (a)-(d). The department may afford a right of first refusal to the local government or other political subdivision in the jurisdiction in which the parcel is situated, except in a conveyance transacted under paragraph (a), paragraph (c), or paragraph (e). Notwithstanding any provision of this section to the contrary, before any conveyance under this subsection may be made, except a conveyance under paragraph (a) or paragraph (c), the department shall first afford a right of first refusal to the previous property owner for the department's current estimate of value of the property. The right of first refusal shall be made in writing and sent to the previous owner via certified mail or hand delivery, effective upon receipt. The right of first refusal shall provide the previous owner with a minimum of 15 days to exercise the right in writing and be sent to the originator of the offer via certified mail or hand delivery, effective upon dispatch. The previous owner shall have a minimum of 60 days after exercising its right of first refusal to close. If the previous owner does not exercise its right of first refusal, the department may not deviate in any material respect from the offer made to the previous owner unless it first provides the previous owner with the right of first refusal under the new terms. The same procedure shall apply to any subsequent iterations of the sale terms.

(a) If the property has been donated to the state for

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349 transportation purposes and a transportation facility has not
350 been constructed for at least 5 years, plans have not been
351 prepared for the construction of such facility, and the property
352 is not located in a transportation corridor, the governmental
353 entity may authorize reconveyance of the donated property for no
354 consideration to the original donor or the donor's heirs,
355 successors, assigns, or representatives.

356 (b) If the property is to be used for a public purpose, the
357 property may be conveyed without consideration to a governmental
358 entity.

359 (c) If the property was originally acquired specifically to
360 provide replacement housing for persons displaced by
361 transportation projects, the department may negotiate for the
362 sale of such property as replacement housing. As compensation,
363 the state shall receive at least its investment in such property
364 or the department's current estimate of value, whichever is
365 lower. It is expressly intended that this benefit be extended
366 only to persons actually displaced by the project. Dispositions
367 to any other person must be for at least the department's
368 current estimate of value.

369 (d) If the department determines that the property requires
370 significant costs to be incurred or that continued ownership of
371 the property exposes the department to significant liability
372 risks, the department may use the projected maintenance costs
373 over the next 10 years to offset the property's value in
374 establishing a value for disposal of the property, even if that
375 value is zero.

376 (e) If, at the discretion of the department, a sale to a
377 person other than an abutting property owner would be

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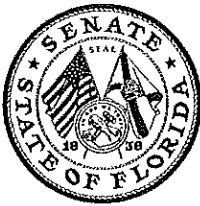
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378 inequitable, the property may be sold to the abutting owner for
379 the department's current estimate of value.

380 Section 5. This act shall take effect July 1, 2020.

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The Florida Senate

Committee Agenda Request

To: Senator Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 12, 2020

I respectfully request that **Senate Bill #1766**, relating to Growth Management, be placed on the:

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

A handwritten signature in black ink that reads "Tom Lee".

Senator Tom Lee
Florida Senate, District 20

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 7048

INTRODUCER: Infrastructure and Security Committee

SUBJECT: Public Records/Public Shelter Space

DATE: February 24, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Proctor	Miller		IS Submitted as Committee Bill
1.	Hackett	McVane	GO	Favorable
2.	Proctor	Phelps	RC	Favorable

I. Summary:

SB 7048 exempts from public inspection and copying the name, address, and telephone number of a person which are held by an agency providing shelter or assistance to such person during an emergency.

The bill provides that the exemption created under the bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2025, unless reviewed and saved from repeal by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding this exemption should be offset by authorized fees. See Section V. Fiscal Impact Statement.

The bill takes effect upon becoming a law.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies

¹ FLA. CONST. art. I, s. 24(a).

to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

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

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Public Shelters

The Division of Emergency Management (DEM) is established in the Executive Office of the Governor to serve as the state's emergency management agency.²⁷ The State Emergency Management Act²⁸ directs DEM to oversee and manage emergency preparedness, response, recovery, and mitigation programs in Florida.

DEM currently manages a program for surveying existing public and private buildings, with the owner's written agreement, to identify which facilities are appropriately designed and located to serve as shelters in the event of an emergency.²⁹ Public facilities, including schools, post-secondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals or nursing homes, which are suitable for use as public hurricane evacuation shelters must be made available at the request of the local emergency management agencies.³⁰

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 14.2016, F.S.

²⁸ Section 252.31, F.S., through s. 252.60, F.S., are known as the State Emergency Management Act. Section 252.31, F.S.

²⁹ Section 252.385(2)(a), F.S.

³⁰ Section 252.385(4)(a), F.S.

DEM is required to prepare a state comprehensive emergency management plan (CEMP) that must be integrated into, and coordinated with, the emergency management plans of the Federal Government.³¹ The CEMP³² must include a shelter component, the Statewide Emergency Shelter Plan (plan),³³ with specific planning provisions and the CEMP must promote shelter activity coordination between the public, private, and nonprofit sectors.³⁴ The plan must include the following:

- Contain strategies to ensure the availability of adequate shelter space in each region of the state;
- Establish strategies for refuge-of-last-resort programs;
- Provide strategies to assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel;
- Provide for a post disaster communications system for public shelters;
- Establish model shelter guidelines for operations, registration, inventory, power generation capability, information management, and staffing; and
- Set forth policy guidance for sheltering people with special needs.³⁵

The plan must be prepared and submitted to the Governor and Cabinet each even-numbered year.³⁶ The plan, among other requirements, must identify the location and square footage of existing shelters as well as shelters needed in the next five years.³⁷ The plan must also identify the types of public facilities that should be constructed to comply with emergency-shelter criteria and must recommend an appropriate and available source of funding for the additional cost of constructing emergency shelters within these public facilities.³⁸

Public shelters are not required to gather personal information on shelter residents, however, nothing in law prevents the collection of such information. Shelters that collect personal information on their residents may do so to have an accurate accounting of all persons staying within or to locate family members for the purpose of family reunification. While no public record exemption for this information exists, the plan states that shelter staff members should “abide by principles of confidentiality.”³⁹

³¹ Section 252.35(2)(a), F.S. ; *see also* s. 1013.372, F.S.

³² FLA. ADMIN. CODE R. 27P-2.002, incorporates the CEMP by reference; *See* Comprehensive Emergency Management Plan, Division of Emergency Management, available at <https://www.floridadisaster.org/globalassets/importedpdfs/2014-state-cemp-basic-plan.pdf> (last visited January 29, 2020).

³³ 2018 Statewide Emergency Shelter Plan, DIVISION OF EMERGENCY MANAGEMENT, available at <https://www.floridadisaster.org/globalassets/dem/response/sesp/2018/2018-sesp-entire-document.pdf> (last visited January 29, 2020).

³⁴ Section 252.35(2)(a)2., F.S.

³⁵ *Id.*

³⁶ Section 1013.372(2), F.S.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Supra*, note 33 at Appendix F, pg. F-2.

III. Effect of Proposed Changes:

Section 1 creates 252.385(5), to exempt⁴⁰ from public inspection and copying the name, address, and telephone number of a person which are held by an agency, as defined in s. 119.011, F.S., providing shelter or assistance to such person during an emergency.

The bill provides that the exemptions are subject to the Open Government Sunset Review Act and will repeal October 2, 2025, unless the Legislature reviews and reenacts the exemptions by that date.

Section 2 provides a public necessity statement as required by the Florida Constitution. The statement asserts that:

“Shelters are made available to the public to provide a safe place of accommodation before, during, and immediately following an emergency. During an emergency, the people affected are in a vulnerable state, as they have voluntarily displaced themselves from their residences and possessions to seek refuge. The information submitted to an agency by such a person seeking shelter or assistance could be used by persons seeking to take advantage of their vulnerability during or following the emergency. In addition, people seeking shelter or assistance for their safety and the safety of their families should not be forced to forfeit their privacy for the sake of such safety.”

Section 3 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for the name, address, and

⁴⁰ There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See *WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att’y Gen. Fla. 85-692 (1985).

telephone number of a person using a public shelter or provided assistance by an agency during an emergency, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the name, address, and telephone number of a person using a public shelter or provided assistance by an agency during an emergency. This SB exempts only the name, address, and telephone number of a person using a public shelter or provided assistance by an agency during an emergency 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:

None.

C. Government Sector Impact:

The bill may have a minimal fiscal impact on agencies due to the fact agency staff responsible for complying with public records requests may require training related to the creation of the public records exemptions. Costs associated with redacting the exempt information prior to releasing a record may be incurred. The costs, however, would be absorbed by existing resources, as they are part of day-to-day responsibilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 252.385, Florida Statutes.

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

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

None.

B. Amendments:

None.

By the Committee on Infrastructure and Security

596-03048-20

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A bill to be entitled

An act relating to public records; amending s. 252.385, F.S.; creating an exemption from public records requirements for the name, address, and telephone number of a person which are held by an agency providing shelter or assistance to such person during an emergency; 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 (5) is added to section 252.385, Florida Statutes, to read:

252.385 Public shelter space; public records exemption.—

(5) The name, address, and telephone number of a person which are held by an agency, as defined in s. 119.011, providing shelter or assistance to such person during an emergency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the name, address, and telephone number of a person which are held by an agency providing shelter or assistance to such person during an emergency be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of

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the State Constitution. Shelters are made available to the public to provide a safe place of accommodation before, during, and immediately following an emergency. During an emergency, the people affected are in a vulnerable state, as they have voluntarily displaced themselves from their residences and possessions to seek refuge. The information submitted to an agency by such a person seeking shelter or assistance could be used by persons seeking to take advantage of their vulnerability during or following the emergency. In addition, people seeking shelter or assistance for their safety and the safety of their families should not be forced to forfeit their privacy for the sake of such safety. Therefore, the Legislature finds that it is a public necessity to protect such information from public disclosure.

Section 3. This act shall take effect upon becoming a law.

Page 2 of 2

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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/CS/SB 680

INTRODUCER: Rules Committee; Commerce and Tourism Committee; Environment and Natural Resources Committee; and Senator Hutson and others

SUBJECT: Shark Fins

DATE: March 2, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dyson	Rogers	EN	Fav/CS
2.	McMillan	McKay	CM	Fav/CS
3.	Dyson	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 680 prohibits the sale of shark fins in Florida, and the import and export of shark fins to and from Florida. However, the prohibition on sale and export does not apply to commercial fishermen who harvested sharks from a vessel that has been issued a valid shark fishing permit on or before January 1, 2020, or to seafood dealers who harvest and possess sharks, shark fins, and associated shark products that are legally landed, handled, processed, and transported. This exception expires on January 1, 2025.

The bill takes effect on October 1, 2020.

II. Present Situation:

Pursuant to Article IV, s. 9 of the Florida Constitution, the Florida Fish and Wildlife Conservation Commission exercises the regulatory and executive powers with respect to marine life, including sharks.¹ Florida's shark population is diverse and includes species that range in size from only a few feet to more than 40 feet in total length.² Most species of sharks have slow

¹ FLA. CONST. ART. IV, S. 9.

² University of Florida's Institute of Food and Agricultural Sciences (IFAS), *Common Sharks in Florida*, SGEF-203, available at <http://edis.ifas.ufl.edu/pdf/SG/SG06200.pdf> (last visited Feb. 18, 2020).

rates of growth and late age-at-maturity, which limits their ability to withstand fishing pressure and means they have a longer recovery time in response to overfishing.³

Global shark catches have tripled since 1950 and reached an all-time high of 888,000 tons in 2000.⁴ Because overfishing in some areas of the world's oceans has led to concerns for the populations of some shark species, adequate conservation and management of shark populations has become increasingly important on a global scale.⁵ In response to concerns about growing shark harvests internationally, many countries have banned shark fishing in their waters in favor of promoting tourism opportunities relating to sharks.⁶

Harvesting Sharks off Florida's Coast

Fishermen harvest sharks primarily for their meat, fins, skin, cartilage, and liver.⁷ Meat from some species of shark is an important dietary component in many developing countries, and shark fins, the most valuable of shark products, are used to make traditional shark fin soup, which is a delicacy in the Chinese culture.⁸ However, despite the high value of some shark products, sharks historically have been considered a low-value fish and mostly seen as a by-product of other more profitable fisheries, such as tuna.⁹

Within Florida's seaward boundary, the use of hook and line gear is the only lawful means to harvest sharks in or from the waters of the state.¹⁰ A person may not harvest in or from the waters of the state more than one shark per day.¹¹ The possession of more than two sharks harvested from the state waters aboard any vessel with two or more persons is prohibited.¹² While certain species of shark, including any part of these species, are prohibited under state law from being harvested, possessed, landed, purchased, sold, or exchanged in the state, the prohibition does not apply to sharks harvested lawfully in federal waters when the shark is transported directly through state waters.¹³

To commercially harvest sharks, an individual must possess both a valid saltwater products license and any applicable federal permit for sharks.¹⁴ The commercial harvest season

³ United Nations Food and Agriculture Organization of the United Nations (FAO), *International Plan of Action for Conservation and Management of Sharks*, available at <http://www.fao.org/ipoa-sharks/background/sharks/en/> (last visited Feb. 18, 2020).

⁴ *Id.*

⁵ *Id.*

⁶ National Oceanic and Atmospheric Administration (NOAA), 2017 *Shark Finning Report to Congress*, 3 (2017), available at <https://www.fisheries.noaa.gov/resource/document/2017-shark-finning-report-congress> (last visited Feb. 18, 2020).

⁷ NOAA, 2015 *Shark Finning Report to Congress*, 2, 6, 78, 93 (2015) available at <https://repository.library.noaa.gov/view/noaa/15645> (last visited Feb. 18, 2020).

⁸ Smithsonian National Museum of Natural History, *Sharking Finning: Sharks Turned Prey*, available at <https://ocean.si.edu/ocean-news/shark-finning-sharks-turned-prey> (last visited Feb. 18, 2020).

⁹ Frans Teutscher, FAO, *Sharks (Chondrichthyes)*, available at <http://www.fao.org/docrep/006/Y5261E/y5261e08.htm> (last visited Feb. 18, 2020).

¹⁰ Fla. Admin. Code R. 68B-44.006(1); Florida's seaward boundary extends 9 nautical miles in the Gulf of Mexico and 3 nautical miles in the Atlantic.

¹¹ Fla. Admin. Code R. 68B-44.004(1).

¹² *Id.*

¹³ Fla. Admin. Code R. 68B-44.003(4).

¹⁴ Fla. Admin. Code R. 68B-44.009.

technically spans the entire year, but can be closed if any adjacent federal waters are closed. Additionally, if the Atlantic Marine fisheries commission deems the need for closure, all waters between the Florida–Georgia border and Miami-Dade county will also be closed to commercial harvesting.¹⁵

Shark Finning

Shark finning is the practice of removing and retaining shark fins at sea while discarding the remainder of the shark's body, often while the shark is still alive, into the waters. In Florida, the practice of shark finning was prohibited in 1992 by requiring sharks harvested to be landed in a whole condition.¹⁶ Additionally, the prohibition on shark finning was codified into Florida Statutes in 2017.¹⁷ The statute prohibits the possession of a shark fin separated from the shark in Florida waters unless such possession is authorized by FWC or the fin was legally obtained on land, was prepared by taxidermy, and is possessed for the purposes of display.¹⁸

An individual who violates the prohibition is subject to the following penalties:

Violations	Type of Criminal Infraction	Civil Penalty and Jail Time	License Restrictions	Administrative Fines
1 st offense ¹⁹	2 nd Degree Misdemeanor	Max: \$500 ²⁰ Max: 60 days ²¹	Suspension of license for 180 days	\$4,500
2 nd offense ²²	2 nd Degree Misdemeanor	Max \$500 ²³ Max: 60 days ²⁴	Suspension of license for 365 days	\$9,500
3 rd offense and subsequent offenses ²⁵	1 st Degree Misdemeanor	Max: \$1,000 ²⁶ Max: 1 year ²⁷	Permanent revocation of all license privileges	\$9,500

In the United States, shark finning was prohibited in 2000.²⁸ In 2010, the Shark Conservation Act strengthened the prohibition by improving the ability to enforce the shark finning prohibition by making it unlawful to:

- Remove any fins of a shark, including the tail, at sea;
- Have custody, control, or possession of any such fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass;

¹⁵ Fla. Admin. Code R. 68B-44.005.

¹⁶ Fla. Admin. Code R. 68B-44.004.

¹⁷ Section 379.2426(2), F.S.

¹⁸ *Id.*

¹⁹ Section 379.2426(3)(a), F.S.

²⁰ Section 775.083(1)(e), F.S.

²¹ Section 775.082(4)(b), F.S.

²² Section 379.2426(3)(b), F.S.

²³ *Id.*

²⁴ Section 775.082(4)(b), F.S.

²⁵ Section 379.2426(3)(c), F.S.

²⁶ Section 775.083(1)(d), F.S.

²⁷ Section 775.082(4)(a), F.S.

²⁸ 16 U.S.C. s. 1857 (2000).

- Transfer any such fin from one vessel to another vessel at sea; or
- Land any such fin that is not naturally attached to the corresponding carcass or land any shark carcass without such fins naturally attached.²⁹

A person who violates these federal laws may be subject to a civil penalty of up to \$100,000 for each violation, as determined by the U.S. Secretary of Commerce.³⁰

While the practice of shark finning is prohibited in the United States, the trade of shark fins is legal. In 2011, the last year that full global data is available, the total declared value of world exports was \$438.6 million for 17,154 tons imported.³¹ The United States is both an importer and exporter of shark fins.³² In 2011, the U.S. exported 38 tons of shark fins and imported 58 tons.³³ A number of the countries that the U.S. imports shark fins from do not have a ban in place, such as China, Indonesia, and Japan. In response, some U.S. states have passed laws to ban the trade of shark fins, such states include Hawaii, California, Oregon, Washington, Illinois, Maryland, Delaware, Nevada, New York, Massachusetts, Rhode Island, and Texas.³⁴

Many other countries have also banned shark fishing in their waters. Nations that have adopted finning bans include the Bahamas, Belize, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, the Maldives, Nicaragua, Palau, Panama, and Taiwan.³⁵ Additionally, Canada, the largest importer of shark fins outside of Asia, banned the importation and exportation of shark fins in June of 2019.³⁶

California's ban on the trade of shark fins was challenged in federal court. On appeal, the plaintiffs alleged that the ban violated the Supremacy Clause under Art. VI of the U.S. Constitution and the Commerce Clause under Art. I, s. 8 of the U.S. Constitution.³⁷ The 9th Circuit Court of Appeals held that states are authorized to regulate "on-land activities," as the Magnuson-Stevens Fishery Conservation and Management Act was enacted as a federal-state partnership and expressly preserved the jurisdiction of the states over fishery management within their boundaries.³⁸ Additionally, the court held that the ban did not violate the Commerce Clause as it does not "interfere with activity that is inherently national or that requires a uniform system of regulation," and its purpose is to "conserve state resources, prevent animal cruelty, and protect wildlife and public health," purposes which are matters of local concern.³⁹

²⁹ *Id.*

³⁰ 16 U.S.C. s. 1858 (2014).

³¹ FAO, *State of the global market for shark products*, 1 (2015), available at <http://www.fao.org/3/a-i4795e.pdf> (last visited Feb. 18, 2020).

³² *Id.* at 85.

³³ *Id.* at 19, 21.

³⁴ See HAW. REV. STAT. § 188-40.7; CAL. FISH & GAME § 2021; OR. REV. STAT. § 509.160; WASH. REV. CODE § 77.15.770; 515 ILL. COMP. STAT. 5/5-30; MD CODE ANN., NAT. RES. § 4-747; DEL. CODE TIT. 7, § 928A; NEV. REV. STAT. § 597.905; N.Y. ENVTL. CONSERV. LAW § 13-0338; MASS. GEN. LAWS ch. 130, § 106; R.I. GEN LAWS §20-1-29; and TEX. PARKS & WILD. CODE § 66.2161.

³⁵ NOAA, *2017 Shark Finning Report to Congress*, available at <https://repository.library.noaa.gov/view/noaa/19769> (last visited Feb. 17, 2020).

³⁶ Fisheries Act, S.C. ch. 18.1 §32(1).

³⁷ *Chinatown Neighborhood Ass'n. v. Harris*, 794 F.3d 1136 (9th Cir. 2015), cert. denied, 136 S.Ct. 2448 (2016).

³⁸ *Id.*

³⁹ *Id.*

III. Effect of Proposed Changes:

The bill prohibits the sale of shark fins in Florida, and the import and export of shark fins to and from Florida. However, the prohibition on sale and export does not apply to commercial fishermen who harvested sharks from a vessel that has been issued a valid federal shark fishing permit on or before January 1, 2020, or to seafood dealers who harvest and possess sharks, shark fins, and associated shark products that are legally landed, handled, processed, and transported. This exception expires on January 1, 2025.

The bill takes effect on October 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:

The Commerce Clause of the United States Constitution states that the United States Congress has the power to regulate commerce with foreign nations, and among the several states, and with the Indian Tribes.⁴⁰ If an exercise of local power serves a legitimate local interest but simultaneously burdens commerce, the courts will undertake a balancing test.⁴¹ California's shark ban was challenged in the 9th Circuit Court of Appeals, and the court held that the shark ban does not violate the Commerce Clause.

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

None.

⁴⁰ U.S. CONST. art. I, s. 8.

⁴¹ *Great Atlantic & Pac. Tea Co., Inc. v. Cottrell*, 424 U.S. 366 (1976).

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. 379.2426 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 March 2, 2020:

- Changes language to specify that the exception listed in the bill applies to commercial fishermen who harvested sharks from a vessel that has been issued a valid federal shark fishing permit on or before January 1, 2020.

CS/CS by Commerce and Tourism on February 18, 2020:

- Provides an exception to the sale and export prohibition by establishing that the prohibition does not apply to commercial fishermen who hold a valid federal shark fishing permit on January 1, 2020, or to seafood dealers who harvest and possess sharks, shark fins, and associated shark products that are legally landed, handled, processed, and transported. This exception expires on January 1, 2025.

CS by Environment and Natural Resources on February 3, 2020:

- Changes the bill to prohibit importing and exporting shark fins to and from Florida.
- Changes the statute's title to read "Regulation of shark fins; penalties."

B. Amendments:

None.



421662

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2020	.	
	.	
	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment

Delete line 37
and insert:
fisherman who harvested sharks from a vessel that has been
issued a valid federal shark fishing permit on or before



382092

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/02/2020	.	
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	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with title amendment)

Between lines 68 and 69
insert:

Section 2. The Office of Program Policy Analysis and Government Accountability (OPPAGA) shall conduct a study to determine the potential economic impacts to the commercial shark fishing industry in this state and the potential environmental impacts to our oceans due to such industry, including the positive or negative impact to our oceans if the fishing and sale of shark fins in this state and the export of shark fins



382092

from this state are prohibited. In conducting the study, OPPAGA shall consult with the National Oceanic and Atmospheric Administration, Mote Marine Laboratory, the Fish and Wildlife Conservation Commission, any other interested entities, and commercial fishermen, and such study may consider any relevant information necessary. If the office determines that there is a negative economic or environmental impact to the commercial shark fishing industry in this state or to the oceans themselves, respectively, the office must consider potential actions that this state may take to lessen or offset such impacts to the extent practicable. OPPAGA shall submit a report of its findings to the President of the Senate and the Speaker of the House of Representatives by October 1, 2021.

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

And the title is amended as follows:

Delete line 6

and insert:

applicability; requiring the Office of Program Policy Analysis and Government Accountability to conduct a study on the economic and environmental impacts of the commercial shark fishing industry in this state; requiring the office to consult with specified entities in conducting the study; requiring the office to consider offsets to certain potential negative impacts if necessary; requiring a report to the Legislature by a specified date; providing an effective date.

By the Committees on Commerce and Tourism; and Environment and Natural Resources; and Senators Hutson, Gruters, Stewart, Berman, and Book

577-03840-20

2020680c2

A bill to be entitled

An act relating to shark fins; amending s. 379.2426, F.S.; prohibiting the import of shark fins to this state; prohibiting the sale of shark fins within or the export of shark fins from this state; providing applicability; providing an effective date.

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

Section 1. Section 379.2426, Florida Statutes, is amended to read:

379.2426 Regulation Possession of separated shark fins on the water prohibited; penalties.—

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

(a) "Land" means the physical act of bringing a harvested organism, or any part thereof, ashore.

(b) "Shark" means any species of the orders *Carcharhiniformes*, *Lamniiformes*, *Hexanchiiformes*, *Orectolobiformes*, *Pristiophoriformes*, *Squaliformes*, *Squatiniiformes*, or any part thereof.

(c) "Shark fin" means the detached fin of a shark, including the caudal or tail fin, or any portion thereof.

(d) "Separated," with respect to a shark fin, means not naturally attached to the corresponding shark body through some portion of uncut skin.

(2) A person may not possess in or on the waters of this state a shark fin that has been separated from a shark or land a separated shark fin in this state, unless:

(a) Such possession is authorized by commission rule; or

577-03840-20

2020680c2

(b) Such fin has been lawfully obtained on land, prepared by taxidermy, and is possessed for the purposes of display.

(3) The import of shark fins to this state is prohibited.

(4) (a) Except as provided under paragraph (b), the sale of shark fins in this state and the export of shark fins from this state are prohibited.

(b) This subsection does not apply to any commercial fisherman who holds a valid federal shark fishing permit on January 1, 2020, or to seafood dealers who harvest and possess sharks, shark fins, and associated shark products that are legally landed, handled, processed, and transported. This paragraph expires on January 1, 2025.

(5) (3) A person who violates this section is subject to the following penalties:

(a) For a first violation, a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. In addition, the commission shall assess an administrative fine of \$4,500 and suspend all of the person's license privileges under this chapter for 180 days.

(b) For a second violation, a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. In addition, the commission shall assess an administrative fine of \$9,500 and suspend all of the person's license privileges under this chapter for 365 days.

(c) For a third and any subsequent violation, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In addition, the commission shall assess an administrative fine of \$9,500 and permanently revoke all of the person's license privileges under this chapter.

577-03840-20

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While his or her license privileges are under suspension or revocation pursuant to this subsection, a person may not participate in the taking or harvesting, or attempt the taking or harvesting, of saltwater products from any vessel within the waters of the state; be aboard any vessel on which a commercial quantity of saltwater products is possessed through an activity requiring a license pursuant to this chapter; or engage in any other activity requiring a license, permit, or certificate issued pursuant to this chapter.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

5/2/20

Meeting Date

680

Bill Number (if applicable)

421662

Amendment Barcode (if applicable)

Topic SHARK FINS

Name JEFF SANSON

Job Title _____

Address PO Box 700

Street

City

Cocoa

FL

State

32923

Zip

Phone 321 773-0212

Email FISHAWK@sol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ORGANIZED FISHERMEN 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)

3/2/20

Meeting Date

680

Bill Number (if applicable)

Topic SHANE FUNS

Amendment Barcode (if applicable)

Name JERRY SANBORN

Job Title _____

Address PO BOX 700

Phone 321-773-0212

Street

COGA

City

FL.

State

32923

Zip

Email FISHAWK@AOL.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing ORGANIZED FISHERMEN OF FLA

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)

3/2/20

Meeting Date

SB680

Bill Number (if applicable)

Topic SHARK FIN TRADE

Amendment Barcode (if applicable)

Name Cassandra Scott

Job Title RIVER

Address 11662 Lake Shore Place

Street

North Palm Beach FL

City

State

Zip

Phone 561-543-2829

Email covascott@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

3/2/20

Meeting Date

SB 680

Bill Number (if applicable)

Topic Shark fin Trade

Amendment Barcode (if applicable)

Name Joe Longobardi

Job Title Yacht Broker

Address 1513 Nottingham Knoll Dr.

Street

Phone (410) 490-0584

City

Jacksonville, FL 32225

State

Zip

Email JL@unitedyacht.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

03/02/20
Meeting Date

SB680
Bill Number (if applicable)

Topic Shark fins

Amendment Barcode (if applicable)

Name Yaneisy Padino

Job Title Student

Address 104 Westwood Dr.

Phone 813 520 0669

Tallahassee FL 32304
City State Zip

Email yaneisy.padino@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Shark Allies

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)

3-2-20

Meeting Date

680

Bill Number (if applicable)

Topic Shark Fins

Amendment Barcode (if applicable)

Name Frank Bernardino

Job Title _____

Address 201 West Park Ave. Suite 100

Phone (561) 718-2345

Street

Tallahassee

FL

32301

City

State

Zip

Email frankcanfield@florida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

3/2/20

3/3/20

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

680
Bill Number (if applicable)

Topic Shank Farm

Amendment Barcode (if applicable)

Name Lindsay Cross

Job Title Government Relations Director

Address 1700 N Monroe St-286

Phone _____

Street

Tallah

FL

32303

City

State

Zip

Email lindsay@fcvoters.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida conservation voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-2-26
Meeting Date

680
Bill Number (if applicable)

Topic ~~REED~~ shark fin

Amendment Barcode (if applicable)

Name FRED DICKINSON

Job Title Pool Making

Address 106 E College

Phone 850-681-1980

TLH FL
City State Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing GUY HARVEY

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)

3/2/20
Meeting Date

680
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 104-2 CREST ST
Street

Phone 941-323-2404

TLH FL 32301
City State Zip

Email cullen@searoad.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)

3/2/20
Meeting Date

680
Bill Number (if applicable)

Topic Shank Pin

Amendment Barcode (if applicable)

Name DAVID CAMPO

Job Title Shank Fisherman

Address 11486 64th AVE W

Phone 727 836 050

Street
City Seminole FL 33772
State Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Fisherman

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2020

Meeting Date

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

680

Bill Number (if applicable)

Topic Shark Fins

Amendment Barcode (if applicable)

Name Travis Moore

Job Title _____

Address P.O. Box 2020

Street

Phone 727.421.6902

St. Petersburg

City

FL

State

33731

Zip

Email travis@moore-relations.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Animal Legal Defense Fund + Oceana

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-2-20

Meeting Date

680

Bill Number (if applicable)

Topic Shark Fins

Amendment Barcode (if applicable)

Name BOB HARRIS

Job Title _____

Address 2618 Centennial Place

Phone 222-0720

Street

Tallahassee FL 32308

Email bharris@lawfla.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing Diving Equipment & Marketing Assn. (DEMA)

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)

3-2-2020

Meeting Date

SBG 80

Bill Number (if applicable)

Topic SHARK FIN TRADE

Amendment Barcode (if applicable)

Name BRADY HALE

Job Title FOUNDER

Address 10139 SINTON DR.

Phone 409-387-4940

Street

PENSACOLA

FL

32507

City

State

Zip

Email BRADY@BEYOND130.COM

Speaking: ☒ For ☐ Against ☐ Information

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

Representing GULF COAST LIONFISH TOURNAMENTS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/2020
Meeting Date

SB 680
Bill Number (if applicable)

Topic Shark Fin Trade

Amendment Barcode (if applicable)

Name STEFANIE BRENDL

Job Title Executive Director

Address 6 Coco Pl
Street

Phone (808) 778-6740

Pacific Palisades CA 90272
City State Zip

Email stefaniebrendl@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing SHARK ALLIES

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3-2-2020

Meeting Date

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

SB680

Bill Number (if applicable)

Topic Shark Fin Trade

Amendment Barcode (if applicable)

Name Shara Teter

Job Title Marine Scientist

Address 1801 28th Ter

Phone 717 926 8704

Street

Pompano Beach FL 33062

City

State

Zip

Email shara.tetere@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/20
Meeting Date

680
Bill Number (if applicable)

Topic Sharks

Amendment Barcode (if applicable)

Name Kate Macfall

Job Title state director

Address 1624 McFay Street Cir.

Phone 850 508-1001

Street

City

State

Zip

Tallahassee FL 32308

Email kmacfall@hsus.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Humane Society of the United States

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 812

INTRODUCER: Governmental Oversight and Accountability Committee; Environment and Natural Resources Committee; and Senator Hutson

SUBJECT: Public Records/Endangered and Threatened Species

DATE: February 28, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rogers</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Rogers</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 812 creates a new public records exemption to exempt site-specific location information for endangered and threatened species from public inspection and copying requirements. The exemption does not apply to location information for animals held in captivity.

The exemption is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal by the Legislature.

The bill contains legislative findings, including that “the release of such location information would jeopardize the continued existence of protected species by putting them in danger from wildlife poachers or by threatening the integrity of the site due to increased use of or traffic within the site. This exemption protects private property owners from potential trespass and related liability issues when endangered or threatened species are found on their properties and encourages the landowners, as well as researchers, to provide information to the agencies which they would not otherwise provide if the information could be made public.”

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, 2020.

II. Present Situation:

Access to Public Records - Generally

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the Legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id.*; see, e.g., *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); see *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Florida's Management of Endangered Species

Pursuant to s. 9, Art. IV of the State Constitution, the Florida Fish and Wildlife Conservation Commission (FWC) exercises the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.²⁷ Under the Florida Endangered and Threatened Species Act, FWC is responsible for research and management of freshwater and upland species and for research and management of marine species.²⁸ "Endangered species" includes any species of fish and wildlife naturally occurring in Florida, whose prospects of survival are in jeopardy due to modification or loss of habitat; overutilization for commercial, sporting, scientific, or educational purposes; disease; predation; inadequacy of regulatory

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ FLA. CONST. art. IV, s. 9.

²⁸ Section 379.2291(4), F.S.

mechanisms; or other natural or manmade factors affecting its continued existence.²⁹ “Threatened species” are defined by statute as any species of fish and wildlife naturally occurring in Florida which may not be in immediate danger of extinction, but which exists in such small populations as to become endangered if it is subjected to increased stress as a result of further modification of its environment.³⁰

At the federal level, the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NOAA–Fisheries) is responsible for listing most marine species and the U.S. Fish and Wildlife Service (USFWS) is responsible for other species.³¹ FWC rules clarify that Florida endangered and threatened species include federally-designated endangered and threatened species and state-designated threatened species.³²

The current listing status of all of Florida’s federal and state listed species is found in FWC’s publication “Florida’s Endangered and Threatened Species List” and in agency rules.³³ Intentionally killing or wounding any fish or wildlife of a species designated by FWC as endangered, threatened, or of special concern is a felony.³⁴ This also applies to intentionally destroying the eggs or nest of any such fish or wildlife.³⁵ While the USFWS has primary responsibility for Florida species that are federally endangered or threatened, like the sand skink or the Florida scrub-jay, FWC works in partnership with USFWS to help conserve these species.³⁶

FWC’s mission is “managing fish and wildlife resources for their long-term well-being and the benefit of people.”³⁷ Management of listed species includes surveying and monitoring of species, habitat improvement and restoration, development and implementation of management plans, conservation planning, agency commenting on potential impacts to species and citizen awareness. Research is a systematic means of generating the scientific information necessary to support and guide management. Research also leads to a better understanding of how wildlife managers may alter populations through management actions, as well as leading to management actions that have aided in species stabilization and conservation.³⁸ FWC developed the “Imperiled Species Management Plan” to address the needs of state listed species that did not already have a management plan or specific program in place.³⁹ The plan focuses primarily on improving the conservation status of Florida’s imperiled wildlife through reducing the risk of

²⁹ Section 379.2291(3)(b), F.S.

³⁰ Section 379.2291(3)(c), F.S.

³¹ 50 C.F.R. 17 (animals); 50 C.F.R. 23 (plants); 50 C.F.R. 223 and 224 (marine species).

³² Fla. Admin. Code R. 68A-27.001.

³³ Fla. Admin. Code R.s 68A–27.003 and 68A–27.0031; FWC, *Florida’s Endangered and Threatened Species*, available at <https://myfwc.com/media/1945/threatend-endangered-species.pdf>.

³⁴ Section 379.411, F.S.

³⁵ *Id.*

³⁶ FWC, *Wildlife Conservation*, <https://myfwc.com/wildlifehabitats/wildlife/> (last visited Dec. 26, 2019).

³⁷ FWC, *Endangered and Threatened Species Management and Conservation Plan Progress Report Fiscal Year 2018-2019*, available at <https://myfwc.com/media/22264/2018-19-legislative-report.pdf>.

³⁸ *Id.*

³⁹ FWC, *Florida’s Imperiled Species Management Plan 2016-2026*, available at <https://myfwc.com/media/2030/imperiled-species-management-plan.pdf>.

extinction, maintaining sufficient habitat, and improving public and partner support of conservation efforts.⁴⁰

Habitat restoration is often a key aspect of a species management plan.⁴¹ This includes reestablishment of native habitat and ecological functions after disturbance and as enhancement (improving habitat features) and rehabilitation (accelerating natural recovery of habitat after disturbance). A crucial element for habitat restoration and enhancement is a well-organized framework for research, monitoring, and evaluation. The analysis of information helps to identify the most effective types of restoration, improves cost effectiveness, and improves models that guide managers as they decide on future habitat improvement projects and maintenance after restoration.⁴²

Site-specific Species Information

FWC has the following concerns relating to the disclosure of species-specific information:

Current public records laws require Florida state agencies to disclose data and research, including those data that originated from the Commission and data connected with research conducted by outside parties that have their information stored within the Commission.

This research data includes, but is not limited to: population trends, migratory patterns, reproductive ecology, distribution data, den locations, satellite telemetry, point localities for artificial reefs, and mark-recapture data. Collaboration with nongovernmental organizations (NGO's), universities, other management agencies, and private consultants is extremely beneficial when making management decisions for species that the Commission is tasked with conserving.

Additionally, for landowners that are currently enrolled in the Commission's management plan, there is no exemption that protects private property owners from potential trespass and related liability issues when endangered or threatened species are found on their properties. This is cause for private land owners not to allow research or allow for the Commission to develop wildlife management plans that would assist with species management.⁴³

The primary concerns raised by FWC include:

- Withholding of data by the federal government, universities, and researchers due to concerns that stakeholders with such information may interfere with species, harm species, or damage species habitat if the location of the species was made public.
- Safety concerns relating to the public putting themselves in harm's way to view species such as bears and panthers.

⁴⁰ *Id.* at iv.

⁴¹ *Id.* at 106.

⁴² *Id.*

⁴³ FWC, *Agency Analysis of SB 812* (Dec. 26, 2019) (on file with the Senate Committee on Environment and Natural Resources).

- Illegal activity for the taking of species that have value on the black market.⁴⁴

III. Effect of Proposed Changes:

Section 1 creates s. 379.1026, F.S., creating a public records exemption for site-specific location information for threatened and endangered species.

The bill provides that site-specific location information held by an agency concerning an endangered or threatened species as defined in Florida law or as listed by a federal agency is exempt from the constitutional and statutory provisions relating to public records. The exemption does not apply to animals held in captivity.

The exemption is subject to the Act and is subject to repeal on October 2, 2025, unless reviewed and saved from repeal by the Legislature.

Section 2 creates legislative findings that it is a public necessity that the site-specific location information held by an agency concerning a species that is listed federally as an endangered species or a threatened species or is listed by the Fish and Wildlife Conservation Commission as a threatened species be made exempt from disclosure as a public record. Specific findings include that:

- The release of such location information would jeopardize the continued existence of protected species by putting them in danger from wildlife poachers or by threatening the integrity of the site due to increased use of or traffic within the site.
- The exemption protects private property owners from potential trespass and related liability issues when endangered or threatened species are found on their properties and encourages the landowners, as well as researchers, to provide information to the agencies which they would not otherwise provide if the information could be made public.
- The harm that may result from the release of such site-specific location information outweighs any public benefit that may be derived from the disclosure of the information.

Section 3 provides that the bill takes effect July 1, 2020.

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.

⁴⁴ FWC, *Examples Table 1* (Dec. 26, 2019) (on file with the Senate Committee on Environment and Natural Resources) (including specific examples that have raised these concerns).

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

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for site-specific information relating to endangered or threatened species, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect endangered and threatened species and the general public. This bill exempts only site-specific information relating to endangered or threatened species from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The private sector will be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

Indeterminate. The custodian will incur minor costs relating to the redaction of exempt records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 379.1026 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 Governmental Oversight and Accountability on February 3, 2020:

The CS amends the bill to remove the stipulation that the exemption is not waived by the release of such location information to another agency or to an educational institution or scientific facility for research purposes. The CS shifts the definitions into the same section as the exemption for clarity. The CS clarifies that the exemption does not apply to *the site-specific location information of animals held in captivity*.

CS by Environment and Natural Resources on January 13, 2020:

The amendment adds a provision specifying that the exemption does not apply to animals held in captivity.

B. Amendments:

None.

By the Committees on Governmental Oversight and Accountability;
and Environment and Natural Resources; and Senator Hutson

585-03005-20

2020812c2

A bill to be entitled

An act relating to public records; creating s.
379.1026, F.S.; providing an exemption from public
records requirements for the site-specific location
information of certain endangered and threatened
species; 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 379.1026, Florida Statutes, is created
to read:

379.1026 Site-specific location information for endangered
and threatened species; public records exemption.—The site-
specific location information held by an agency, as defined in
s. 119.011, concerning an endangered species as defined in s.
379.2291(3)(b), a threatened species as defined in s.
379.2291(3)(c), or a species listed by a federal agency as
endangered or threatened is exempt from s. 119.07(1) and s.
24(a), Art. I of the State Constitution. This exemption does not
apply to the site-specific location information of animals held
in captivity. This section is subject to the Open Government
Sunset Review Act in accordance with s. 119.15 and shall stand
repealed on October 2, 2025, unless reviewed and saved from
repeal by the Legislature.

Section 2. The Legislature finds that it is a public
necessity that the site-specific location information held by an
agency concerning an endangered or threatened species as listed

Page 1 of 2

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

585-03005-20

2020812c2

by a federal agency or the Fish and Wildlife Conservation
Commission be made exempt from s. 119.07(1), Florida Statutes,
and s. 24(a), Article I of the State Constitution. The
Legislature finds that the release of such location information
would jeopardize the continued existence of endangered or
threatened species by increasing the risk of exposure to
wildlife poachers or by threatening the integrity of the site
due to increased use or traffic. This exemption protects private
property owners from potential trespass and related liability
issues when endangered or threatened species are found on their
properties and encourages such property owners, as well as
researchers, to provide agencies with information they might not
otherwise provide if such location information were made public.
The Legislature finds that the harm that may result from the
release of such location information outweighs any public
benefit that may be derived from the disclosure of the
information.

Section 3. This act shall take effect July 1, 2020.

Page 2 of 2

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: February 6, 2020

I respectfully request that **Senate Bill #812**, relating to Public Records/Threatened or Endangered Species, be placed on the:

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

A handwritten signature in black ink, reading "Travis J. Hutson".

Senator Travis Hutson
Florida Senate, District 7

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20

Meeting Date

812

Bill Number (if applicable)

Topic Endangered & Threatened Species

Amendment Barcode (if applicable)

Name Lindsay Cross

Job Title Government Relations Director

Address 1700 N Monroe 11-286

Phone _____

Street

Tally

City

FL

State

32303

Zip

Email lindsay@fca.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida conservation voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2
Meeting Date

CS/CS 812
Bill Number (if applicable)

Topic Pub. Rec./Endangered & Threatened Species

Amendment Barcode (if applicable)

Name Jessica Crawford

Job Title Legislative Affairs Director

Address 620 S. Meridian St.

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32399

City

State

Zip

Email Jessica.Crawford@myfla.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Fish & Wildlife Conservation Commission

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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 1872

INTRODUCER: Banking and Insurance Committee; Governmental Oversight and Accountability Committee; and Senator Hutson

SUBJECT: Public Records/Office of Financial Regulation/Financial Technology Sandbox Applications

DATE: February 24, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2. <u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
3. <u>McVaney</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1872 creates public record exemptions for certain records containing proprietary business information related to the Financial Technology Sandbox. Specifically, the bill makes confidential and exempt from public disclosure the following records:

- The reasons why the general law or rule requirements for which an exception or waiver is sought prevent the innovative financial product or service from being made available to consumers;
- Certain information submitted to the Office of Financial Regulation to consider in deciding whether to approve an application for the Financial Technology Sandbox; and
- Any information related to the consultation between the OFR and a sandbox participant regarding the maximum number of consumers authorized to receive the innovative financial product or service.

The bill provides that this information may be released to appropriate state and federal agencies for the purposes of investigation.

The bill provides for repeal of the exemptions on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

Government agencies will incur costs related to the redaction of records in responding to public records requests.

This bill will take effect on the same date that CS/CS/SB 1870 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. At this point, CS/CS/SB 1870 takes effect July 1, 2020.

II. Present Situation:

Access to Public Records – Generally

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

“public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

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

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Financial Technology Sandbox

CS/CS/SB 1870 (2020), which this bill is linked to, creates the Financial Technology Sandbox within the Office of Financial Regulation (OFR). The Financial Technology Sandbox is intended to allow financial technology innovators to test innovative financial products or services in a supervised, flexible regulatory sandbox, using waivers of specified general law and corresponding rule requirements under defined conditions.

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

III. Effect of Proposed Changes:

CS/CS/SB 1872 makes confidential and exempt from public inspection and copying the following records relating to the Financial Technology Sandbox because they will contain proprietary business information:

- The reasons why the general law or rule requirements for which a waiver is sought prevent the innovative financial product or service from being made available to consumers;
- Specified information that the OFR must consider in deciding whether to approve or deny an application for the Financial Technology Sandbox; and
- Any information related to the consultation between the OFR and a sandbox participant regarding the maximum number of consumers authorized to receive the innovative financial product or service.

The bill provides that this information may be released to appropriate state and federal agencies for the purposes of investigation.

The bill provides a statement of public necessity as required by the Florida Constitution. It includes the following legislative findings:

- The disclosure of the proprietary business information relating to the innovative financial technology products and services could adversely affect the business interests of the financial technology sandbox applicants.
- Those entities and individuals who would otherwise disclose proprietary business information in their applications to the Office of Financial Regulation to start a business in this state or who would maintain records relating to their innovative financial products or services were they already established here would hesitate to cooperate with the office, and this lack of cooperation would impair the effective and efficient administration of governmental functions.
- Disclosure of such information would impair competition in the financial technology industry because competitors could use the information to impede full and fair competition in the financial technology industry to the disadvantage of consumers.
- Without the exemption from public records requirements that would protect their proprietary business information, financial technology innovators might elect to establish their business in another state with a more secure business environment.
- Any proprietary business information in the Financial Technology Sandbox applications, any records maintained by financial technology innovators relating to their financial products or services, and specified discussions with the office on their financial products or services must be held confidential and exempt from disclosure.

The public record exemptions are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities

have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill exempts from public inspection and copying certain information used by the Office of Financial Regulation to decide whether to approve an application for the Financial Technology Sandbox. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records disclosure requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains statements of public necessity for justifying the exemption for proprietary business information.

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 encourage innovative financial products or services to be made available to Florida consumers. This bill exempts proprietary information of the business entity developing a new product or service. The exemption does not appear to be more broad 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

Government agencies will incur costs related to the redaction of records in responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 559.952 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 Banking and Insurance on February 19, 2020:**

- Updates statutory references to conform to CS/CS/SB 1870.

CS by Governmental Oversight and Accountability on February 10, 2020:

- Shifts the protected records from those “made available to the commissioner” to those “submitted to the office” of Financial Regulation.
- Narrows the public records exemption (consistent with the public necessity statement) to make confidential and exempt only proprietary business information submitted to the office.

B. Amendments:

None.

By the Committees on Banking and Insurance; and Governmental Oversight and Accountability; and Senator Hutson

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A bill to be entitled

An act relating to public records; amending s. 559.952, F.S.; providing exemptions from public records requirements for certain information submitted to the Office of Financial Regulation in Financial Technology Sandbox applications and information relating to certain consultations; authorizing the office to disclose the information to state and federal agencies for investigative purposes; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Paragraph (g) is added to subsection (5) and paragraph (f) is added to subsection (6) of section 559.952, Florida Statutes, as created by SB 1870, 2020 Regular Session, to read:

559.952 Financial Technology Sandbox.—

(5) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS FOR APPROVAL.—

(g)1. The following information submitted to the office in a Financial Technology Sandbox application under this subsection is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. The reasons why the general law or rule requirements for which an exception or waiver is sought prevent the innovative financial product or service from being made available to

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consumers.

b. The information specified in subparagraphs (d)1.-4. and (d)7.

However, such information may be released to appropriate state and federal agencies for purposes of investigation.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

(6) OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—

(f)1. Any information relating to the consultation described in paragraph (b) is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

However, such information may be released to appropriate state and federal agencies for the purposes of investigation.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that proprietary business information in the innovative Financial Technology Sandbox be expressly made confidential and exempt from public records requirements. The disclosure of the proprietary business information relating to the innovative financial technology products and services could adversely affect the business interests of the Financial Technology Sandbox applicants. Those entities and individuals who would otherwise disclose proprietary business information in

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59 their applications to the Office of Financial Regulation to
60 start a business in this state would hesitate to cooperate with
61 the office, and this lack of cooperation would impair the
62 effective and efficient administration of governmental
63 functions. Further, disclosure of such information would impair
64 competition in the financial technology industry because
65 competitors could use the information to impede full and fair
66 competition in the financial technology industry to the
67 disadvantage of consumers. Without the exemption from public
68 records requirements which would protect their proprietary
69 business information, financial technology innovators might
70 elect to establish their business in another state with a more
71 secure business environment. Therefore, the Legislature finds
72 that any proprietary business information in Financial
73 Technology Sandbox applications and information relating to
74 specified consultations between Financial Technology Sandbox
75 applicants and the office on the applicants' financial products
76 or services must be held confidential and exempt from disclosure
77 under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
78 the State Constitution.

79 Section 3. This act shall take effect on the same date that
80 SB 1870 or similar legislation takes effect, if such legislation
81 is adopted in the same legislative session or an extension
82 thereof and becomes a law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 7066

INTRODUCER: Rules Committee and Appropriations Committee

SUBJECT: Fees

DATE: March 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>McKnight</u>	<u>Kynoch</u>		AP Submitted as Comm. Bill/Fav
1.	<u>McKnight</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7066, which is linked to CS/CS/CS/SB 512, provides that establishments meeting criteria for permitting, registration, or licensure as required under CS/CS/CS/SB 512 must pay any fees associated with such permitting, registration, or licensure.

This bill authorizes new state fees, requiring a two-thirds vote of the membership of the Senate. See Section IV.

The bill will have a significant negative fiscal impact on the Agency for Health Care Administration's (AHCA) and the Department of Business and Professional Regulation's (DBPR) expenditures that will be offset by the significant positive fiscal impact to the AHCA's and DBPR's revenues from the permitting, registration, and licensure fees collected from nonembryonic stem cell banks (NSCBs) under the bill. See Section V.

The bill takes effect on the same date that CS/CS/CS/SB 512 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. Present Situation:

The Florida Constitution

The Florida Constitution provides that no state tax or fee may be imposed, authorized, or raised by the Legislature except through legislation approved by two-thirds of the membership of each

house of the Legislature.¹ For purposes of this requirement, a “fee” is any charge or payment required by law, including any fee or charge for services and fees or costs for licenses and to “raise” a fee or tax means to:²

- Increase or authorize an increase in the rate of a state tax or fee imposed on a percentage or per mill basis;
- Increase or authorize an increase in the amount of a state tax or fee imposed on a flat or fixed amount basis; or
- Decrease or eliminate a state tax or fee exemption or credit.

A bill that imposes, authorizes, or raises any state fee or tax may only contain the fee or tax provision(s) and may not contain any other subject.³

The constitutional provision does not authorize any state tax or fee to be imposed if it is otherwise prohibited by the constitution and does not apply to any tax or fee authorized or imposed by a county, municipality, school board, or special district.⁴

Health Care Clinics

The Health Care Clinic Act⁵ provides the Agency for Health Care Administration (AHCA) with licensing and regulatory authority to provide standards and oversight for health care clinics.⁶ A clinic is defined as an entity where health care services are provided and which tenders charges for reimbursement for such services. Numerous exceptions to licensure exist.⁷ The AHCA interprets the scope of its regulatory powers to solely include entities that bill third parties, such as Medicare, Medicaid, and insurance companies. Entities that provide health care services and accept “cash only” for services are excluded from the definition of “clinic” and are not subject to licensure or regulation by the AHCA.

Stem Cell Preparation/Manufacturing

The registration of stem cell banks does not exist under current Florida law. The Department of Business and Professional Regulation (DBPR) administers and enforces the Florida Drug and Cosmetic Act to prevent fraud, adulteration, misbranding, or false advertising in the preparation, manufacture, repackaging, or distribution of drugs, devices, and cosmetics.⁸ In Florida, “a person may not sell, offer for sale, hold for sale, manufacture, repackage, distribute, or give away any new drug unless an approved application has become effective under the federal act or unless otherwise permitted by the Secretary of the United States Department of Health and Human Services for shipment in interstate commerce.”⁹

¹ Fla. Const. art. VII, s. 19(a)-(b). The amendment appeared on the 2018 ballot as Amendment 5.

² Fla. Const. art. VII, s. 19(d).

³ Fla. Const. art. VII, s. 19(e).

⁴ Fla. Const. art. VII s. 19(c).

⁵ Part X of ch. 400, F.S.

⁶ Section 400.990, F.S.

⁷ Section 400.9905(4), F.S.

⁸ See part I of ch. 499, F.S.

⁹ Section 499.023, F.S.

The Florida Drug and Cosmetic Act defines the manufacturing of a drug to mean the preparation, deriving, compounding, propagation, processing, producing, or fabrication of a substance into a drug.¹⁰

Stem cells recovered, processed, and implanted in Florida that meet the above definition are “unapproved new drugs” under both federal and state regulation and require a manufacturing permit issued by the DBPR to ensure the drugs are manufactured in accordance with good manufacturing practices.¹¹

Nonembryonic Stem Cell Banks

CS/CS/CS/SB 512 requires the AHCA to license establishments meeting the definition of nonembryonic stem cell banks (NSCBs) as health care clinics. Hospitals, ambulatory surgical centers, and clinical facilities affiliated with an accredited medical school that provides training to medical students, residents, or fellows, are exempt from licensure under CS/CS/CS/SB 512.

The bill also requires NSCBs that manufacture adult human nonembryonic human cells, tissues, or cellular or tissue-based products (HCT/Ps) to register with and submit a list of all HCT/Ps manufactured to the Food and Drug Administration and obtain a permit from the DBPR, if the HCT/P manufactured meets specific criteria established under CS/CS/CS/SB 512.

CS/CS/CS/SB 512 defines a NSCB as a publicly or privately owned establishment that:

- Operates its own laboratories.
- Retains control over all aspects of processing and storage.
- Is managed by a single entity.
- Performs any of the following activities in the course of its business:
 - Engages in the manufacture, use, implantation, transplantation, infusion, dispensing, transfer, or storage of adult human allogenic and autologous nonembryonic stem cells.
 - Accepts, receives, carries, or delivers human allogenic and autologous nonembryonic stem cells, drugs, or products that are approved by the United States Food and Drug Administration and regulated as drugs, devices, or biological products.
 - Recovers, collects, screens, and tests, in the facility, adult human autologous nonembryonic HCT/Ps from a specific patient for implantation, transplantation, infusion, or transfer back into the same patient during a single surgery within the facility.
 - Provides patient-specific health care services using adult human autologous nonembryonic HCT/Ps in the facility during a single procedure.
 - Advertises adult human nonembryonic stem cell services or adult human autologous nonembryonic HCT/P services, including, but not limited to the collection, manufacture implantation, transplantation, infusion, transfer, storage, dispensing, use, or purported use, of United States Food and Drug Administration-approved adult human autologous nonembryonic stem cells or adult human autologous nonembryonic HCT/Ps that are

¹⁰ Section 499.003(28), F.S.

¹¹ Department of Business and Professional Regulation, Division of Drugs, Devices and Cosmetics, *Does my company need a permit?*, available at <http://www.myfloridalicense.com/DBPR/drugs-devices-and-cosmetics/do-i-need-a-license/#1508505246226-7153ba5b-b4c4> (last visited Jan. 31, 2020).

intended to diagnose, cure, mitigate, treat, provide therapy for, or prevent an injury or a disease.

- Performs any procedure that is intended to collect or store adult human autologous nonembryonic HCT/Ps for autonomous homologous use or diagnoses, cures, mitigates, treats, provides therapy for, or prevents an injury or a disease through the use, or purported use, of adult human autologous nonembryonic HCT/Ps.
- Compounds patient-specific adult human autologous nonembryonic HCT/Ps into a drug product by combining or mixing the patient-specific adult human nonembryonic HCT/Ps, at the prescriptive direction of a licensed physician authorized within the scope of his or her license to prescribe and administer adult human autologous nonembryonic HCT/Ps with one or more drugs or products to create a patient-specific drug or product.
- Dispenses adult human autologous nonembryonic stem cells or HCT/Ps to any of the following for a specific patient pursuant to a valid order from a licensed physician authorized within the scope of his or her license to prescribe and administer adult human autologous nonembryonic HCT/Ps: the specific patient's physician with privileges to practice at the nonembryonic stem cell bank; or, for office use, the specific patient's physician's office or a health care facility or treatment setting where the physician has privileges to administer adult human autologous nonembryonic HCT/Ps.

III. Effect of Proposed Changes:

The bill, which is linked to CS/CS/CS/SB 512, provides that establishments meeting criteria for permitting, registration, or licensure as required under CS/CS/CS/SB 512 must pay any fees associated with such permitting, registration, or licensure.

The bill takes effect on the same date that CS/CS/CS/SB 512 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, s. 19 of the State Constitution requires that a new state tax or fee, as well as an increased state tax or fee, be approved by two-thirds of the membership of each house of the Legislature and be contained in a separate bill that contains no other subject.

Article VII, s. 19(d)(1) of the State 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.”

The bill provides that establishments meeting criteria for permitting, registration, or licensure as required under CS/CS/CS/SB 512 must pay any fees associated with such permitting, registration, or licensure.

For the AHCA, these fees include a licensure fee not to exceed \$2,000 authorized in s. 400.9925, F.S., and a biennial assessment of \$300 pursuant to s. 408.033, F.S. The DBPR’s permitting fee is \$1,500 for a two-year permit, plus a one-time inspection fee of \$150, pursuant to s. 499.041, F.S.

These fees are existing statutory fees that are not being increased; however, the bill requires NSCBs to pay all fees associated with permitting, registration, or licensure.

It is unclear if Article VII, s. 19 applies to these provisions of the bill. As such, the State Constitution may require that the fees be passed in a separate bill by a two-thirds vote of the membership of each house of the Legislature.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

CS/SB 7066 provides that establishments meeting criteria for permitting, registration, or licensure as required under CS/CS/CS/SB 512 must pay any fees associated with such permitting, registration, or licensure. For the AHCA, these fees include a licensure fee not to exceed \$2,000 authorized in s. 400.9925, F.S., and a biennial assessment of \$300 pursuant to s. 408.033, F.S. The DBPR’s permitting fee is \$1,500 for a two-year permit, plus a one-time inspection fee of \$150, pursuant to s. 499.041, F.S.

The bill’s requirements also impose the costs associated with a level 2 background screening for applicants and personnel as required in s. 408.809(1)(e) pursuant to ch. 435 and s. 408.809, F.S., if they are not already required to be screened under a separate professional licensee. The cost for a level 2 background screening with five years of Care Provider Background Screening Clearinghouse (Clearinghouse) retention is \$61.25 (\$13.25 for the national criminal record check; \$24 for the state criminal record check; and \$24 paid up front for five years of state fingerprint Clearinghouse retention).

B. Private Sector Impact:

The Agency for Health Care Administration (AHCA) estimates that 500 facilities may require a health care clinic license under CS/CS/CS/SB 512.¹² Licensure fees would be collected every two years from applicants. Estimating 500 additional health care clinics would result in the collection of \$500,000 in annual licensure fees, based on spreading initial applicants over a two year period (250 per year). Additionally, the facilities will pay a biennial assessment of \$300 that would result in the collection of \$150,000 biennially.

Based on the AHCA's estimate, 500 facilities would require a permit and an inspection by the DBPR that would result in the collection of \$375,000 in annual permitting fees, based on spreading initial applicants over a two year period (250 per year). Each facility will also pay a one-time inspection fee of \$150 that would result in the collection of \$75,000.

The cost for a level 2 background screening with five years of Clearinghouse retention is \$61.25. The number of individuals impacted by this requirement is indeterminate.

C. Government Sector Impact:

The AHCA estimates a recurring increase in workload and costs associated with the registration of NSCBs as health care clinics. Specifically, the AHCA estimates the need for three full-time equivalent positions and \$285,007 in Fiscal Year 2020-2021, and a recurring \$300,250 thereafter, to implement the bill's requirements.¹³

Due to permitting and inspection requirements under CS/CS/CS/SB 512, the DBPR will likely experience a recurring increase in workload and costs associated with the permitting and inspection of NSCBs. As of this writing, a fiscal impact for this bill or CS/CS/CS/SB 512 has not been provided by the DBPR.

The anticipated increase in expenditures by the AHCA and the DBPR will be offset by the revenues collected from the 500 facilities that the AHCA estimates may require a health care clinic license and a prescription drug manufacturer permit under CS/CS/CS/SB 512.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹² Agency for Health Care Administration, CS/SB 512 Bill Analysis (Feb. 14, 2020) (on file with the Senate Committee on Appropriations).

¹³ *Id.*

VIII. Statutes Affected:

This bill substantially amends section 381.06017 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 March 2, 2020:

The committee substitute conforms to amendments made to CS/CS/CS/SB 512 and provides that establishments meeting criteria for permitting, registration, or licensure as required under CS/CS/CS/SB 512 must pay any fees associated with such permitting, registration, or licensure.

- B. **Amendments:**

None.



738014

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2020	.	
	.	
	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment

Delete lines 9 - 23
and insert:

Section 1. Subsection (6) is added to section 381.06017,
Florida Statutes, as created by SB 512, to read:

381.06017 Nonembryonic stem cell banks; collection,
manufacturing, storage, dispensing, and use of human
nonembryonic stem cells.—

(6) FEES.—An establishment that is required to obtain a
permit, registration, or license under subsection (2) must pay



738014

12 any fees associated with such permit, registration, or license.

By the Committee on Appropriations

576-03992-20

20207066__

A bill to be entitled

An act relating to fees; amending s. 381.06017, F.S., as created by SB 512; requiring certain nonembryonic stem cell banks to pay specified fees; providing a contingent effective date.

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

Section 1. Paragraph (i) is added to subsection (2) of section 381.06017, Florida Statutes, as created by SB 512, to read:

381.06017 Nonembryonic stem cell banks; collection, manufacturing, storage, dispensing, and use of human nonembryonic stem cells.—

(2) DUTIES AND REGISTRATION.—A nonembryonic stem cell bank that advertises, collects, stores, manufactures, dispenses, compounds, uses, or purports to use nonembryonic stem cells or products containing nonembryonic stem cells is deemed a clinic as defined in s. 400.9905 and must comply with all of the following requirements:

(i) Pay all fees associated with health care clinic licensure, registration, and inspection under part X of chapter 400 and part II of chapter 408.

Section 2. This act shall take effect on the same date that SB 512 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 1060

INTRODUCER: Rules Committee; Innovation, Industry, and Technology Committee; and Senator Thurston

SUBJECT: Public Records and Meetings/911 or E911 Communication System

DATE: March 3, 2020

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1060 makes confidential and exempt from public records disclosure requirements certain plans and geographical maps relating to 911, E911, or public safety radio communication structures or facilities owned and operated by a state agency. Any portion of a meeting that would reveal the confidential and exempt information is made exempt from the public meeting requirements.

An agency is authorized to disclose the confidential and exempt information to:

- Another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;
- A licensed architect, engineer, or contractor who is performing work on or related to the 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities owned and operated by an agency; or
- Upon a showing of good cause before a court of competent jurisdiction.

The bill provides for the scheduled repeal of the public records and public meetings exemptions on October 2, 2025, pursuant to the Open Government Sunset Review Act and contains legislative findings of public necessity for the exemptions.

The bill may have a minimal negative fiscal impact on the governmental sector.

The bill takes effect upon becoming law.

II. Present Situation:

Access to Public Records - Generally

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Meetings Law

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

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ FLA CONST., art. I, s. 24(b).

¹⁷ *Id.*

¹⁸ 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.”

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

The Legislature may create an exemption to public meetings requirements by passing a general law by at least a two-thirds vote of both the Senate and the House of Representatives.²⁷ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.²⁸ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act³⁰ (the act) prescribes a legislative review process for newly created or substantially amended³¹ public records or open meetings exemptions, with specified exceptions.³² 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.³³

¹⁹ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

²⁰ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

²¹ Section 286.011(1)-(2), F.S.

²² *Id.*

²³ Section 286.011(6), F.S.

²⁴ Section 286.011(2), F.S.

²⁵ Section 286.011(1), F.S.

²⁶ Section 286.011(3), F.S.

²⁷ FLA CONST., art. I, s. 24(c).

²⁸ *Id.*

²⁹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

³⁰ Section 119.15, F.S.

³¹ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

³² 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.

³³ Section 119.15(3), F.S.

The act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.³⁴ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;³⁵
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³⁶ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.³⁷

The act also requires specified questions to be considered during the review process.³⁸ In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁹ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.⁴⁰

The 911 System

The purpose of the 911 system is to improve public safety by establishing one number to call to contact a nationwide, seamless communications infrastructure for all emergency services. 911 service is a vital part of our nation's emergency response and disaster preparedness system.⁴¹ While 911 operates nationwide, it is not a single, nationwide system. Instead, all voice communications service providers are required to route 911 calls to the nearest public safety

³⁴ Section 119.15(6)(b), F.S.

³⁵ Section 119.15(6)(b)1., F.S.

³⁶ Section 119.15(6)(b)2., F.S.

³⁷ Section 119.15(6)(b)3., F.S.

³⁸ 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?

³⁹ See generally s. 119.15, F.S.

⁴⁰ Section 119.15(7), F.S.

⁴¹ Federal Communications Commission, *911 and E911 Services*, <https://www.fcc.gov/general/9-1-1-and-e9-1-1-services> (last visited December 20, 2019).

answering point (PSAP), which is operated by local government, answers all 911 calls, and dispatches the appropriate local emergency first responders.⁴² These locally owned and operated PSAPs and their infrastructure are the heart of the 911 emergency reporting system.

Section 365.172(3)(h), F.S., defines “enhanced 911” or “E911” to mean an enhanced 911 system or enhanced 911 service that:

- is an emergency telephone system or service that provides a subscriber with 911 service and, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated, or as otherwise provided in the state plan under s. 365.171, F.S.; and
- that provides for automatic number identification and automatic location-identification features.⁴³

Public Record and Public Meeting Exemptions Related to Security and Firesafety

Current law provides public record and public meeting exemptions for certain information related to security systems. The law specifies the circumstances under which the information may be disclosed and to whom it may be disclosed.

Security and Firesafety Plan

Section 119.071(3)(a)1., F.S., defines a “security or firesafety plan” to include:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security or firesafety of the facility or revealing security or firesafety systems⁴⁴;
- Threat assessments conducted by any agency or any private entity;⁴⁵
- Threat Response Plans;
- Emergency evacuation plans;
- Sheltering arrangements; or
- Manuals for security or firesafety personnel, emergency equipment, or security or firesafety training.

A security or firesafety plan or any portion thereof that is held by an agency⁴⁶ is confidential and exempt⁴⁷ from public record requirements if the plan is for any property owned by or leased to

⁴² Julie Layton, *How 9-1-1 Works*, <https://people.howstuffworks.com/9-1-1.htm> (last visited December 20, 2019).

⁴³ An E911 service provided by a wireless provider means E911 as defined in the order as specified under s. 365.172(t), F.S. See s. 365.172(3)(h), F.S.

⁴⁴ Section 119.071(3)(a)1.a., F.S.

⁴⁵ Section 119.071(3)(a)1.b., F.S.

⁴⁶ Section 119.011(2), F.S., defines “agency” to mean any 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 chapter 119, F.S., 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.

⁴⁷ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City*

the state or any of its political subdivisions or any privately owned or leased property.⁴⁸ An agency is authorized to disclose the confidential and exempt information:

- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the agency holding the information;
- To another local, state or federal agency in furtherance of that agency's official duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.⁴⁹

Any portion of a meeting that would reveal a security or firesafety system plan or portion thereof is exempt from public meetings requirements.⁵⁰

Building Plans, Blueprints, Schematic Drawings and Diagrams

Section 119.071(3)(b)1., F.S., makes confidential and exempt from the public record requirements:

Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment, facility, or other structure owned by an agency.

This information may be disclosed to:

- To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;
- To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by an agency; or
- Upon a showing of good cause before a court of competent jurisdiction.⁵¹

The entities or persons receiving such information must maintain the exempt status of the information.⁵²

Section 119.071(3)(c)1., F.S., provides:

Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, health care facility, or hotel or motel development,

of Minneola, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

⁴⁸ Section 119.071(3)(a)2., F.S.

⁴⁹ Section 119.071(a)3., F.S.

⁵⁰ Section 286.0113(1), F.S.

⁵¹ Section 119.071(3)(b)3., F.S.

⁵² Section 119.071(3)(b)4., F.S.

which records are held by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.⁵³

This information may be disclosed to:

- Another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;
- The owners of the structure in question or the owner's legal representative; or
- Upon a showing of good cause before a court of competent jurisdiction.⁵⁴

Section 119.071(3)(c)4., F.S., specifies that this comprehensive plans or site plans, or amendment thereto, which are submitted for approval or which have been approved under local land development regulations, local zoning regulations, or development-of-regional-impact review do not fall under the exemption in this paragraph.

Information relating to the Nationwide Public Safety Broadband Network

Section 119.071(3)(d)1., F.S., makes confidential and exempt from the public records requirements information relating to the Nationwide Public Safety Broadband Network established pursuant to 47 U.S.C. ss. 1401 et seq., held by an agency if the release would reveal certain information pertaining to network facilities and network infrastructure.⁵⁵

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(3), F.S., to create a public record exemption for:

- Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, or public safety radio communication system infrastructure owned and operated by an agency, including towers and antennae; and
- Geographical maps indicating the actual or proposed locations of 911, E911, or public safety radio communication system infrastructure owned and operated by an agency (collectively, 911, E911, or public safety radio Plans and Maps).

The bill defines “public safety radio” as the means of communication between and among 911 public safety answering points, dispatchers, and first responder agencies using those portions of the radio frequency spectrum designated by the Federal Communications Commission under 47 C.F.R. 90 for public safety purposes.

The bill specifies that the public record exemption for 911, E911, or public safety radio communication information applies retroactively. Thus, the 911, E911, or public safety radio Plans and Maps in existence prior to the effective date of the bill will be protected by the exemptions.

⁵³ This paragraph provides definitions for “attractions and recreation facility,” “entertainment or resort complex,” “Industrial complex,” “retail and service development,” “office development,” “health care facility,” “hotel or motel development.” See Section 119.071(3)(c)5., F.S.

⁵⁴ Section 119.071(3)(c)3., F.S.

⁵⁵ See Section 119.071(3)(d)1., F.S.

The bill permits disclosure of the exempt information to:

- Another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;
- A licensed architect, engineer, or contractor who is performing work on or related to the 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication services, or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency; or
- Upon a showing of good cause before a court of competent jurisdiction.

The entities or persons receiving such information are charged with maintaining the exempt status of the information.

The bill provides for repeal of the public records exemption on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 amends s. 286.0113, F.S., to create a public meeting exemption for any portion of a meeting that would reveal 911, E911, or public safety radio Plans or Maps.

The bill defines “public safety radio” as the means of communication between and among 911 public safety answering points, dispatchers, and first responder agencies using those portions of the radio frequency spectrum designated by the Federal Communications Commission under 47 C.F.R. 90 for public safety purposes.

No portion of an exempt meeting may be off the record, and all exempt portions of such a meeting must be recorded and transcribed. The recordings and transcripts are confidential and exempt from disclosure unless a court of competent jurisdiction, after an in-camera review, determines that the meeting was not restricted to the discussion of the exempt information made exempt. If such a judicial determination is made, only that portion of the recording and transcript which reveals nonexempt information may be disclosed to a third party.

This bill provides for repeal of the public meetings exemption on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3 provides a statement of public necessity as required by the State Constitution, which states that the exemptions are a public necessity to ensure the security of emergency communication infrastructure, structures, and facilities.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities

have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records or public meetings requirements. This bill enacts a new public records exemption for building plans, blueprints, schematic drawings, and diagrams depicting the structural elements of 911 or E911 communication system infrastructure, and for geographical maps indicating the location of 911 or E911 communication system infrastructure, owned and operated by an agency. It also enacts a new public meetings records exemption for that portion of a public meeting where these records are discussed. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 3 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 purpose of the law is to protect 911 or E911 communication system infrastructure from any disruption during an active shooter or other terror event, including cybercrime, arson, and terrorism. This bill exempts only building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, and geographic maps indicating the actual or proposed locations of such infrastructure from public records requirements. It also exempts only the discussion of those records from the public meetings requirements. The exemptions do not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The private sector will be subject to the cost, to the extent one is imposed, associated with an agency making redactions in response to a public records requests.

C. Government Sector Impact:

Government agencies will incur costs related to the redaction of records in responding to public records requests. Additionally, governmental agencies will incur costs associated with recording the closed portion of meetings wherein the confidential and exempt information is discussed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.071, 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/CS by Rules on March 2, 2020:

The committee substitute defines the term “public safety radio” for purposes of the exemptions from public records and public meetings requirements and adds this means of communications to the 911 and E911 provisions throughout the bill.

CS by Innovation, Industry, and Technology on January 13, 2020:

The committee substitute:

- Provides for recording and transcribing exempt portions of a meeting, makes these recordings and transcripts confidential and exempt from disclosure, and provides a process for limited disclosure; and
- Sets out legislative findings of public necessity that the recordings and transcripts of that portion of the meeting discussing the exempt records also be confidential and exempt from disclosure.

B. Amendments:

None.

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



344162

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2020	.	
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	.	

The Committee on Rules (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (e) is added to subsection (3) of
section 119.071, Florida Statutes, to read:

119.071 General exemptions from inspection or copying of
public records.—

(3) SECURITY AND FIRESAFETY.—

(e)1.a. Building plans, blueprints, schematic drawings, and
diagrams, including draft, preliminary, and final formats, which



344162

depict the structural elements of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication services, or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

b. Geographical maps indicating the actual or proposed locations of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio services, or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, or public safety radio communication system infrastructure or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency, and geographical maps indicating actual or proposed locations of 911, E911, or public safety radio communication system infrastructure or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency, before, on, or after the effective date of this act.

3. Information made exempt by this paragraph may be disclosed:

a. To another governmental entity if disclosure is



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41 necessary for the receiving entity to perform its duties and
42 responsibilities;

43 b. To a licensed architect, engineer, or contractor who is
44 performing work on or related to the 911, E911, or public safety
45 radio communication system infrastructure, including towers,
46 antennae, equipment or facilities used to provide 911, E911, or
47 public safety radio communication services, or other 911, E911,
48 or public safety radio communication structures or facilities
49 owned and operated by an agency; or

50 c. Upon a showing of good cause before a court of competent
51 jurisdiction.

52 4. The entities or persons receiving such information must
53 maintain the exempt status of the information.

54 5. For purposes of this paragraph, the term "public safety
55 radio" is defined as the means of communication between and
56 among 911 public safety answering points, dispatchers, and first
57 responder agencies using those portions of the radio frequency
58 spectrum designated by the Federal Communications Commission
59 under 47 C.F.R. 90 for public safety purposes.

60 6. This paragraph is subject to the Open Government Sunset
61 Review Act in accordance with s. 119.15 and shall stand repealed
62 on October 2, 2025, unless reviewed and saved from repeal
63 through reenactment by the Legislature.

64 Section 2. Subsection (4) is added to section 286.0113,
65 Florida Statutes, to read:

66 286.0113 General exemptions from public meetings.—

67 (4) (a) Any portion of a meeting that would reveal building
68 plans, blueprints, schematic drawings, or diagrams, including
69 draft, preliminary, and final formats, which depict the



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structural elements of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication services, or other 911, E911, or public safety radio communication structures or facilities made exempt by s. 119.071(3)(e)1.a. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.

(b) Any portion of a meeting that would reveal geographical maps indicating the actual or proposed locations of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication services, or other 911, E911, or public safety radio communication structures or facilities made exempt by s. 119.071(3)(e)1.b. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.

(c) No portion of an exempt meeting under paragraphs (a) or (b) may be off the record. All exempt portions of such meeting shall be recorded and transcribed. Such recordings and transcripts are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in-camera review, determines that the meeting was not restricted to the discussion of the information made exempt by s. 119.071(3)(e)1.a. or b. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt information may be disclosed to a third party.

(d) For purposes of this subsection, the term "public safety radio" is defined as the means of communication between



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and among 911 public safety answering points, dispatchers, and first responder agencies using those portions of the radio frequency spectrum designated by the Federal Communications Commission under 47 C.F.R. 90 for public safety purposes.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. The Legislature finds that it is a public necessity that building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication services, and other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency, and geographical maps indicating the actual or proposed locations of such communication system infrastructure, structures, or facilities should be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution to ensure the security of emergency communication infrastructure, structures, and facilities. In addition, the Legislature finds that it is a public necessity that any portion of a meeting revealing such documents and maps that are held by an agency should be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, received and held by counties,



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municipalities, and other governmental agencies that depict the
structural elements of 911, E911, or public safety radio
communication system infrastructure, structures, and facilities
are currently subject to release as public records upon request.
Similarly, geographical maps showing the present or proposed
locations of such 911, E911, or public safety radio
communication system infrastructure, structures, and facilities
that are in the possession of counties, municipalities, and
other governmental agencies are also subject to release as
public records upon request. Counties, municipalities, and other
governmental agencies may review the building plans or
geographical maps to ensure compliance with land development
regulations, building codes, agency rules, and standards to
protect the public health and safety. These building plans
include diagrams and schematic drawings of emergency
communication systems, electrical systems, and other physical
plant and security details which depict the structural elements
of such emergency communications facilities and structures. 911,
E911, and public safety radio communication facilities,
including towers and antennae, are a vital link in the chain of
survival. Such critical infrastructure must be protected as any
disruption during an active shooter or other terror event is
very likely to result in greater loss of life and property
damage. To function properly, towers and antennae need to be
visible, increasing the security risk of such facilities.
Because architectural and engineering plans reviewed and held by
counties, municipalities, and other government agencies include
information about tower, equipment, ancillary facilities,
critical systems, and restricted areas, these plans could be



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used by criminals or terrorists to examine the physical plant
for vulnerabilities. Information contained in these documents
could aid in the planning of, training for, and execution of
criminal actions including cybercrime, arson, and terrorism.
Consequently, the Legislature finds that it is a public
necessity to exempt such information from public records
requirements to reduce exposure to security threats and protect
the public.

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

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to public records and meetings;
amending s. 119.071, F.S.; providing an exemption from
public records requirements for certain documents
which depict the structural elements of certain 911,
E911, or public safety radio communication system
infrastructure, structures, or facilities; providing
an exemption from public records requirements for
geographical maps indicating the actual or proposed
locations of certain 911, E911, or public safety radio
communication system infrastructure, structures, or
facilities; providing for retroactive application;
authorizing disclosure under certain circumstances;
defining the term "public safety radio"; providing for
future legislative review and repeal of the



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exemptions; amending s. 286.0113, F.S.; providing an exemption from public meetings requirements for portions of meetings that would reveal certain documents depicting the structural elements of certain 911, E911, or public safety radio communication system infrastructure, structures, or facilities, or geographical maps indicating the locations or proposed locations of certain 911, E911, or public safety radio communication system infrastructure, structures, or facilities; requiring the recording and transcription of exempt portions of such meetings; providing an exemption from public records requirements for such recordings and transcripts; providing an exception; defining the term "public safety radio"; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

By the Committee on Innovation, Industry, and Technology; and
Senator Thurston

580-02213-20

20201060c1

A bill to be entitled

An act relating to public records and meetings;
amending s. 119.071, F.S.; providing an exemption from
public records requirements for certain documents that
depict the structural elements of certain 911 or E911
communication system infrastructure, structures, or
facilities; providing an exemption from public records
requirements for geographical maps indicating the
actual or proposed locations of certain 911 or E911
communication system infrastructure, structures, or
facilities; providing for retroactive application;
authorizing disclosure under certain circumstances;
providing for future legislative review and repeal of
the exemptions; amending s. 286.0113, F.S.; providing
an exemption from public meetings requirements for
portions of meetings which would reveal certain
documents depicting the structural elements of 911 or
E911 communication system infrastructure, structures,
or facilities, or geographic maps indicating the
actual or proposed locations of 911 or E911
communication system infrastructure, structures, or
facilities; requiring the recording and transcription
of exempt portions of such meetings; providing an
exemption from public records requirements for such
recordings and transcripts; providing an exception;
providing for future legislative review and repeal of
the exemptions; providing a statement of public
necessity; providing an effective date.

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

580-02213-20

20201060c1

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

Section 1. Paragraph (e) is added to subsection (3) of
section 119.071, Florida Statutes, to read:

119.071 General exemptions from inspection or copying of
public records.—

(3) SECURITY AND FIRESAFETY.—

(e)1.a. Building plans, blueprints, schematic drawings, and
diagrams, including draft, preliminary, and final formats, which
depict the structural elements of 911 or E911 communication
system infrastructure, including towers, antennae, equipment or
facilities used to provide 911 or E911 communication services,
or other 911 or E911 communication structures or facilities
owned and operated by an agency are exempt from s. 119.07(1) and
s. 24(a), Art. I of the State Constitution.

b. Geographical maps indicating the actual or proposed
locations of 911 or E911 communication system infrastructure,
including towers, antennae, equipment or facilities used to
provide 911 or E911 services, or other 911 or E911 communication
structures or facilities owned and operated by an agency are
exempt from s. 119.07(1) and s. 24(a), Art. I of the State
Constitution.

2. This exemption applies to building plans, blueprints,
schematic drawings, and diagrams, including draft, preliminary,
and final formats, which depict the structural elements of 911
or E911 communication system infrastructure or other 911 and
E911 communication structures or facilities owned and operated
by an agency, and geographical maps indicating actual or
proposed locations of 911 or E911 communication system

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

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59 infrastructure or other 911 or E911 communication structures or
 60 facilities owned and operated by an agency, before, on, or after
 61 the effective date of this act.

62 3. Information made exempt by this paragraph may be
 63 disclosed:

64 a. To another governmental entity if disclosure is
 65 necessary for the receiving entity to perform its duties and
 66 responsibilities;

67 b. To a licensed architect, engineer, or contractor who is
 68 performing work on or related to the 911 or E911 communication
 69 system infrastructure, including towers, antennae, equipment or
 70 facilities used to provide 911 or E911 communication services,
 71 or other 911 or E911 communication structures or facilities
 72 owned and operated by an agency; or

73 c. Upon a showing of good cause before a court of competent
 74 jurisdiction.

75 4. The entities or persons receiving such information must
 76 maintain the exempt status of the information.

77 5. This paragraph is subject to the Open Government Sunset
 78 Review Act in accordance with s. 119.15 and shall stand repealed
 79 on October 2, 2025, unless reviewed and saved from repeal
 80 through reenactment by the Legislature.

81 Section 2. Subsection (4) is added to section 286.0113,
 82 Florida Statutes, to read:

83 286.0113 General exemptions from public meetings.—

84 (4)(a) Any portion of a meeting that would reveal building
 85 plans, blueprints, schematic drawings, or diagrams, including
 86 draft, preliminary, and final formats, which depict the
 87 structural elements of 911 or E911 communication system

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88 infrastructure, including towers, antennae, equipment or
 89 facilities used to provide 911 or E911 communication services,
 90 or other 911 and E911 communication structures or facilities
 91 made exempt by s. 119.071(3)(e)1.a. is exempt from s. 286.011
 92 and s. 24, Art. I of the State Constitution.

93 (b) Any portion of a meeting that would reveal geographical
 94 maps indicating the actual or proposed locations of 911 or E911
 95 communication system infrastructure, including towers, antennae,
 96 equipment or facilities used to provide 911 or E911
 97 communication services, or other 911 or E911 communication
 98 structures or facilities made exempt by s. 119.071(3)(e)1.b. is
 99 exempt from s. 286.011 and s. 24, Art. I of the State
 100 Constitution.

101 (c) No portion of an exempt meeting under paragraph (a) or
 102 paragraph (b) may be off the record. All exempt portions of such
 103 meeting shall be recorded and transcribed. Such recordings and
 104 transcripts are confidential and exempt from disclosure under s.
 105 119.07(1) and s. 24(a), Art. I of the State Constitution unless
 106 a court of competent jurisdiction, after an in-camera review,
 107 determines that the meeting was not restricted to the discussion
 108 of the information made exempt by s. 119.071(3)(e)1. In the
 109 event of such a judicial determination, only that portion of the
 110 recording and transcript which reveals nonexempt information may
 111 be disclosed to a third party.

112 (d) This subsection is subject to the Open Government
 113 Sunset Review Act in accordance with s. 119.15 and shall stand
 114 repealed on October 2, 2025, unless reviewed and saved from
 115 repeal through reenactment by the Legislature.

116 Section 3. The Legislature finds that it is a public

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117 necessity that building plans, blueprints, schematic drawings,
 118 and diagrams, including draft, preliminary, and final formats,
 119 which depict the structural elements of 911 or E911
 120 communication system infrastructure, including towers, antennae,
 121 equipment or facilities used to provide 911 or E911
 122 communication services, and other 911 or E911 communication
 123 structures or facilities owned and operated by an agency, and
 124 geographic maps indicating the actual or proposed locations of
 125 such communication system infrastructure, structures, or
 126 facilities should be made exempt from s. 119.07(1), Florida
 127 Statutes, and s. 24(a), Article I of the State Constitution to
 128 ensure the security of emergency communication infrastructure,
 129 structures, and facilities. In addition, the Legislature finds
 130 that it is a public necessity that any portion of a meeting
 131 revealing such documents and maps that are held by an agency
 132 should be made exempt from s. 286.011, Florida Statutes, and s.
 133 24(b), Article I of the State Constitution and that the
 134 recordings and transcripts of such an exempt meeting be
 135 confidential and exempt from disclosure under s. 119.07(1),
 136 Florida Statutes, and s. 24(a), Article I of the State
 137 Constitution. Building plans, blueprints, schematic drawings,
 138 and diagrams, including draft, preliminary, and final formats,
 139 received and held by counties, municipalities, and other
 140 governmental agencies that depict the structural elements of 911
 141 or E911 communication system infrastructure, structures, and
 142 facilities are currently subject to release as public records
 143 upon request. Similarly, geographical maps showing the present
 144 or proposed locations of such 911 or E911 communication system
 145 infrastructure, structures, and facilities that are in the

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146 possession of counties, municipalities, and other governmental
 147 agencies are also subject to release as public records upon
 148 request. Counties, municipalities and other governmental
 149 agencies may review the building plans or geographical maps to
 150 ensure compliance with land development regulations, building
 151 codes, agency rules, and standards to protect the public health
 152 and safety. These building plans include diagrams and schematic
 153 drawings of emergency communication systems, electrical systems,
 154 and other physical plant and security details which depict the
 155 structural elements of such emergency communication facilities
 156 and structures. 911 and E911 communication facilities, including
 157 towers and antennae, are a vital link in the chain of survival.
 158 Such critical infrastructure must be protected as any disruption
 159 during an active shooter or other terror event is very likely to
 160 result in greater loss of life and property damage. To function
 161 properly, towers and antennae need to be visible, increasing the
 162 security risk of such facilities. Because architectural and
 163 engineering plans reviewed and held by counties, municipalities
 164 and other government agencies include information about towers,
 165 equipment, ancillary facilities, critical systems, and
 166 restricted areas, these plans could be used by criminals or
 167 terrorists to examine the physical plant for vulnerabilities.
 168 Information contained in these documents could aid in the
 169 planning of, training for, and execution of criminal actions
 170 including cybercrime, arson, and terrorism. Consequently, the
 171 Legislature finds that it is a public necessity to exempt such
 172 information from public records requirements to reduce exposure
 173 to security threats and protect the public.

174 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

February 14, 2020

The Honorable Lizbeth Benacquisto
400 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Benacquisto,

I am writing you this letter because my bill SB 1060: Public Records and Meetings/911 or E911 Communication System has been referred to the Senate Rules Committee. I am writing respectfully requesting you to place the bill on your committee's calendar for the next committee agenda.

Thank you for your consideration. Please contact me if you have any question.

Respectfully,

Perry E. Thurston, Jr.

Perry E. Thurston, Jr.
State Senator, 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
APPEARANCE RECORD

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

3.2.2020

Meeting Date

1060

Bill Number (if applicable)

Topic Public Records / 911 Communication System

Amendment Barcode (if applicable)

Name Tonnette [Tone-Net] Graham

Job Title Assoc. Director of Public Policy

Address 100 S. Monroe Street

Street

Phone 850.922.4300

Tallahassee, FL

City

State

32301

Zip

Email tgraham@fl-counties.com

Com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Association of Counties

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

03/02

Meeting Date

1060

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jasmyne Henderson

Job Title Lobbyist

Address 1020 East Park Avenue

Street

Tallahassee

City

Florida

State

32308

Zip

Phone (850) 214-1002

Email jasmyne@pittman-law.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1148

INTRODUCER: Infrastructure and Security Committee and Senator Brandes

SUBJECT: Electric Bicycles

DATE: February 24, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Price	Miller	IS	Fav/CS
2. Toman	Ryon	CA	Favorable
3. Price	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1148 addresses the definition and operation of electric bicycles (e-bikes) within a three-tiered classification system, revising a number of related definitions. The bill creates regulations governing the operation of e-bikes, affording an e-bike or e-bike operator with all of the rights and privileges, and subjecting them to all of the duties, of a bicycle or bicycle operator. E-bikes are authorized to operate where bicycles are allowed, including, but not limited to, streets, highways, roadways, shoulders, bicycle lanes, and bicycle or multiuse paths. However, the bill provides that the new e-bike regulations may not be construed to prevent a local government from regulating the operation of e-bikes on streets, highways, sidewalks, and sidewalk areas under the local government's jurisdiction; or to prevent a municipality, county, or agency of the state having jurisdiction over a bicycle lane, bicycle path, multiuse path, or trail network from restricting or prohibiting the operation of an e-bike on such lanes, paths, or trail networks.

The bill provides that an e-bike or an e-bike operator is not subject to the provisions of law relating to financial responsibility, driver or motor vehicle licenses, vehicle registration, title certificates, off-highway motorcycles, or off-highway vehicles. Additionally, the bill sets out labeling requirements for manufacturers and distributors of electric bicycles and prohibits tampering with or modifying an electric bicycle unless the label is replaced after modification.

The bill will likely have a negative but insignificant fiscal impact to the State Transportation Trust Fund and the Highway Safety Operating Trust Fund. The fiscal impact to local governments is indeterminate. See the “Fiscal Impact Statement” for additional information.

The bill takes effect July 1, 2020.

II. Present Situation:

In 2002, Congress amended the Consumer Product Safety Commission (CPSC) definition of e-bikes.¹ The law defines a low-speed e-bike as “A two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.” The federal law permits e-bikes to be powered by the motor alone (a “throttle-assist” e-bike), or by a combination of motor and human power (a “pedal-assist” e-bike).²

Devices that meet the federal definition of an e-bike are regulated by the CPSC and must meet bicycle safety standards. However, federal law only applies to e-bikes’ product standards and safety, and only specifies the maximum speed that an e-bike can travel under motor power alone. It does not provide a maximum speed when the bicycle is being propelled by a combination of human and motor power. The law does distinguish e-bikes that can travel 20 mph or less under motor power *alone* from motorcycles, mopeds, and motor vehicles.³ The CPSC has clarified that the federal law does not prohibit e-bikes from traveling faster than 20 mph when using a combination of human and motor power.⁴

While the federal government regulates the manufacturing and first sale of an e-bike, its operation on streets and bikeways remains within each state’s control. Therefore, many states have their own laws that categorize e-bikes with mopeds and other motorized vehicles, require licensure and registration, or do not enable them to be used on facilities such as bike lanes or multi-purpose trails.⁵

For ease of organization of the provisions in SB 1148, the present situation is discussed below in conjunction with the Effect of Proposed Changes.

¹ House Bill 727, available at <https://www.congress.gov/bill/107th-congress/house-bill/727/text> (last visited February 6, 2020).

² National Conference of State Legislatures, *State Electric Bicycle Laws: A Legislative Primer* (March 28, 2019), available at <https://www.ncsl.org/research/transportation/state-electric-bicycle-laws-a-legislative-primer.aspx> (last visited February 6, 2020).

³ *Id.* Emphasis added.

⁴ *Id.*

⁵ *Id.*

Bicycle Regulation

Present Situation

State Bicycle Regulation:

Section 316.003(4), F.S., defines a “bicycle” as “every vehicle propelled solely by human power, and every motorized bicycle propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground upon which any person may ride, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels.”⁶ The term does not include:

- Such a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position, or
- A scooter or similar device.

That section prohibits a person under the age of 16 from operating or riding upon a motorized bicycle.⁷

Under current law, every person propelling a vehicle *by human power* has all of the rights and duties applicable to any other vehicle driver and is generally required to obey the same rules of the road as other vehicle operators, including traffic signs, signals, and lane markings.⁸ Section 316.2065, F.S., governs the operation of bicycles in Florida and provides a number of regulations, including:

- A bicycle rider or passenger who is under 16 years of age must wear a bicycle helmet.⁹
- A person may not knowingly rent or lease any bicycle to be ridden by a child who is under the age of 16 years unless the child possesses a bicycle helmet or the lessor provides a bicycle helmet for the child to wear.¹⁰
- Every bicycle in use between sunset and sunrise must be equipped with a lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and a lamp and reflector on the rear each exhibiting a red light visible from a distance of 600 feet to the rear.¹¹
- A person operating a bicycle on a sidewalk, or across a roadway on a crosswalk, must yield the right-of-way to any pedestrian and must give an audible signal before overtaking and passing the pedestrian.¹²

A person operating a bicycle on a roadway must ride in the bicycle lane, but if there is no bicycle lane, the bicycle operator must ride as close to the right-hand curb or edge of the roadway as practicable, except when:

- Overtaking and passing another bicycle or vehicle proceeding in the same direction.

⁶ Section 316.003(4), F.S. Emphasis added.

⁷ *Id.*

⁸ Section 316.2065, F.S.

⁹ Section 316.2065(3)(d), F.S.

¹⁰ Section 316.2065(15)(a), F.S.

¹¹ Section 316.2065(7), F.S.

¹² Section 316.2065(10), F.S.

- Preparing for a left turn at an intersection or into a private road or driveway.
- Reasonably necessary to avoid any condition or potential conflict, including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane.¹³

Bicycle operators traveling on a one-way highway with two or more marked traffic lanes may ride as near to the left-hand curb or edge of the roadway as practicable¹⁴ and bicycle operators may not ride more than two abreast on a roadway.¹⁵

With respect to vehicle drivers relative to a bicycle or other nonmotorized vehicle on the roadway, a driver overtaking either must pass at a safe distance of not less than three feet between the vehicle and the bicycle or nonmotorized vehicle.¹⁶

Bicycles are currently excluded from provisions of law relating to child restraint requirements,¹⁷ safety belt usage,¹⁸ vehicle registration,¹⁹ driver licensing,²⁰ minimum insurance requirements,²¹ and waste tire and lead-acid battery requirements.²²

Motorized Bicycle Registration:

For purposes of vehicle registration, s. 320.01, F.S., currently provides that a “motor vehicle” does not include bicycles. However, among other fees, s. 320.08, F.S., imposes a \$5 flat fee for registration (or renewal of registration) of mopeds and motorized bicycles. In addition, a \$2.50 motorcycle safety education fee is imposed on mopeds, which is deposited into the Highway Safety Operating Trust Fund (HSOTF).²³ The Department of Highway Safety and Motor Vehicles advises that moped and motorized bicycle registration data is combined and provides the following information on moped *and* motorized bicycle registration:²⁴

¹³ Section 316.2065(5)(a), F.S. For purposes of subsection (5), a substandard width lane is any lane that is too narrow for a bicycle and another vehicle to travel safely side-by-side within the lane.

¹⁴ Section 316.2065(5)(b), F.S.

¹⁵ Section 316.2065(6), F.S.

¹⁶ Section 316.083, F.S.

¹⁷ Section 316.613(2), F.S.

¹⁸ Section 316.614(3)(a), F.S.

¹⁹ Section 320.01(1), F.S.

²⁰ Section 322.01(27) and (44), F.S.

²¹ Section 324.021(1), F.S.

²² Section 403.717(1), F.S.

²³ Section 320.08(1)(c), F.S. These funds may be used to fund a motorcycle driver improvement program, the Florida Motorcycle Safety Education Program, or the general operations of the Department of Highway Safety and Motor Vehicles.

²⁴ See email to House Committee Staff, January 9, 2020 (on file in the Senate Infrastructure and Security Committee). Section 320.20, F.S., after other distributions, directs the remainder of revenue derived from registration of motor vehicles for deposit in the State Transportation Trust Fund.

Moped and Motorized Bicycle Registration Transactions		
FY 2016-17	FY 2017-18	FY 2018-19
2,389	2,159	1,951
Moped and Motorized Bicycle Revenue Distribution		
State Transportation Trust Fund (\$5)		
\$11,945.00	\$10,795.00	\$9,755.00
Highway Safety Operating Trust Fund (\$2.50)		
\$5,972.50	\$5,397.50	\$4,877.50

Local Regulation of Bicycles and Other Motorized Transportation Modes:

Local authorities, in the exercise of their police power, are authorized to regulate the operation of bicycles.²⁵ Additionally, local authorities may prohibit or regulate the use of heavily traveled streets by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic.²⁶ As the definition of “bicycles” currently includes motorized bicycles, local authorities are authorized to impose regulations under both grants of power.

Current law prohibits a person from driving any vehicle *other than by human power* upon a bicycle path, sidewalk, or sidewalk area, except upon a permanent or duly authorized temporary driveway.²⁷ However, exceptions to the prohibition are made with respect to local regulation, and current law provides that:

- A county or municipality may enact an ordinance to regulate the operation of vehicles, golf carts, mopeds,²⁸ motorized scooters,²⁹ and electric personal assistive mobility devices³⁰ on sidewalks or sidewalk areas when such use is permissible under federal law, if the vehicles or devices are restricted to a maximum speed of 15 miles per hour in such areas.³¹

²⁵ Section 316.008(1)(h), F.S.

²⁶ Section 316.008(1)(n), F.S.

²⁷ Section 316.1995, F.S.

²⁸ The term “moped” means “any vehicle with pedals to permit propulsion by human power, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels, with a motor rated not in excess of 2 brake horsepower and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground and with a power-drive system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged. If an internal combustion engine is used, the displacement may not exceed 50 cubic centimeters.” Section 316.003(41), F.S.

²⁹ The term “motorized scooter” means “any vehicle or micromobility device that is powered by a motor with or without a seat or saddle for the use of the rider, which is designed to travel on not more than three wheels, and which is not capable of propelling the vehicle at a speed greater than 20 miles per hour on level ground.” Section 316.003(45), F.S.

³⁰ The term “electric personal assistive mobility device” means “any self-balancing, two-nontandem-wheeled device, designed to transport only one person, with an electric propulsion system with average power of 750 watts (1 horsepower), the maximum speed of which, on a paved level surface when powered solely by such a propulsion system while being ridden by an operator who weighs 170 pounds, is less than 20 miles per hour.” These devices, however, are not vehicles as defined in s. 316.003, F.S. Section 316.003(22), F.S.

³¹ Section 316.008(7)(a), F.S.

- A personal delivery device³² and a mobile carrier³³ may be operated on sidewalks and crosswalks within a county or municipality when such use is permissible under federal law, except that a county or municipality may adopt regulations for the safe operation of personal delivery devices and mobile carriers. A personal delivery device may not be operated on the Florida Shared-Use Nonmotorized Trail Network or components of the Florida Greenways and Trails System.³⁴ As its title indicates, the network consists “of a statewide network of nonmotorized trails which *allows nonmotorized vehicles and pedestrians* to access a variety of origins and destinations *with limited exposure to motorized vehicles*.”³⁵
- A local governmental entity may regulate golf cart operation on sidewalks adjacent to specific segments of municipal streets, county roads, or state highways within the jurisdictional territory of the local governmental entity if:
 - The local entity determines, after considering the condition and current use of the sidewalks, the character of the surrounding community, and the locations of authorized golf cart crossings, that golf carts, bicycles, and pedestrians may safely share the sidewalk;
 - The local entity consults with the Department of Transportation before adopting the ordinance;
 - The ordinance restricts golf carts to a maximum speed of 15 miles per hour and permits such use on sidewalks adjacent to state highways only if the sidewalks are at least eight feet wide;
 - The ordinance requires golf carts to meet certain equipment requirements;³⁶ and
 - The local entity posts appropriate signs or otherwise informs residents that the ordinance exists and applies to such sidewalks.³⁷
- A local government may regulate the operation of micromobility devices and motorized scooters on streets, highways, sidewalk, and sidewalk areas under the local government’s jurisdiction.³⁸

³² The term “personal delivery device” means “an electrically powered device that (a) is operated on sidewalks and crosswalks and intended primarily for transporting property, (b) weighs less than 80 pounds, excluding cargo; (c) has a maximum speed of 10 miles per hour; and (d) is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person.” Section 316.003(55), F.S.

³³ The term “mobile carrier” means “an electrically powered device that (a) is operated on sidewalks and crosswalks and intended primarily for transporting property, (b) weighs less than 80 pounds, excluding cargo; (c) has a maximum speed of 12.5 miles per hour; and (d) is equipped with a technology to transport personal property with the active monitoring of a property owner and primarily designed to remain within 25 feet of the property owner.” Section 316.003(40), F.S. Under current law, a personal delivery device is not a vehicle unless expressly defined by law as a vehicle, and a mobile carrier is not a personal delivery device. Section 316.003(55), F.S.

³⁴ Section 316.008(7)(b), F.S. Emphasis added. Section 339.81, F.S., creates the Florida Shared-Use Nonmotorized Trail Network as a component of the Florida Greenways and Trails System established in ch. 260, F.S. “The statewide network consists of multiuse trails or shared-use paths physically separated from motor vehicle traffic and constructed with asphalt, concrete, or another hard surface which, by virtue of design, location, extent of connectivity or potential connectivity, and allowable uses, provides *nonmotorized* transportation opportunities for bicyclists and pedestrians statewide....” Section 339.81(2), F.S.

³⁵ Section 339.81(1), F.S. Emphasis added. A bicycle rider or pedestrian on the trail network might, for example, encounter limited exposure to motorized vehicles on an on-road facility no longer than one-half mile connecting two or more nonmotorized trails. See s. 339.81(3)(a), F.S.

³⁶ Section 316.212(6), F.S., requires a golf cart to be equipped with efficient brakes, reliable steering apparatus, safe tires, a rear-view mirror, and red reflectorized warning devices in both the front and rear.

³⁷ Section 316.212(8)(b), F.S.

³⁸ Section 316.2128, F.S.

III. Effect of Proposed Changes

Definitions (Sections 1, 2, 4, and 7-15):

Section 2 of the bill revises s. 316.003, F.S., relating to definitions for the purposes of state uniform traffic control requirements. Specifically, the bill removes the definition of “motorized bicycle” from within the definition of “bicycle.” The bill creates a separate definition for “electric bicycle,” and defines three classes, as follows:

- “Electric bicycle” means “a bicycle or tricycle equipped with fully operable pedals, a seat or saddle for the use of the rider, and an electric motor of less than 750 watts which meets the requirements of one of the following three classifications:
 - “Class 1 electric bicycle” means an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the electric bicycle reaches the speed of 20 miles per hour.
 - “Class 2 electric bicycle” means an electric bicycle equipped with a motor that may be used exclusively to propel the electric bicycle and that ceases to provide assistance when the electric bicycle reaches the speed of 20 miles per hour.
 - “Class 3 electric bicycle” means an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the electric bicycle reaches the speed of 28 miles per hour.

The bill deletes the provision in the current definition of “bicycle” providing that the term does not include “a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position,” leaving in place exclusion from the definition of a scooter or similar device. This revision means that vehicles with the specified seat height are bicycles and would be subject to all bicycle regulations.

While provided information³⁹ indicates that this revision is an attempt to address confusion over recumbent bicycles and tricycles,⁴⁰ a reading of the plain words of the revision could allow small children to legally operate the described bicycles on highways and streets.⁴¹ However, riders of the described bicycles who are under 16 years of age would be required to wear bicycle helmets.⁴²

The bill deletes the provision in the current definition of “bicycle” prohibiting a person under the age of 16 from operating or riding on a motorized bicycle. Presumably, this revision is intended to authorize any person, regardless of age, to operate or ride on an e-bike as defined in the bill.

³⁹ Telephone conversation with Becky Afonso, Executive Director, Florida Bicycle Association, January 31, 2020. See also FDOT and DHSMV email to committee staff, January 31, 2020 (on file in the Senate Infrastructure and Security Committee).

⁴⁰ Merriam-Webster defines “recumbent” with respect to a bicycle as “a bicycle with a wide seat that has a back support and is positioned so that the rider’s legs are extended horizontally forward to the pedals and the body is reclined. Merriam-Webster, available at <https://www.merriam-webster.com/dictionary/recumbent> (last visited Feb. 6, 2020).

⁴¹ See s. 316.2065(5)(a), F.S.

⁴² Section 316.2065(3)(d), F.S.

This section of the bill also excludes e-bikes from the current definitions of moped,⁴³ motor vehicle,⁴⁴ motorcycle,⁴⁵ and motorized scooter.⁴⁶ Definition of the terms “bicycle,” “moped,” “motorcycle,” and “motorized scooter” continue to include identification as “vehicles.”

Section 4 of the bill amends s. 316.027, F.S., relating to vulnerable road users and leaving the scene of a crash, to include a person operating an e-bike within that section’s definition of “vulnerable road user.” This revision has no effect, as under current law, a motorized bicycle rider is already a vulnerable road user.

Sections 1 and 9 through 15 make conforming revisions, likewise excluding e-bikes from the current definitions of:

- “OHM” or “off-highway motorcycle” in s. 261.03(4), F.S., for purposes of off-highway vehicle safety and recreation provisions.
- “Motor vehicle” in s. 316.613(2), F.S., relating to child restraint requirements; in s. 316.614(3)(a), F.S., relating to safety belt usage; in s. 320.01(1), F.S., relating to motor vehicle registration; in s. 322.01(27), F.S., relating to driver licensing; in s. 324.021(1), F.S., relating to minimum insurance requirements; in s. 403.717(1), F.S., relating to waste tire and lead-acid battery requirements; and in s. 681.102(14), F.S., relating to motor vehicle sales warranties.
- “Vehicle” in s. 322.01(44), F.S., relating to driver licensing.

State and Local Regulation of E-bikes (Sections 3, 5, and 8):

Section 3 amends s. 316.008(7)(a), F.S., relating to powers of local authorities with respect to traffic control, authorizing a county or municipality to enact an ordinance regulating the operation of e-bikes on sidewalks and sidewalk areas when such use is permissible under federal law.⁴⁷ Under current state law, the ordinance must restrict e-bikes to a maximum speed of 15 miles per hour in such areas. While federal law *authorizes* state and local regulations permitting the use of e-bikes on sidewalks, whether to undertake such state or local regulation is within state or local government discretion.

Section 8 creates s. 316.20655, F.S., establishing regulations governing the operation of e-bikes and providing that an e-bike or an e-bike operator shall be afforded all the rights and privileges,

⁴³ *Supra* note 28.

⁴⁴ Currently defined, except when used in s. 316.1001, F.S., relating to toll payment, as “a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped.” Section 316.003(43), F.S.

⁴⁵ Currently defined as “any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground,” including an autocycle, but the term “does not include a tractor, a moped, or any vehicle in which the operator is enclosed by a cabin unless it meets the requirements of the National Highway Traffic Safety Administration for a motorcycle.” Section 316.003(44), F.S.

⁴⁶ *Supra* note 29.

⁴⁷ 23 U.S.C. s. 217 authorizes a state to expend certain funds for construction of pedestrian walkways (sidewalks) and bicycle transportation facilities and for carrying out non-construction projects related to safe bicycle use. 23 U.S.C. s. 217(h) specifically prohibits motorized vehicles on trails and pedestrian walkways if such funds are used by the state to construct them, except for maintenance purposes; when snow conditions and state or local regulations permit, snowmobiles; motorized wheelchairs; when state or local regulations permit, electric bicycles; and such other circumstances as the U.S.D.O.T. Secretary deems appropriate. Failure to comply can result in the state’s loss of those federal funds.

and be subject to all of the duties, of a bicycle or a bicycle operator, including s. 316.2065, F.S., governing the operation of bicycles. However, the bill provides that the new section of law may not be construed to prevent a local government, through the exercise of its powers under s. 316.008, F.S., from adopting an ordinance governing the operation of e-bikes on streets, highways, sidewalks, and sidewalk areas under the local government's jurisdiction; or to prevent a municipality, county, or agency of the state having jurisdiction over a bicycle lane, bicycle path, multiuse path, or trail network from restricting or prohibiting the operation of an e-bike on such lanes, paths, or trail networks.

Under the bill, an e-bike is considered a vehicle to the same extent as a bicycle, and the bill authorizes an e-bike to operate where bicycles are allowed, including, but not limited to, streets, highways, roadways, shoulders, bicycle lanes, bicycle or multiuse paths, and trail networks, unless restricted or prohibited as authorized.

Like bicycles under current law, the bill provides that an e-bike or an operator of an e-bike is not subject to the provisions of law relating to financial responsibility, driver or motor vehicle licenses, vehicle registration, title certificates, off-highway motorcycles, or off-highway vehicles. These provisions have no effect, as bicycles are already excluded from those provisions, except that "motorized" bicycles as currently defined are subject to the described registration fees. E-bikes will not be subject to registration fees.

The bill also requires that an e-bike must function so that the electric motor is disengaged or ceases to function when the rider stops pedaling or when the brakes are applied.

Beginning January 1, 2021, the bill requires manufacturers and distributors of e-bikes to apply a label that is permanently affixed in a prominent location to each e-bike containing the classification number, top assisted speed, and motor wattage of the e-bike. The bill prohibits a person from tampering with or modifying an e-bike in order to change the motor-powered speed capability or engagement of an e-bike, unless the label indicating the classification number required is replaced after such modification. E-bikes must comply with the equipment and manufacturing requirements for bicycles adopted by the CPSC.⁴⁸ The latter provision is a restatement of current law, as bicycles (including e-bikes) must already comply with the requirements of applicable federal law.

Section 5 amends s. 316.083, F.S., to include e-bikes in the provisions of law relating to a driver overtaking a bicycle or other nonmotorized vehicle. Under the bill, a driver overtaking an e-bikes must pass the e-bike at a safe distance of not less than three feet between the vehicle and the e-bike.

Motorized Bicycle Registration (Section 16):

Section 16 amends s. 320.08, F.S., to repeal the imposition of the \$5 flat fee for registration or registration renewal, as well as the \$2.50 safety education fee, imposed on motorized bicycles. These fees will no longer be collected and distributed into the State Transportation Trust Fund and the Highway Safety Operating Trust Fund.

⁴⁸ 16 C.F.R. Part 1512 applies to bicycles and e-bikes.

Additional Technical and Conforming Changes (Sections 6, 7, 17, and 18):

Section 6 amends s. 316.1995, F.S., relating to driving on a sidewalk or bicycle path, to insert a cross-reference to the e-bike regulations in new s. 316.20655, F.S.

Section 7 amends s. 316.2065(3)(d), F.S., to remove references to obsolete bicycle helmet safety standards, leaving in place reference to the federal safety standard for bicycle helmets in 16 C.F.R. part 1203.

Section 17 and 18 amend ss. 316.306 and 655.960, F.S., to correct cross-references made necessary by the revisions to the definitions in s. 316.003, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Owners of e-bikes will no longer have to pay a \$5 flat fee for registration or registration renewal, nor the \$2.50 safety education fee.

C. Government Sector Impact:

The bill will likely have a negative but insignificant fiscal impact to the State Transportation Trust Fund and Highway Safety Operating Trust Fund. In FY 2018-19, \$14,633 was collected by the Department of Highway Safety and Motor Vehicles (DHSMV) for both moped and motorized bicycle registration fees.⁴⁹ Because the data is collected and stored together, it is uncertain what percent of the \$14,633 is associated with motorized bicycle registration fees that would not be collected under the bill. The DHSMV advises its Division of Motorist Services will be required to modify its existing procedures, website, driver license handbook, and communications to specific stakeholders, including tax collectors, but assigned no dollar value to these expenses.⁵⁰

Local governments that choose to hold public hearings for the purpose of restricting or prohibiting the operation of an e-bike on bicycle or multi-use paths may incur indeterminate but likely insignificant expenses, offset by possible penalties for violation of any restriction or limitation adopted by the local government. However, the fiscal impact to local governments is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill deletes the provision in the current definition of “bicycle” prohibiting a person under the age of 16 from operating or riding on a motorized bicycle. Presumably, this revision is intended to authorize any person, regardless of age, to operate or ride on an electric bicycle as defined in the bill. The bill may need revision to ensure that such authorization is or is not intended.

Representatives of the Florida Bicycle Association have expressed some concerns with the e-bike three-class definition. One concern is that the class 2 e-bike does not need pedal assist to engage and may be more similar to a motorized vehicle than a bicycle. Another concern is that the class 3 e-bike can reach speeds of 28 mph, which may be too fast to safely operate on sidewalks or multi-use paths.⁵¹

Likewise, some environmental groups, mountain bikers, hunters, and anglers in other states have voiced opposition to the authorization of e-bikes on public trails. Their concerns relate to damage to the trails, overcrowding of the trails, and too much access to wildlife habitats.⁵²

⁴⁹ *Supra* note 26.

⁵⁰ See the DHSMV’s 2020 Legislative Bill Analysis for SB 1148 (on file in the Senate Infrastructure and Security Committee).

⁵¹ See email to House committee staff, November 11, 2019 (on file in the Senate Infrastructure and Security Committee).

⁵² See Kurt Repanshek, *Dozens of Conservation Groups Oppose eBikes on Non-Motorized Trails*, National Parks Traveler (August 7, 2019), available at <https://www.nationalparkstraveler.org/2019/08/dozens-conservation-groups-oppose-ebikes-non-motorized-trails> (last visited Feb. 6, 2020).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 261.03, 316.003, 316.027, 316.083, 316.1995, 316.613, 316.614, 320.01, 322.01, 324.021, 403.717, 681.102, 320.08, 316.306, and 655.960.

This bill creates the following section of the Florida Statutes: 316.20655.

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 February 3, 2020:

The committee substitute:

- Removes obsolete language relating to bicycle helmets, leaving reference to the existing federal safety standard for bicycle helmets.
- Removes a current exclusion for a bicycle with a specified seat height from the definition of “bicycle,” thereby subjecting the described bicycles to bicycle regulations.
- Authorizes a county or municipality to enact an ordinance to regulate the operation of e-bikes on sidewalks and sidewalk areas when permissible under federal law if the ordinance restricts the maximum speed of an e-bike to 15 miles per hour.
- Provides that the new e-bike regulations may not be construed to prevent a local government from adopting an ordinance governing the operation of e-bikes on streets, highways, sidewalks, and sidewalk areas under the local government’s jurisdiction; or to prevent a municipality, county, or agency of the state having jurisdiction over a bicycle lane, bicycle path, multiuse path, or trail network from restricting or prohibiting the operation of an e-bike on such lanes, paths, or trail networks.
- Removes the provision requiring a municipality, county, or agency of the state having jurisdiction over a bicycle or multiuse path to provide notice and hold a public hearing before restricting or prohibiting the operation of an e-bike on the path if the entity finds that such a restriction is necessary in the interest of public safety or to comply with other laws or legal obligations.

- B. **Amendments:**

None.

By the Committee on Infrastructure and Security; and Senator Brandes

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1 A bill to be entitled
 2 An act relating to electric bicycles; amending s.
 3 261.03, F.S.; revising the definition of the term
 4 "OHM" or "off-highway motorcycle"; amending s.
 5 316.003, F.S.; revising definitions relating to the
 6 Florida Uniform Traffic Control Law; defining the term
 7 "electric bicycle"; amending s. 316.008, F.S.;
 8 authorizing a county or municipality to enact an
 9 ordinance regulating the operation of electric
 10 bicycles on sidewalks or sidewalk areas when such use
 11 is permissible under federal law; restricting the
 12 speed of electric bicycles in such areas; amending s.
 13 316.027, F.S.; revising the definition of the term
 14 "vulnerable road user"; amending s. 316.083, F.S.;
 15 requiring the driver of a vehicle overtaking an
 16 electric bicycle to pass the electric bicycle at a
 17 certain distance; amending s. 316.1995, F.S.;
 18 expanding exceptions to a prohibition on persons
 19 driving certain vehicles on sidewalks and bicycle
 20 paths; amending s. 316.2065, F.S.; deleting obsolete
 21 language; creating s. 316.20655, F.S.; providing
 22 electric bicycle regulations; providing for rights and
 23 privileges of electric bicycles and operators of
 24 electric bicycles; providing that electric bicycles
 25 are vehicles to the same extent as bicycles; providing
 26 construction; providing that electric bicycles and
 27 operators of electric bicycles are not subject to
 28 specified provisions; requiring manufacturers and
 29 distributors, beginning on a specified date, to apply

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

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30 a label containing certain information to each
 31 electric bicycle; prohibiting persons from tampering
 32 with or modifying electric bicycles for certain
 33 purposes; providing an exception; requiring electric
 34 bicycles to comply with specified provisions of law;
 35 requiring electric bicycles to operate in a manner
 36 that meets certain requirements; authorizing operators
 37 to ride electric bicycles where bicycles are allowed;
 38 amending ss. 316.613, 316.614, and 320.01, F.S.;
 39 revising the definition of the term "motor vehicle";
 40 amending s. 322.01, F.S.; revising the definitions of
 41 the terms "motor vehicle" and "vehicle"; amending ss.
 42 324.021, 403.717, and 681.102, F.S.; revising the
 43 definition of the term "motor vehicle"; amending s.
 44 320.08, F.S.; conforming a provision to changes made
 45 by the act; amending ss. 316.306 and 655.960, F.S.;
 46 conforming cross-references; providing an effective
 47 date.
 48
 49 Be It Enacted by the Legislature of the State of Florida:
 50
 51 Section 1. Subsection (4) of section 261.03, Florida
 52 Statutes, is amended to read:
 53 261.03 Definitions.—As used in this chapter, the term:
 54 (4) "OHM" or "off-highway motorcycle" means any motor
 55 vehicle used off the roads or highways of this state that has a
 56 seat or saddle for the use of the rider and is designed to
 57 travel with not more than two wheels in contact with the ground,
 58 but excludes a tractor, an electric bicycle, or a moped.

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

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Section 2. Present subsections (22) through (104) of section 316.003, Florida Statutes, are redesignated as subsections (23) through (105), respectively, a new subsection (22) is added to that section, and subsection (4) and present subsections (41), (43), (44), (45), and (61) of that section are amended, to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(4) BICYCLE.—Every vehicle propelled solely by human power, ~~and every motorized bicycle propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground upon which any person may ride,~~ having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include ~~such a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position or a scooter or similar device. A person under the age of 16 may not operate or ride upon a motorized bicycle.~~

(22) ELECTRIC BICYCLE.—A bicycle or tricycle equipped with fully operable pedals, a seat or saddle for the use of the rider, and an electric motor of less than 750 watts which meets the requirements of one of the following three classifications:

(a) "Class 1 electric bicycle" means an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the electric bicycle reaches the speed of 20 miles per hour.

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(b) "Class 2 electric bicycle" means an electric bicycle equipped with a motor that may be used exclusively to propel the electric bicycle and that ceases to provide assistance when the electric bicycle reaches the speed of 20 miles per hour.

(c) "Class 3 electric bicycle" means an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the electric bicycle reaches the speed of 28 miles per hour.

~~(42)(41)~~ MOPED.—Any vehicle with pedals to permit propulsion by human power, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels, with a motor rated not in excess of 2 brake horsepower and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground and with a power-drive system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged. If an internal combustion engine is used, the displacement may not exceed 50 cubic centimeters. The term does not include an electric bicycle.

~~(44)(43)~~ MOTOR VEHICLE.—Except when used in s. 316.1001, a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, electric bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped. For purposes of s. 316.1001, "motor vehicle" has the same meaning as provided in s. 320.01(1)(a).

~~(45)(44)~~ MOTORCYCLE.—Any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground. The term

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includes an autocycle, but does not include a tractor, a moped, an electric bicycle, or any vehicle in which the operator is enclosed by a cabin unless it meets the requirements set forth by the National Highway Traffic Safety Administration for a motorcycle.

~~(46)-(45)~~ MOTORIZED SCOOTER.—Any vehicle or micromobility device that is powered by a motor with or without a seat or saddle for the use of the rider, which is designed to travel on not more than three wheels, and which is not capable of propelling the vehicle at a speed greater than 20 miles per hour on level ground. The term does not include an electric bicycle.

~~(62)-(61)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph ~~(84)(b)~~ ~~(83)(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 3. Paragraph (a) of subsection (7) of section 316.008, Florida Statutes, is amended to read:

316.008 Powers of local authorities.—

(7) (a) A county or municipality may enact an ordinance to permit, control, or regulate the operation of vehicles, golf carts, mopeds, motorized scooters, electric bicycles, and electric personal assistive mobility devices on sidewalks or sidewalk areas when such use is permissible under federal law. The ordinance must restrict such vehicles or devices to a maximum speed of 15 miles per hour in such areas.

Section 4. Paragraph (b) of subsection (1) of section 316.027, Florida Statutes, is amended to read:

316.027 Crash involving death or personal injuries.—

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

(b) "Vulnerable road user" means:

1. A pedestrian, including a person actually engaged in work upon a highway, or in work upon utility facilities along a highway, or engaged in the provision of emergency services within the right-of-way;

2. A person operating a bicycle, an electric bicycle, a motorcycle, a scooter, or a moped lawfully on the roadway;

3. A person riding an animal; or

4. A person lawfully operating on a public right-of-way, crosswalk, or shoulder of the roadway:

a. A farm tractor or similar vehicle designed primarily for farm use;

b. A skateboard, roller skates, or in-line skates;

c. A horse-drawn carriage;

d. An electric personal assistive mobility device; or

e. A wheelchair.

Section 5. Subsection (1) of section 316.083, Florida Statutes, is amended to read:

316.083 Overtaking and passing a vehicle.—The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall give an appropriate signal as provided for in s. 316.156, shall pass to the left thereof at a safe distance, and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle. The driver of a vehicle overtaking a bicycle or other

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nonmotorized vehicle, or an electric bicycle, must pass the bicycle, ~~or~~ other nonmotorized vehicle, or electric bicycle at a safe distance of not less than 3 feet between the vehicle and the bicycle, ~~or~~ other nonmotorized vehicle, or electric bicycle.

Section 6. Section 316.1995, Florida Statutes, is amended to read:

316.1995 Driving upon sidewalk or bicycle path.—

(1) Except as provided in s. 316.008, s. 316.20655, s. 316.212(8), or s. 316.2128, a person may not drive any vehicle other than by human power upon a bicycle path, sidewalk, or sidewalk area, except upon a permanent or duly authorized temporary driveway.

(2) A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

(3) This section does not apply to motorized wheelchairs.

Section 7. Paragraph (d) of subsection (3) of section 316.2065, Florida Statutes, is amended to read:

316.2065 Bicycle regulations.—

(3)

(d) A bicycle rider or passenger who is under 16 years of age must wear a bicycle helmet that is properly fitted and is fastened securely upon the passenger's head by a strap and that meets the federal safety standard for bicycle helmets, final rule, 16 C.F.R. part 1203. ~~A helmet purchased before October 1, 2012, which meets the standards of the American National Standards Institute (ANSI Z 90.4 Bicycle Helmet Standards), the standards of the Snell Memorial Foundation (1984 Standard for Protective Headgear for Use in Bicycling), or any other~~

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~~nationally recognized standards for bicycle helmets adopted by the department may continue to be worn by a bicycle rider or passenger until January 1, 2016.~~ As used in this subsection, the term "passenger" includes a child who is riding in a trailer or semitrailer attached to a bicycle.

Section 8. Section 316.20655, Florida Statutes, is created to read:

316.20655 Electric bicycle regulations.—

(1) Except as otherwise provided in this section, an electric bicycle or an operator of an electric bicycle shall be afforded all the rights and privileges, and be subject to all of the duties, of a bicycle or the operator of a bicycle, including those identified in s. 316.2065. An electric bicycle is a vehicle to the same extent as a bicycle. However, this section may not be construed to prevent a local government, through the exercise of its powers under s. 316.008, from adopting an ordinance governing the operation of electric bicycles on streets, highways, sidewalks, and sidewalk areas that are under the local government's jurisdiction; or to prevent a municipality, county, or agency of the state having jurisdiction over a bicycle lane, bicycle path, multiuse path, or trail network from restricting or prohibiting the operation of an electric bicycle on a bicycle lane, bicycle path, multiuse path, or trail network.

(2) An electric bicycle or an operator of an electric bicycle is not subject to the provisions of law relating to financial responsibility, driver or motor vehicle licenses, vehicle registration, title certificates, off-highway motorcycles, or off-highway vehicles.

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(3) Beginning on January 1, 2021, manufacturers and distributors of electric bicycles shall apply a label that is permanently affixed in a prominent location to each electric bicycle. The label must contain the classification number, top assisted speed, and motor wattage of the electric bicycle.

(4) A person may not tamper with or modify an electric bicycle so as to change the motor-powered speed capability or engagement of an electric bicycle, unless the label indicating the classification number required in subsection (3) is replaced after such modification.

(5) An electric bicycle must comply with the equipment and manufacturing requirements for bicycles adopted by the United States Consumer Product Safety Commission under 16 C.F.R. part 1512.

(6) An electric bicycle must operate in a manner so that the electric motor is disengaged or ceases to function when the rider stops pedaling or when the brakes are applied.

(7) An operator may ride an electric bicycle where bicycles are allowed, including, but not limited to, streets, highways, roadways, shoulders, bicycle lanes, and bicycle or multiuse paths.

Section 9. Paragraph (e) of subsection (2) of section 316.613, Florida Statutes, is amended to read:

316.613 Child restraint requirements.—

(2) As used in this section, the term “motor vehicle” means a motor vehicle as defined in s. 316.003 that is operated on the roadways, streets, and highways of the state. The term does not include:

(e) A motorcycle, a moped, a ~~or~~ bicycle, or an electric

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bicycle.

Section 10. Paragraph (a) of subsection (3) of section 316.614, Florida Statutes, is amended to read:

316.614 Safety belt usage.—

(3) As used in this section:

(a) “Motor vehicle” means a motor vehicle as defined in s. 316.003 which is operated on the roadways, streets, and highways of this state. The term does not include:

1. A school bus.

2. A bus used for the transportation of persons for compensation.

3. A farm tractor or implement of husbandry.

4. A truck having a gross vehicle weight rating of more than 26,000 pounds.

5. A motorcycle, a moped, a ~~or~~ bicycle, or an electric bicycle.

Section 11. Paragraph (a) of subsection (1) 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:

(1) “Motor vehicle” means:

(a) 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 or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, motorized scooters, micromobility devices, personal delivery devices and mobile carriers as defined in s. 316.003, special mobile equipment as defined in s. 316.003, vehicles that run

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291 only upon a track, bicycles, electric bicycles, swamp buggies,
 292 or mopeds.

293 Section 12. Subsections (27) and (44) of section 322.01,
 294 Florida Statutes, are amended to read:

295 322.01 Definitions.—As used in this chapter:

296 (27) "Motor vehicle" means any self-propelled vehicle,
 297 including a motor vehicle combination, not operated upon rails
 298 or guideway, excluding vehicles moved solely by human power,
 299 motorized wheelchairs, and electric ~~motorized~~ bicycles as
 300 defined in s. 316.003.

301 (44) "Vehicle" means every device in, upon, or by which any
 302 person or property is or may be transported or drawn upon a
 303 public highway or operated upon rails or guideway, except a
 304 bicycle, motorized wheelchair, or electric ~~motorized~~ bicycle.

305 Section 13. Subsection (1) of section 324.021, Florida
 306 Statutes, is amended to read:

307 324.021 Definitions; minimum insurance required.—The
 308 following words and phrases when used in this chapter shall, for
 309 the purpose of this chapter, have the meanings respectively
 310 ascribed to them in this section, except in those instances
 311 where the context clearly indicates a different meaning:

312 (1) MOTOR VEHICLE.—Every self-propelled vehicle that is
 313 designed and required to be licensed for use upon a highway,
 314 including trailers and semitrailers designed for use with such
 315 vehicles, except traction engines, road rollers, farm tractors,
 316 power shovels, and well drillers, and every vehicle that is
 317 propelled by electric power obtained from overhead wires but not
 318 operated upon rails, but not including any personal delivery
 319 device or mobile carrier as defined in s. 316.003, bicycle,

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320 electric bicycle, or moped. However, the term "motor vehicle"
 321 does not include a motor vehicle as defined in s. 627.732(3)
 322 when the owner of such vehicle has complied with the
 323 requirements of ss. 627.730-627.7405, inclusive, unless the
 324 provisions of s. 324.051 apply; and, in such case, the
 325 applicable proof of insurance provisions of s. 320.02 apply.

326 Section 14. Paragraph (b) of subsection (1) of section
 327 403.717, Florida Statutes, is amended to read:

328 403.717 Waste tire and lead-acid battery requirements.—

329 (1) For purposes of this section and ss. 403.718 and
 330 403.7185:

331 (b) "Motor vehicle" means an automobile, motorcycle, truck,
 332 trailer, semitrailer, truck tractor and semitrailer combination,
 333 or any other vehicle operated in this state, used to transport
 334 persons or property and propelled by power other than muscular
 335 power. The term does not include traction engines, road rollers,
 336 vehicles that run only upon a track, bicycles, electric
 337 bicycles, mopeds, or farm tractors and trailers.

338 Section 15. Subsection (14) of section 681.102, Florida
 339 Statutes, is amended to read:

340 681.102 Definitions.—As used in this chapter, the term:

341 (14) "Motor vehicle" means a new vehicle, propelled by
 342 power other than muscular power, which is sold in this state to
 343 transport persons or property, and includes a recreational
 344 vehicle or a vehicle used as a demonstrator or leased vehicle if
 345 a manufacturer's warranty was issued as a condition of sale, or
 346 the lessee is responsible for repairs, but does not include
 347 vehicles run only upon tracks, off-road vehicles, trucks over
 348 10,000 pounds gross vehicle weight, motorcycles, mopeds,

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349 electric bicycles, or the living facilities of recreational
 350 vehicles. "Living facilities of recreational vehicles" are those
 351 portions designed, used, or maintained primarily as living
 352 quarters and include, but are not limited to, the flooring,
 353 plumbing system and fixtures, roof air conditioner, furnace,
 354 generator, electrical systems other than automotive circuits,
 355 the side entrance door, exterior compartments, and windows other
 356 than the windshield and driver and front passenger windows.

357 Section 16. Section 320.08, Florida Statutes, is amended to
 358 read:

359 320.08 License taxes.—Except as otherwise provided herein,
 360 there are hereby levied and imposed annual license taxes for the
 361 operation of motor vehicles, mopeds, ~~motorized bicycles as~~
 362 ~~defined in s. 316.003(4)),~~ tri-vehicles as defined in s. 316.003,
 363 and mobile homes as defined in s. 320.01, which shall be paid to
 364 and collected by the department or its agent upon the
 365 registration or renewal of registration of the following:

366 (1) MOTORCYCLES AND MOPEDS.—

367 (a) Any motorcycle: \$10 flat.

368 (b) Any moped: \$5 flat.

369 (c) Upon registration of a motorcycle, motor-driven cycle,
 370 or moped, in addition to the license taxes specified in this
 371 subsection, a nonrefundable motorcycle safety education fee in
 372 the amount of \$2.50 shall be paid. The proceeds of such
 373 additional fee shall be deposited in the Highway Safety
 374 Operating Trust Fund to fund a motorcycle driver improvement
 375 program implemented pursuant to s. 322.025, the Florida
 376 Motorcycle Safety Education Program established in s. 322.0255,
 377 or the general operations of the department.

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378 (d) An ancient or antique motorcycle: \$7.50 flat.

379 (2) AUTOMOBILES OR TRI-VEHICLES FOR PRIVATE USE.—

380 (a) An ancient or antique automobile, as defined in s.
 381 320.086, or a street rod, as defined in s. 320.0863: \$7.50 flat.

382 (b) Net weight of less than 2,500 pounds: \$14.50 flat.

383 (c) Net weight of 2,500 pounds or more, but less than 3,500
 384 pounds: \$22.50 flat.

385 (d) Net weight of 3,500 pounds or more: \$32.50 flat.

386 (3) TRUCKS.—

387 (a) Net weight of less than 2,000 pounds: \$14.50 flat.

388 (b) Net weight of 2,000 pounds or more, but not more than
 389 3,000 pounds: \$22.50 flat.

390 (c) Net weight more than 3,000 pounds, but not more than
 391 5,000 pounds: \$32.50 flat.

392 (d) A truck defined as a "goat," or other vehicle if used
 393 in the field by a farmer or in the woods for the purpose of
 394 harvesting a crop, including naval stores, during such
 395 harvesting operations, and which is not principally operated
 396 upon the roads of the state: \$7.50 flat. The term "goat" means a
 397 motor vehicle designed, constructed, and used principally for
 398 the transportation of citrus fruit within citrus groves or for
 399 the transportation of crops on farms, and which can also be used
 400 for hauling associated equipment or supplies, including required
 401 sanitary equipment, and the towing of farm trailers.

402 (e) An ancient or antique truck, as defined in s. 320.086:
 403 \$7.50 flat.

404 (4) HEAVY TRUCKS, TRUCK TRACTORS, FEES ACCORDING TO GROSS
 405 VEHICLE WEIGHT.—

406 (a) Gross vehicle weight of 5,001 pounds or more, but less

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than 6,000 pounds: \$60.75 flat.

(b) Gross vehicle weight of 6,000 pounds or more, but less than 8,000 pounds: \$87.75 flat.

(c) Gross vehicle weight of 8,000 pounds or more, but less than 10,000 pounds: \$103 flat.

(d) Gross vehicle weight of 10,000 pounds or more, but less than 15,000 pounds: \$118 flat.

(e) Gross vehicle weight of 15,000 pounds or more, but less than 20,000 pounds: \$177 flat.

(f) Gross vehicle weight of 20,000 pounds or more, but less than 26,001 pounds: \$251 flat.

(g) Gross vehicle weight of 26,001 pounds or more, but less than 35,000: \$324 flat.

(h) Gross vehicle weight of 35,000 pounds or more, but less than 44,000 pounds: \$405 flat.

(i) Gross vehicle weight of 44,000 pounds or more, but less than 55,000 pounds: \$773 flat.

(j) Gross vehicle weight of 55,000 pounds or more, but less than 62,000 pounds: \$916 flat.

(k) Gross vehicle weight of 62,000 pounds or more, but less than 72,000 pounds: \$1,080 flat.

(l) Gross vehicle weight of 72,000 pounds or more: \$1,322 flat.

(m) Notwithstanding the declared gross vehicle weight, a truck tractor used within the state or within a 150-mile radius of its home address is eligible for a license plate for a fee of \$324 flat if:

1. The truck tractor is used exclusively for hauling forestry products; or

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2. The truck tractor is used primarily for the hauling of forestry products, and is also used for the hauling of associated forestry harvesting equipment used by the owner of the truck tractor.

(n) A truck tractor or heavy truck, not operated as a for-hire vehicle and which is engaged exclusively in transporting raw, unprocessed, and nonmanufactured agricultural or horticultural products within the state or within a 150-mile radius of its home address is eligible for a restricted license plate for a fee of:

1. If such vehicle's declared gross vehicle weight is less than 44,000 pounds, \$87.75 flat.

2. If such vehicle's declared gross vehicle weight is 44,000 pounds or more and such vehicle only transports from the point of production to the point of primary manufacture; to the point of assembling the same; or to a shipping point of a rail, water, or motor transportation company, \$324 flat.

Such not-for-hire truck tractors and heavy trucks used exclusively in transporting raw, unprocessed, and nonmanufactured agricultural or horticultural products may be incidentally used to haul farm implements and fertilizers delivered direct to the growers. The department may require any documentation deemed necessary to determine eligibility before issuance of this license plate. For the purpose of this paragraph, "not-for-hire" means the owner of the motor vehicle must also be the owner of the raw, unprocessed, and nonmanufactured agricultural or horticultural product, or the user of the farm implements and fertilizer being delivered.

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465 (5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT;
 466 SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—
 467 (a)1. A semitrailer drawn by a GVW truck tractor by means
 468 of a fifth-wheel arrangement: \$13.50 flat per registration year
 469 or any part thereof.
 470 2. A semitrailer drawn by a GVW truck tractor by means of a
 471 fifth-wheel arrangement: \$68 flat per permanent registration.
 472 (b) A motor vehicle equipped with machinery and designed
 473 for the exclusive purpose of well drilling, excavation,
 474 construction, spraying, or similar activity, and which is not
 475 designed or used to transport loads other than the machinery
 476 described above over public roads: \$44 flat.
 477 (c) A school bus used exclusively to transport pupils to
 478 and from school or school or church activities or functions
 479 within their own county: \$41 flat.
 480 (d) A wrecker, as defined in s. 320.01, which is used to
 481 tow a vessel as defined in s. 327.02, a disabled, abandoned,
 482 stolen-recovered, or impounded motor vehicle as defined in s.
 483 320.01, or a replacement motor vehicle as defined in s. 320.01:
 484 \$41 flat.
 485 (e) A wrecker that is used to tow any nondisabled motor
 486 vehicle, a vessel, or any other cargo unless used as defined in
 487 paragraph (d), as follows:
 488 1. Gross vehicle weight of 10,000 pounds or more, but less
 489 than 15,000 pounds: \$118 flat.
 490 2. Gross vehicle weight of 15,000 pounds or more, but less
 491 than 20,000 pounds: \$177 flat.
 492 3. Gross vehicle weight of 20,000 pounds or more, but less
 493 than 26,000 pounds: \$251 flat.

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494 4. Gross vehicle weight of 26,000 pounds or more, but less
 495 than 35,000 pounds: \$324 flat.
 496 5. Gross vehicle weight of 35,000 pounds or more, but less
 497 than 44,000 pounds: \$405 flat.
 498 6. Gross vehicle weight of 44,000 pounds or more, but less
 499 than 55,000 pounds: \$772 flat.
 500 7. Gross vehicle weight of 55,000 pounds or more, but less
 501 than 62,000 pounds: \$915 flat.
 502 8. Gross vehicle weight of 62,000 pounds or more, but less
 503 than 72,000 pounds: \$1,080 flat.
 504 9. Gross vehicle weight of 72,000 pounds or more: \$1,322
 505 flat.
 506 (f) A hearse or ambulance: \$40.50 flat.
 507 (6) MOTOR VEHICLES FOR HIRE.—
 508 (a) Under nine passengers: \$17 flat plus \$1.50 per cwt.
 509 (b) Nine passengers and over: \$17 flat plus \$2 per cwt.
 510 (7) TRAILERS FOR PRIVATE USE.—
 511 (a) Any trailer weighing 500 pounds or less: \$6.75 flat per
 512 year or any part thereof.
 513 (b) Net weight over 500 pounds: \$3.50 flat plus \$1 per cwt.
 514 (8) TRAILERS FOR HIRE.—
 515 (a) Net weight under 2,000 pounds: \$3.50 flat plus \$1.50
 516 per cwt.
 517 (b) Net weight 2,000 pounds or more: \$13.50 flat plus \$1.50
 518 per cwt.
 519 (9) RECREATIONAL VEHICLE-TYPE UNITS.—
 520 (a) A travel trailer or fifth-wheel trailer, as defined by
 521 s. 320.01(1)(b), that does not exceed 35 feet in length: \$27
 522 flat.

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523 (b) A camping trailer, as defined by s. 320.01(1)(b)2.:
 524 \$13.50 flat.

525 (c) A motor home, as defined by s. 320.01(1)(b)4.:
 526 1. Net weight of less than 4,500 pounds: \$27 flat.
 527 2. Net weight of 4,500 pounds or more: \$47.25 flat.

528 (d) A truck camper as defined by s. 320.01(1)(b)3.:
 529 1. Net weight of less than 4,500 pounds: \$27 flat.
 530 2. Net weight of 4,500 pounds or more: \$47.25 flat.

531 (e) A private motor coach as defined by s. 320.01(1)(b)5.:
 532 1. Net weight of less than 4,500 pounds: \$27 flat.
 533 2. Net weight of 4,500 pounds or more: \$47.25 flat.

534 (10) PARK TRAILERS; TRAVEL TRAILERS; FIFTH-WHEEL TRAILERS;
 535 35 FEET TO 40 FEET.—

536 (a) *Park trailers.*—Any park trailer, as defined in s.
 537 320.01(1)(b)7.: \$25 flat.

538 (b) *Travel trailers or fifth-wheel trailers.*—A travel
 539 trailer or fifth-wheel trailer, as defined in s. 320.01(1)(b),
 540 that exceeds 35 feet: \$25 flat.

541 (11) MOBILE HOMES.—

542 (a) A mobile home not exceeding 35 feet in length: \$20
 543 flat.

544 (b) A mobile home over 35 feet in length, but not exceeding
 545 40 feet: \$25 flat.

546 (c) A mobile home over 40 feet in length, but not exceeding
 547 45 feet: \$30 flat.

548 (d) A mobile home over 45 feet in length, but not exceeding
 549 50 feet: \$35 flat.

550 (e) A mobile home over 50 feet in length, but not exceeding
 551 55 feet: \$40 flat.

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552 (f) A mobile home over 55 feet in length, but not exceeding
 553 60 feet: \$45 flat.

554 (g) A mobile home over 60 feet in length, but not exceeding
 555 65 feet: \$50 flat.

556 (h) A mobile home over 65 feet in length: \$80 flat.

557 (12) DEALER AND MANUFACTURER LICENSE PLATES.—A franchised
 558 motor vehicle dealer, independent motor vehicle dealer, marine
 559 boat trailer dealer, or mobile home dealer and manufacturer
 560 license plate: \$17 flat.

561 (13) EXEMPT OR OFFICIAL LICENSE PLATES.—Any exempt or
 562 official license plate: \$4 flat, except that the registration or
 563 renewal of a registration of a marine boat trailer exempt under
 564 s. 320.102 is not subject to any license tax.

565 (14) LOCALLY OPERATED MOTOR VEHICLES FOR HIRE.—A motor
 566 vehicle for hire operated wholly within a city or within 25
 567 miles thereof: \$17 flat plus \$2 per cwt.

568 (15) TRANSPORTER.—Any transporter license plate issued to a
 569 transporter pursuant to s. 320.133: \$101.25 flat.

570 Section 17. Paragraph (a) of subsection (3) of section
 571 316.306, Florida Statutes, is amended to read:

572 316.306 School and work zones; prohibition on the use of a
 573 wireless communications device in a handheld manner.—

574 (3)(a)1. A person may not operate a motor vehicle while
 575 using a wireless communications device in a handheld manner in a
 576 designated school crossing, school zone, or work zone area as
 577 defined in s. 316.003(105) ~~s. 316.003(104)~~. This subparagraph
 578 shall only be applicable to work zone areas if construction
 579 personnel are present or are operating equipment on the road or
 580 immediately adjacent to the work zone area. For the purposes of

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581 this paragraph, a motor vehicle that is stationary is not being
582 operated and is not subject to the prohibition in this
583 paragraph.

584 2.a. During the period from October 1, 2019, through
585 December 31, 2019, a law enforcement officer may stop motor
586 vehicles to issue verbal or written warnings to persons who are
587 in violation of subparagraph 1. for the purposes of informing
588 and educating such persons of this section. This sub-
589 subparagraph shall stand repealed on October 1, 2020.

590 b. Effective January 1, 2020, a law enforcement officer may
591 stop motor vehicles and issue citations to persons who are
592 driving while using a wireless communications device in a
593 handheld manner in violation of subparagraph 1.

594 Section 18. Subsection (1) of section 655.960, Florida
595 Statutes, is amended to read:

596 655.960 Definitions; ss. 655.960-655.965.—As used in this
597 section and ss. 655.961-655.965, unless the context otherwise
598 requires:

599 (1) "Access area" means any paved walkway or sidewalk which
600 is within 50 feet of any automated teller machine. The term does
601 not include any street or highway open to the use of the public,
602 as defined in s. 316.003(84)(a) or (b) ~~s. 316.003(83)(a) or (b)~~,
603 including any adjacent sidewalk, as defined in s. 316.003.

604 Section 19. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/2020
Meeting Date

1148
Bill Number (if applicable)

Topic Electric Bicycles

Amendment Barcode (if applicable)

Name Jeff Branch

Job Title Legislative Advocate

Address _____

Phone 761-3701

Street

Talkhovee FL 32202

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida's 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)

3-2-2020

Meeting Date

CS/SB 1148

Bill Number (if applicable)

Topic Electric Bicycles

Amendment Barcode (if applicable)

Name Becky Afonso

Job Title Executive Director

Address 174 B STATE ST E

Street

Phone 813-748-1513

OLDSMAR

FL

34677

City

State

Zip

Email becky@floridabicycle.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Bicycle Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3/2/00

Meeting Date

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

SB 1148

Bill Number (if applicable)

Topic Electric Bicycles

Amendment Barcode (if applicable)

Name Larisa Svechin

Job Title Vice Mayor Sunny Isles Bch

Address 18070 Collins Ave

Phone 917 751 1565

Street

SVB

City

FL

State

33160

Zip

Email lsvechin@81BFL.net

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/CS/SB 1352

INTRODUCER: Rules Committee; Innovation, Industry, and Technology Committee; and Senator Brandes

SUBJECT: Transportation Companies

DATE: March 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	IS	Favorable
2.	Wiehle	Imhof	IT	Fav/CS
3.	Price	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1352 establishes a regulatory framework for digital advertising on transportation network company vehicles and for luxury ground transportation network company vehicles, preempting such regulation to the state.

To the extent that local governments currently collect revenue from regulation of digital advertising on vehicles, or fees from regulation of limousines and luxury sedans, that revenue will be negatively impacted. However, the extent of any impact is indeterminate.

The bill takes effect upon becoming law.

II. Present Situation:

Technological advances have led to new methods for consumers to arrange and pay for transportation, including software applications that make use of mobile smartphone applications, Internet web pages, and email and text messages. Ridesharing companies, such as Lyft, Uber, and SideCar, describe themselves as transportation network companies (TNCs), rather than as vehicles for hire.

TNCs use smartphone technology to connect individuals who want to ride with private drivers for a fee. A driver logs onto a phone application and indicates the driver is ready to accept

passengers. Potential passengers log on, learn which drivers are nearby, see photographs, receive a fare estimate, and decide whether to accept a ride. If the passenger accepts a ride, the driver is notified and drives to pick up the passenger. Once at the destination, payment is made through the phone application.

Florida law currently contains a number of provisions relating to TNCs.

Definitions

Section 627.748(1), F.S. provides a number of relevant definitions:

- “Transportation network company” or “TNC” means an entity operating in this state using a digital network to connect a rider to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract, and is not a taxicab association or for-hire vehicle owner.¹
- “Prearranged ride” means the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network controlled by a TNC, continuing while the TNC driver transports the requesting rider, and ending when the last requesting rider exits from and is no longer occupying the TNC vehicle. The term does not include a taxicab, for-hire vehicle, or street hail service and does not include ridesharing, carpool, or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.
- “Rider” means an individual who uses a digital network to connect with a TNC driver in order to obtain a prearranged ride in the TNC driver’s TNC vehicle between points chosen by the rider.
- “Transportation network company driver” or “TNC driver” means an individual who receives connections to potential riders and related services from a TNC and, in return for compensation, uses a TNC vehicle to offer or provide a prearranged ride to a rider upon connection through a digital network.
- “Transportation network company vehicle” or “TNC vehicle” means a vehicle that is *not* a taxicab, jitney, limousine,² or for-hire vehicle,³ that is used by a TNC driver to offer or

¹ The term does not include entities arranging nonemergency medical transportation for individuals who qualify for Medicaid or Medicare pursuant to a contract with the state or a managed care organization, but does not prohibit a TNC from providing prearranged rides to individuals who qualify for Medicaid or Medicare if it meets the requirements of s. 627.748, F.S.

² The terms “taxicab,” “jitney,” and “limousine” are not defined in the Florida Statutes.

³ Section 320.01(15), F.S., defines the term “for-hire vehicle” as any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a “share-expense” basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is “for hire.” The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation “for hire.” The following are not included a for-hire vehicle: a motor vehicle used for transporting school children to and from school under contract with school officials; a hearse or ambulance when operated by a licensed embalmer or mortician or his or her agent or employee in this state; a motor vehicle used in the transportation of agricultural or horticultural products or in transporting agricultural or horticultural supplies direct to growers or the consumers of such supplies or to associations of such growers or consumers; a motor vehicle temporarily used by a farmer for the transportation of agricultural or horticultural products from any farm or grove to a packinghouse or to a point of shipment by a transportation company; or a motor vehicle not exceeding

provide a prearranged ride and owned, leased, or otherwise authorized to be used by the TNC driver.

- “Digital network” means any online-enabled technology application service, website, or system offered or used by a TNC which enables the prearrangement of rides with TNC drivers.

A vehicle that is let or rented to another for consideration may be used as a TNC vehicle.⁴

Preemption

Current law also recites the Legislature’s intent to provide for uniformity of laws governing TNCs, TNC drivers, and TNC vehicles throughout the state. “TNC vehicles are governed exclusively by state law, including in any locality or other jurisdiction that enacted a law or created rules governing TNCs, TNC drivers, or TNC vehicles before July 1, 2017.”⁵ A county, municipality, special district, airport authority, port authority, or other local government entity or subdivision is prohibited from:

- Imposing a tax on or requiring a license for a TNC, TNC driver, or TNC vehicle if such tax or license relates to providing prearranged rides;
- Subjecting a TNC, TNC driver, or TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or
- Requiring a TNC or TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity’s jurisdiction.

Insurance Requirements for TNCs and TNC Drivers

Section 627.748(7), F.S., addresses insurance requirements for TNCs and TNC drivers. A TNC driver, or a TNC on behalf of the TNC driver, must maintain primary automobile insurance that:

- Recognizes that the TNC driver is a TNC driver or otherwise uses a vehicle to transport riders for compensation; and
- Covers the TNC driver while the TNC driver is logged on to the TNC’s digital network or while the TNC driver is engaged in a prearranged ride.

When a TNC driver is logged on to the digital network but is not engaged in a prearranged ride, the TNC or TNC driver must have automobile insurance that provides:

- Primary automobile liability coverage of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage;
- Personal injury protection (PIP) benefits that meet the minimum coverage amounts required of a limousine under the Florida Motor Vehicle No-Fault Law (which requires every owner and registrant of a motor vehicle in this state to maintain PIP coverage, which compensates persons injured in accidents regardless of fault);⁶ and

1.5 tons under contract with the Government of the United States to carry United States mail, provided such vehicle is not used for commercial purposes

⁴ Section 627.748(g), F.S.

⁵ Section 627.748(15), F.S.

⁶ Sections 627.730-627.7405, F.S. However, s. 627.733(1), F.S., exempts limousines from the Florida Motor Vehicle No-Fault Law. As a result, when logged on to the digital network but not engaged in a prearranged ride, the TNC or TNC driver is not required to have PIP coverage.

- Uninsured and underinsured vehicle coverage.⁷

When a TNC driver is engaged in a prearranged ride, the automobile insurance must provide:

- Primary automobile liability coverage of at least \$1 million for death, bodily injury, and property damage;
- PIP benefits that meet the minimum coverage amounts required of a limousine under the Florida Motor Vehicle No-Fault Law;⁸ and
- Uninsured and under insured vehicle coverage.

The coverage requirements may be satisfied by automobile insurance maintained by the TNC driver, an automobile insurance policy maintained by the TNC, or a combination of automobile insurance policies maintained by the TNC driver and the TNC.

If the TNC driver's insurance policy has lapsed or does not provide the required coverage, the insurance maintained by the TNC must provide the required coverage, beginning with the first dollar of a claim, and have the duty to defend such claim.⁹ Coverage under an automobile insurance policy maintained by the TNC must not be dependent on a personal automobile insurer first denying a claim, and a personal automobile insurance policy is not required to first deny a claim.¹⁰ The required insurance must be provided by an insurer authorized to do business in this state, which is a member of the Florida Insurance Guaranty Association or an eligible surplus lines insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the Office of Insurance Regulation.¹¹ Insurance satisfying the above requirements is deemed to satisfy the financial responsibility requirement for a motor vehicle under the Financial Responsibility Law of 1955¹² and the security required under the Florida Motor Vehicle No-Fault Law.¹³

An insurer that provides an automobile liability insurance policy under part XI of Ch. 627, F.S.,¹⁴ may exclude any and all coverage afforded under the policy issued to an owner or operator of a TNC vehicle for any loss or injury that occurs while a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride. This right to exclude all coverage

⁷ Generally, uninsured and underinsured vehicle coverage provides the policyholder with benefits even if the injured person is at fault in an accident. This vehicle coverage is required by s. 627.727, F.S.

⁸ As a result of the exemption of limousines from the Florida Motor Vehicle No-Fault Law, when a TNC driver is engaged in a prearranged ride, the TNC or TNC driver is not required to have PIP coverage.

⁹ Section 627.748(7)(d), F.S.

¹⁰ Section 627.748(7)(e), F.S.

¹¹ Section 627.748(f), F.S. The Florida Insurance Guaranty Association, which was created by legislation, handles the claims of insolvent property and casualty insurance companies. Its membership is composed of all Florida direct writers of property and casualty insurance. For more information on the association, see FIGA, available at <https://figafacts.com/> (last visited February 4, 2020).

¹² For private passenger vehicles, the minimum proof of financial responsibility is coverage in the amount of \$10,000 for bodily injury to or death of one person in any crash, \$20,000 for bodily injury or death of two or more persons in any one crash, and \$10,000 for property damage. Section 324.021, F.S. Commercial motor vehicle proof requires coverage by weight, ranging from \$50,000 per occurrence to \$100,000 per occurrence. Section 627.7415, F.S. Nonpublic sector bus proof requires \$100,000/\$300,000/\$50,000 or a combined policy in the amount of \$300,000. Section 627.7415, F.S.

¹³ *Supra* note 8.

¹⁴ Part XI relates to motor vehicle and casualty insurance contracts and sets out, among others, the provisions discussed herein relating to the Financial Responsibility Law, the No-Fault Law, and TNC insurance requirements.

may apply to any coverage included in an automobile insurance policy, including, but not limited to:

- Liability coverage for bodily injury and property damage;
- Uninsured and underinsured motorist coverage;
- Medical payments coverage;
- Comprehensive physical damage coverage;
- Collision physical damage coverage; and
- Personal injury protection.¹⁵

The exclusions described above apply notwithstanding any requirement under the Financial Responsibility Law. A personal automobile insurance policy is not required to provide coverage while the TNC driver is logged on to a digital network, while the TNC driver is engaged in a prearranged ride, or while the TNC driver otherwise uses a vehicle to transport riders for compensation. Insurers are not precluded from providing primary or excess coverage for the TNC driver's vehicle by contract or endorsement. An automobile insurer that excludes the coverage described above does not have a duty to defend or indemnify any claim expressly excluded thereunder.¹⁶

An exclusion contained in a policy for vehicles used to carry persons or property for a charge or available for hire by the public, including a policy in use or approved for use in this state before July 1, 2017, is not invalidated or limited. An automobile insurer that defends or indemnifies a claim against a TNC driver, which is excluded under the terms of the policy, has a right of contribution against other insurers that provide automobile insurance to the same TNC driver in satisfaction of the above TNC coverage requirements at the time of loss.¹⁷

Other TNC-Related Provisions

Under current law, a TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does *not* provide taxicab or for-hire vehicle service. Additionally, a TNC driver is not required to register the vehicle the TNC driver uses to provide prearranged rides as a commercial motor vehicle or a for-hire vehicle.¹⁸ Other provisions require a TNC to designate and maintain

¹⁵ Section 627.748(8)(b), F.S.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Section 627.748(2), F.S. Section 320.0(15), F.S., defines the term "for-hire vehicle," for vehicle registration purposes, to mean any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is "for hire." The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire." The term does not include "a motor vehicle used for transporting school children to and from school under contract with school officials; a hearse or ambulance when operated by a licensed embalmer or mortician or his or her agent or employee in this state; a motor vehicle used in the transportation of agricultural or horticultural products or in transporting agricultural or horticultural supplies direct to growers or the consumers of such supplies or to associations of such growers or consumers; a motor vehicle temporarily used by a farmer for the transportation of agricultural or horticultural products from any farm or grove to a packinghouse or to a point of shipment by a

an agent for service of process in this state,¹⁹ to disclose information relating to fare transparency,²⁰ to display a photograph of the TNC driver and the license plate number of the TNC vehicle used to provide a prearranged ride,²¹ and to transmit electronic receipts to riders within a reasonable period after completion of a ride.²²

Additional requirements and related provisions in current law:

- Provide for disclosure of insurance-related information by TNC drivers and TNCs,²³
- Deem a TNC driver to be an independent contractor,²⁴
- Require a TNC to implement a zero-tolerance policy for drug or alcohol use,²⁵
- Set out background-check and driving history research provisions with related reporting requirements and penalties,²⁶
- List conduct prohibited by a TNC driver or a TNC,²⁷
- Require a TNC to adopt a policy of nondiscrimination and provide requirements for accessibility for individuals with disabilities,²⁸ and
- Address maintenance of records by a TNC.²⁹

For-Hire Vehicle Insurance and Registration Requirements

Section 324.032, F.S., generally provides that for-hire passenger transportation vehicles (taxicabs, limousines, jitneys, or any other for-hire transportation vehicle) may prove financial responsibility by furnishing evidence of holding a liability policy with limits of \$125,000/\$250,000 for bodily injury and \$50,000 for property damage. However, the owner or a lessee required to maintain insurance under s. 324.021(9)(b), F.S.,³⁰ who operates for-hire vehicles, *other than taxicabs*, may prove financial responsibility by providing evidence of holding a liability policy with limits of \$10,000/\$20,000/\$10,000.³¹ Further, the owner or a lessee required to maintain insurance under s. 324.021(9)(b), F.S., and who operates at least 300 taxicabs, limousines, jitneys, or any other for-hire vehicle may prove financial responsibility under s. 324.171, F.S., which allows and provides requirements for self-insurance.³²

transportation company; or a motor vehicle not exceeding 11/2 tons under contract with the Government of the United States to carry United States mail, provided such vehicle is not used for commercial purposes.

¹⁹ Section 627.748(3), F.S.

²⁰ Section 627.748(4), F.S.

²¹ Section 627.748(5), F.S.

²² Section 627.748(6), F.S.

²³ Section 627.748(7)(g) and (h), F.S.

²⁴ Section 627.748(9), F.S.,

²⁵ Section 627.748(10), F.S.

²⁶ Section 627.748(11), F.S.

²⁷ Section 627.748(12), F.S.

²⁸ Section 627.748(13), F.S.

²⁹ Section 627.748(14)

³⁰ That section provides that a lessor, under an agreement to rent or lease a motor vehicle for one year or longer that requires the lessee to obtain insurance, must provide coverage of \$100,000/\$300,000 for bodily injury and \$50,000 for property damage, and is not deemed the owner of the vehicle for purposes of financial responsibility. Also, a lessor, under an agreement to rent or lease a motor vehicle for less than one year, is deemed the owner for purposes of liability for operation of the vehicle up to \$100,000/\$300,000 for bodily injury and up to \$50,000 for property damage.

³¹ See ss. 324.032(1)(b), 324.031, and 324.021(8), F.S.

³² Section 324.032(2), F.S. A self-insurance certificate may be obtained from the DHSMV if a person, including any firm, partnership, association, corporation, or other person other than a natural person has a net unencumbered worth of at least

Section 320.08(6), F.S., imposes a \$17 flat fee plus \$1.50 per cwt³³ for registration of for-hire motor vehicles carrying under nine passengers, and a \$17 flat fee plus \$2.50 per cwt for such vehicles carrying nine passengers and more.

Local Regulation of Taxis, Limousines, and Other For-Hire Transportation Services

Florida law provides some requirements relating to taxis, limousines, and other for-hire transportation services; for example, minimum insurance and registration requirements (discussed below). Any additional regulation of these services may be established at the local level.

For counties, to the extent not inconsistent with general or special law, the legislative and governing body of a county has the power to carry on county government, including, but not restricted to, the power to license and regulate taxis, jitneys, and limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county.³⁴ As an example, Miami-Dade County regulates for-hire limousines on a countywide basis under Chapter 31, Article VI of the County Code.³⁵ The County Code contains requirements such as pre-arranging service at least one hour in advance of the transportation to be provided, requiring drivers to have a for-hire chauffeur registration; and requiring vehicle inspections and operating permits.³⁶

Municipalities have broad home rule powers authorizing them to enact legislation concerning any subject matter upon which the state Legislature may act, except:

- 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;
- Any subject expressly prohibited by the constitution;
- Any subject expressly preempted to state or county government by the constitution or by general law; or
- 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.³⁷

As noted, regulation of TNCs, TNC drivers, and TNC vehicles is already preempted to the state.

\$40,000 for the first motor vehicle and \$20,000 for each additional vehicle; or maintain sufficient net worth, as determined annually by the DHSMV, to be financially responsible for potential losses. Section 324.171, F.S.

³³ CWT is a unit of measurement called “hundredweight,” and is equal to 100 pounds. See Investopedia available at <https://www.investopedia.com/terms/h/hundredweight.asp> (last visited January 24, 2020).

³⁴ Section 125.01(1)(n), F.S.

³⁵ See the referenced part of the County Code available at https://library.municode.com/fl/miami-dade-county/codes/code_of_ordinances?nodeId=PTIICOOR_CH31VEHI_ARTVILIREFREL1 (last visited January 24, 2020).

³⁶ For additional detail, see Miami-Dade County, *Limousine Service License*, available at https://www8.miamidade.gov/global/license.page?Mduid_license=lic1499972486380630 (last visited January 24, 2020).

³⁷ Section 166.021(3), F.S.

Local Regulation of Advertising on Vehicles

Some local governments currently regulate advertising on vehicles in some fashion.³⁸ However, the details and extent of such regulation is unknown.

Prohibition Against Certain Lights

Section 316.2397, F.S., provides that a person may not drive any vehicle or equipment upon any highway in this state with any lamp or device thereon showing or displaying a red, red and white, or blue light visible from directly in front of the vehicle, except for certain exceptions, such as fire department vehicles and road maintenance equipment. That section expressly prohibits any vehicle or equipment, except police vehicles, from showing or displaying blue lights, except for Department of Corrections vehicles or county correctional agency vehicles when responding to emergencies. Flashing lights are prohibited on vehicles except:

- As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully stopped or disabled upon the highway;
- When a motorist intermittently flashes his or her vehicle's headlamps at an oncoming vehicle notwithstanding the motorist's intent for doing so; and
- Flashing lamps authorized under that section; s. 316.2065, F.S. (bicycle riders); and s. 316.235(6), F.S., relating to deceleration lighting systems on buses.

III. Effect of Proposed Changes:

The bill establishes a regulatory framework for TNC digital advertising on TNC Vehicles and for Luxury Ground TNCs.

TNC Digital Advertising

The bill amends s. 627.748(1), F.S., to define the term “transportation network company digital advertising device” or “TNC digital advertising device” to mean a device no larger than 20 inches tall and 54 inches long, which is fixed to the roof of a TNC vehicle and which displays advertisements on a digital screen only while the TNC vehicle is turned on.

The bill creates s. 627.748(11), F.S., authorizing a TNC driver or his or her designee to contract with a company to install a TNC digital advertising device (DAD) on a TNC vehicle. The bill:

- Allows a TNC DAD to be enabled with cellular or WiFi-enabled data transmission and equipped with GPS;
- Limits a TNC DAD to displaying advertisements only when the TNC vehicle is turned on;
- Requires a TNC DAD to follow the lighting requirements of s. 316.2397, F.S.; and
- Prohibits any portion of a TNC DAD from extending beyond the front or rear windshield of the vehicle or from impacting the TNC driver's vision.

The bill requires a TNC DAD to display advertisements only to the sides of the vehicle and not to the front or rear of the vehicle.³⁹ This appears to be consistent with the provision in

³⁸ For example, see Sec. 19-15.12 of the Miami-Dade County Code available at https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIIICOR_CH19REPROWMEAC_S19-15.12PRDIVESAADDE (last visited January 24, 2020).

³⁹ The bill provides that identification of the provider does not constitute advertising.

s. 316.2397, F.S., that prohibits showing or displaying red, red and white, or blue light visible from directly in front of the vehicle.

A TNC DAD must, at a minimum, meet the requirements of the MIL-STD-810G standard⁴⁰ or other reasonable environmental and safety industry standard, as determined through independent safety and durability testing under the review of a licensed professional engineer, before being installed on a TNC vehicle.

A TNC DAD may not display advertisements for illegal products or services or advertisements that include nudity or violent images. See “Other Constitutional Issues” below.

All advertisements displayed on a TNC DAD are subject to the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). A TNC driver or TNC vehicle owner, or an owner or operator of a TNC DAD that displays or disseminates an advertisement on behalf of another, is immune from liability for the display of an advertisement that violates this section or the FDUTPA unless the TNC driver, TNC vehicle owner, or an owner or operator of the TNC DAD has actual knowledge that the advertisement constitutes a violation. A TNC that is not the owner or operator of a TNC DAD that displays an advertisement that is in violation of this section or the FDUTPA is immune from liability under this section and the FDUTPA for the violation, unless the advertisement is displayed on behalf of the TNC. The bill provides that for purposes of ch. 627, F.S., a TNC DAD is deemed part of a TNC vehicle.

The bill exempts a TNC from liability by reason of owning, operating, or maintaining the digital network accessed by a TNC driver or rider, or by being the TNC affiliated with a TNC driver, for harm to persons or property that results or arises out of the use, operation, or possession of a motor vehicle operating as a TNC vehicle while the driver is logged on to the digital network if:

- There is no negligence or criminal wrongdoing on the part of the TNC;
- The TNC has fulfilled all of its obligations under this section with respect to the TNC driver; and
- The TNC is not the owner or bailee of the motor vehicle that caused harm to persons or property.

Luxury Ground TNCs

The bill excludes a TNC vehicle and a motor vehicle compliant with the Americans with Disabilities Act which is owned and used by a company that uses a digital network to facilitate prearranged rides to persons with disabilities for compensation from the definition of “for-hire vehicle” in s. 320.01, F.S. It includes a for-hire vehicle in the definitions of the definitions of the terms “prearranged ride” and “transportation network company” or “TNC” in s. 627.748, F.S.

The bill also allows a motor vehicle compliant with the Americans with Disabilities Act which is owned and used by a company that uses a digital network to facilitate prearranged rides to persons with disabilities for compensation to be used as a TNC vehicle.

⁴⁰ The standard is a Department of Defense test method for considering the influences that environmental stresses have on material throughout all phases of its service life. See EverySpec for additional information, available at http://everyspec.com/MIL-STD/MIL-STD-0800-0899/MIL-STD-810G_12306/ (last visited February 4, 2020).

The bill creates s. 627.748(16), F.S., defining the term “luxury ground transportation network company” or “luxury ground TNC” to mean a company that:

- Meets the requirements relating to electing to be regulated as a luxury ground TNC, and
- Uses its digital network to connect riders exclusively to drivers who operate for-hire vehicles, including limousines and luxury sedans and excluding taxicabs.

The bill authorizes an entity to elect, upon written notification to the Department of Financial Services (department), to be regulated as a luxury ground TNC. The bill requires a luxury ground TNC to:

- Comply with all of the requirements of s. 627.748, F.S., applicable to TNCs which do not conflict with insurance coverage requirements or which prohibit the company from connecting riders to drivers who operate for-hire vehicles, including limousines and luxury sedans and excluding taxicabs; and
- Maintain at all times insurance coverage at the levels at least equal to the greater of those required in this section and those required of for-hire vehicles, regardless of whether the driver is operating as a for-hire vehicle driver of luxury ground TNC driver.

However, a prospective luxury ground TNC that satisfies minimum financial responsibility at the time of written notification to the department through compliance by using self-insurance may continue to use self-insurance to satisfy the requirements of this subparagraph.

When a TNC driver is logged on to the digital network but is *not* engaged in a prearranged ride, the required coverage is primary automobile liability coverage of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage, plus PIP benefits (excluding limousines) and uninsured and underinsured motorist coverage. When a TNC driver is engaged in a prearranged ride, the vehicle insurance must provide primary automobile liability coverage of at least \$1 million for death, bodily injury, and property damage, plus PIP benefits (excluding limousines) and uninsured and underinsured motorist coverage. For-hire passenger transportation vehicles are generally required to carry coverage with limits of \$125,000/\$250,000 for bodily injury and \$50,000 for property damage.

Lastly, the bill includes luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles in the existing provisions relating to preemption to the state of regulation of TNCs, TNC drivers, and TNC vehicles. Regulation of luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles are preempted to the state.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, subsection (b) of section 18 of the Florida Constitution provides that, except upon approval of each house of the Legislature by two-thirds of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989. As noted, some

local governments are currently regulating for-hire vehicles and are collecting revenues for items such as business licenses or operating permits, driver registrations, and vehicle inspections. The extent of such regulation and the reduction of revenue collection in the aggregate is indeterminate. If the mandate restriction applies, the bill would need approval of the Legislature by a two-thirds vote of its membership.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The prohibition against display of advertisements on a TNC DAD for advertisements that, for example, include nudity or violent images could raise First Amendment issues, as the prohibition regulates the content of advertising. However, the outcome of any such claim is unknown.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

To the extent that local governments currently collect revenue from regulation of digital advertising on vehicles, or fees from regulation of limousines and luxury sedans, that revenue will be negatively impacted. However, the extent of any impact is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.748 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 March 2, 2020:

The committee substitute:

- Revises and expands the liability exemptions (to a TNC vehicle owner, or an owner or operator of a TNC DAD that displays or disseminates an advertisement on behalf of another) for the display of advertisements on a TNC DAD.
- Makes technical revisions to the provisions relating to TNC liability by reason of owning, operating, or maintaining the digital network accessed by a TNC driver or rider, or by being the TNC affiliated with a TNC driver.

CS by Innovation, Industry, and Technology on February 10, 2020:

The committee substitute:

- Exempts a Transportation Network Company (TNC) vehicle from the definition of “for-hire vehicle” in s. 320.01, F.S.;
- Limits the height of a digital advertising device to twenty inches total, not twenty exclusive of the attachment device;
- Allows a motor vehicle compliant with the ADA owned by a digital network company to be used as a TNC;
- Allows the TNC vehicle owner to provide automobile insurance;
- Changes the standard for the device from “must meet the requirements of the MIL-STD-810G standard” to “at a minimum, meet the requirements of the MIL-STD-810G standard or other reasonable environmental and safety industry standard;”
- Subjects all advertisements displayed on a TNC digital advertising device to the Florida Deceptive and Unfair Trade Practices Act, with a TNC driver immune from liability for the display of an advertisement that violates this section or the Florida Deceptive and Unfair Trade Practices Act unless the TNC driver is the advertiser, and with the owner or operator of a TNC digital advertising device that displays an advertisement that is in violation of this section or the Florida Deceptive and Unfair Trade Practices Act immune from liability for the violation if the advertisement was displayed in good faith and without actual knowledge of the violation, unless the advertiser is the same person as the owner or operator;
- Deletes the requirement that the company operating TNC digital advertising device allocate 10 percent of all advertising to government, not-for-profit, or charitable organizations at no cost;
- Changes the insurance requirement from the greater of those required in s. 627.748, F.S., and those required of for-hire vehicles, to that required in s. 627.748, F.S.; and
- Exempts a TNC from liability for harm to persons or property that results or arises out of the use, operation, or possession of a motor vehicle operating as a TNC vehicle while the driver is logged on to the digital network under specified circumstances.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2020	.	
	.	
	.	
	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present paragraphs (f) and (g) of subsection (1), present subsections (11) through (14), and present subsection (15) of section 627.748, Florida Statutes, are redesignated as paragraphs (g) and (h) of subsection (1), subsections (12) through (15), and subsection (17), respectively, a new paragraph (f) is added to subsection (1) and a new subsection (11) and subsections (16) and (18) are added to



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that section, and paragraphs (b) and (e) and present paragraph (g) of subsection (1), subsection (2), paragraphs (b) and (c) of subsection (7), and paragraph (a) of present subsection (15) of that section are amended, to read:

627.748 Transportation network companies.—

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

(b) "Prearranged ride" means the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the TNC driver transports the rider, and ending when the last rider exits from and is no longer occupying the TNC vehicle. The term does not include a taxicab, ~~for hire vehicle,~~ or street hail service and does not include ridesharing as defined in s. 341.031, carpool as defined in s. 450.28, or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.

(e) "Transportation network company" or "TNC" means an entity operating in this state pursuant to this section using a digital network to connect a rider to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract, and is not a taxicab association ~~or for hire vehicle owner.~~ An individual, corporation, partnership, sole proprietorship, or other entity that arranges medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care organization is not a TNC. This section does not prohibit a TNC



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from providing prearranged rides to individuals who qualify for Medicaid or Medicare if it meets the requirements of this section.

(f) "Transportation network company digital advertising device" or "TNC digital advertising device" means a device no larger than 20 inches tall and 54 inches long that is fixed to the roof of a TNC vehicle and that displays advertisements on a digital screen only when the TNC vehicle is turned on.

(h) ~~(g)~~ "Transportation network company vehicle" or "TNC vehicle" means a vehicle that is not a taxicab ~~or~~ jitney ~~or~~ limousine, or for-hire vehicle as defined in s. 320.01(15) and that is:

1. Used by a TNC driver to offer or provide a prearranged ride; and

2. Owned, leased, or otherwise authorized to be used by the TNC driver.

Notwithstanding any other ~~provision of~~ law, a vehicle that is let or rented to another for consideration, or a motor vehicle compliant with the Americans with Disabilities Act which is owned and used by a company that uses a digital network to facilitate prearranged rides to persons with disabilities for compensation, may be used as a TNC vehicle.

(2) NOT OTHER CARRIERS.—A TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab ~~or for-hire vehicle~~ service. In addition, a TNC driver is not required to register the vehicle that the TNC driver uses to provide prearranged rides as a commercial motor vehicle ~~or a for-hire vehicle~~.



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(7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER INSURANCE
REQUIREMENTS.—

(b) The following automobile insurance requirements apply while a participating TNC driver is logged on to the digital network but is not engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(c) The following automobile insurance requirements apply while a TNC driver is engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least \$1 million for death, bodily injury, and property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under ss. 627.730-627.7405; and



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c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(11) TRANSPORTATION NETWORK COMPANY DIGITAL ADVERTISING DEVICE.—

(a) A TNC driver or his or her designee may contract with a company to install a TNC digital advertising device on a TNC vehicle.

(b) A TNC digital advertising device may be enabled with cellular or WiFi-enabled data transmission and equipped with GPS.

(c) A TNC digital advertising device may display advertisements only when the TNC vehicle is turned on.

(d) A TNC digital advertising device must follow the lighting requirements of s. 316.2397.

(e) No portion of the TNC digital advertising device may extend beyond the front or rear windshield of the vehicle, nor may it impact the TNC driver's vision.

(f) A TNC digital advertising device must display advertisements only to the sides of the vehicle and not to the front or rear of the vehicle. Identification of the provider does not constitute advertising under this paragraph.

(g) A TNC digital advertising device must, at a minimum, meet the requirements of the MIL-STD-810G standard or other



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reasonable environmental and safety industry standard, as
determined through independent safety and durability testing
under the review of a licensed professional engineer, before
being installed on a TNC vehicle.

(h) A TNC digital advertising device may not display
advertisements for illegal products or services or
advertisements that include nudity or violent images.

(i) 1. A TNC driver or TNC vehicle owner, or an owner or
operator of a TNC digital advertising device that displays or
disseminates an advertisement on behalf of another, is exempt
from violations of this subsection or s. 501.212(2) or any other
violation of the Florida Deceptive and Unfair Trade Practices
Act resulting from display of an advertisement on a digital
advertising device unless the TNC driver, TNC vehicle owner, or
owner or operator of a TNC digital advertising device has actual
knowledge that the advertisement violates this section or the
Florida Deceptive and Unfair Trade Practices Act.

2. A TNC that is not the owner or operator of a TNC digital
advertising device is exempt from any violation of this
subsection or the Florida Deceptive and Unfair Trade Practices
Act resulting from display of an advertisement on a TNC digital
advertising device unless the advertisement is displayed on
behalf of the TNC.

(j) For the purposes of this chapter, a TNC digital
advertising device shall be deemed part of a TNC vehicle.

(16) LUXURY GROUND TRANSPORTATION NETWORK COMPANIES.—

(a) As used in this section, the term "luxury ground
transportation network company" or "luxury ground TNC" means a
company that:



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1. Meets the requirements of paragraph (b).

2. Notwithstanding other provisions of this section, uses a digital network to connect riders exclusively to drivers who operate for-hire vehicles as defined in s. 320.01(15), including limousines and luxury sedans and excluding taxicabs.

(b) An entity may elect, upon written notification to the department, to be regulated as a luxury ground TNC. A luxury ground TNC must:

1. Comply with all of the requirements of this section applicable to a TNC, including subsection (17), which do not conflict with subparagraph 2. or which do not prohibit the company from connecting riders to drivers who operate for-hire vehicles as defined in 320.01(15), including limousines and luxury sedans and excluding taxicabs.

2. Maintain insurance coverage as required by subsection (7). However, if a prospective luxury ground TNC satisfies minimum financial responsibility through compliance with s. 324.032(2) by using self-insurance when it gives the department written notification of its election to be regulated as a luxury ground TNC, the luxury ground TNC may use self-insurance to meet the insurance requirements of subsection (7), so long as such self-insurance complies with s. 324.032(2) and provides the limits of liability required by subsection (7).

(17) ~~(15)~~ PREEMPTION.—

(a) It is the intent of the Legislature to provide for uniformity of laws governing TNCs, TNC drivers, and TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles throughout the state. TNCs, TNC drivers, and TNC vehicles, luxury ground TNCs, luxury ground TNC



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drivers, and luxury ground TNC vehicles are governed exclusively by state law, including in any locality or other jurisdiction that enacted a law or created rules governing TNCs, TNC drivers, ~~or~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, or luxury ground TNC vehicles before July 1, 2017. A county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

1. Impose a tax on, or require a license for, a TNC, a TNC driver, ~~or~~ a TNC vehicle, a luxury ground TNC, a luxury ground TNC driver, or a luxury ground TNC vehicle if such tax or license relates to providing prearranged rides;

2. Subject a TNC, a TNC driver, ~~or~~ a TNC vehicle, a luxury ground TNC, a luxury ground TNC driver, or a luxury ground TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or

3. Require a TNC, ~~or~~ a TNC driver, a luxury ground TNC, or a luxury ground TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.

(18) VICARIOUS LIABILITY.—

(a) A TNC shall not be liable under the law of this state by reason of owning, operating, or maintaining the digital network accessed by a TNC driver or rider, or by being the TNC affiliated with a TNC driver, for harm to persons or property that results or arises out of the use, operation, or possession of a motor vehicle operating as a TNC vehicle while the driver



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is logged on to the digital network if:

1. There is no negligence under this section or criminal wrongdoing under the federal criminal code or the criminal laws of this state on the part of the TNC;

2. The TNC has fulfilled all of its obligations under this section with respect to the TNC driver; and

3. The TNC is not the owner or bailee of the motor vehicle that causes harm to persons or property.

(b) Nothing in this subsection shall alter or reduce the coverage or policy limits of the insurance requirements of subsection (7) or the liability of any person other than the vicarious liability of a TNC under paragraph (a).

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 transportation companies; amending
s. 627.748, F.S.; redefining terms; defining the term
"transportation network company digital advertising
device"; deleting for-hire vehicles from the list of
vehicles that are excluded from transportation network
company (TNC) provisions; providing that TNC vehicle
owners may maintain required insurance coverages;
authorizing TNC drivers or their designees to contract
with companies to install TNC digital advertising
devices on TNC vehicles; providing requirements and



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restrictions for such devices; providing immunity from certain liability for TNC drivers, TNC vehicle owners, owners and operators of TNC digital advertising devices, and TNCs except under certain circumstances; providing construction relating to such devices; defining the term "luxury ground transportation network company"; authorizing entities to elect to be regulated as luxury ground TNCs by notifying the Department of Financial Services; providing requirements for luxury ground TNCs; providing for preemption over local law on the governance of luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles; providing that TNCs are not liable for certain harm to persons or property if certain conditions are met; providing construction relating to insurance coverage and liability; providing an effective date.

By the Committee on Innovation, Industry, and Technology; and
Senator Brandes

580-03374-20

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A bill to be entitled

An act relating to transportation companies; amending s. 320.01, F.S.; revising the definition of the term "for-hire vehicle" to exclude transportation network company (TNC) vehicles and certain motor vehicles used for prearranged rides for persons with disabilities for compensation; amending s. 627.748, F.S.; revising and providing definitions; deleting for-hire vehicles from the list of vehicles that are not considered TNC carriers or are not exempt from certain registration; providing that TNC vehicle owners may maintain required insurance coverages; authorizing TNC drivers or their designees to contract with companies to install TNC digital advertising devices on TNC vehicles; providing requirements and restrictions for such devices; providing immunity from certain liability for TNC drivers and owners and operators of TNC digital advertising devices; providing exceptions; providing construction relating to such devices; authorizing entities to elect to be regulated as luxury ground TNCs by notifying the Department of Financial Services; providing requirements for luxury ground TNCs; providing for preemption over local law on the governance of luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles; providing that TNCs are not liable for certain harm to persons or property if certain conditions are met; providing construction relating to insurance coverage and liability; providing an effective date.

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

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

Section 1. Paragraph (b) of subsection (15) 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:

(15)

(b) The following are not included in the term "for-hire vehicle": a motor vehicle used for transporting school children to and from school under contract with school officials; a hearse or ambulance when operated by a licensed embalmer or mortician or his or her agent or employee in this state; a motor vehicle used in the transportation of agricultural or horticultural products or in transporting agricultural or horticultural supplies direct to growers or the consumers of such supplies or to associations of such growers or consumers; a motor vehicle temporarily used by a farmer for the transportation of agricultural or horticultural products from any farm or grove to a packinghouse or to a point of shipment by a transportation company; ~~or~~ a motor vehicle not exceeding 1 1/2 tons under contract with the Government of the United States to carry United States mail, provided such vehicle is not used for commercial purposes; a TNC vehicle as defined in s. 627.748(1); or a motor vehicle compliant with the Americans with Disabilities Act which is owned and used by a company that uses a digital network to facilitate prearranged rides to persons with disabilities for compensation.

Section 2. Present paragraphs (f) and (g) of subsection

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

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(1), present subsections (11) through (14), and present subsection (15) of section 627.748, Florida Statutes, are redesignated as paragraphs (g) and (h) of subsection (1), subsections (12) through (15), and subsection (17), respectively, a new paragraph (f) is added to subsection (1) and a new subsection (11) and subsections (16) and (18) are added to that section, and paragraphs (b) and (e) and present paragraph (g) of subsection (1), subsection (2), paragraphs (b) and (c) of subsection (7), and paragraph (a) of present subsection (15) of that section are amended, to read:

627.748 Transportation network companies.—

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

(b) "Prearranged ride" means the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the TNC driver transports the rider, and ending when the last rider exits from and is no longer occupying the TNC vehicle. The term does not include a taxicab, ~~for-hire vehicle~~, or street hail service and does not include ridesharing as defined in s. 341.031, carpool as defined in s. 450.28, or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.

(e) "Transportation network company" or "TNC" means an entity operating in this state pursuant to this section using a digital network to connect a rider to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written

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contract, and is not a taxicab association ~~or for-hire vehicle owner~~. An individual, corporation, partnership, sole proprietorship, or other entity that arranges medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care organization is not a TNC. This section does not prohibit a TNC from providing prearranged rides to individuals who qualify for Medicaid or Medicare if it meets the requirements of this section.

(f) "Transportation network company digital advertising device" or "TNC digital advertising device" means a device no larger than 20 inches tall and 54 inches long that is fixed to the roof of a TNC vehicle and that displays advertisements on a digital screen only when the TNC vehicle is turned on.

(h) ~~(g)~~ "Transportation network company vehicle" or "TNC vehicle" means a vehicle that is not a taxicab ~~or~~ jitney, ~~limousine, or for-hire vehicle as defined in s. 320.01(15)~~ and that is:

1. Used by a TNC driver to offer or provide a prearranged ride; and
2. Owned, leased, or otherwise authorized to be used by the TNC driver.

Notwithstanding any other ~~provision of~~ law, a vehicle that is let or rented to another for consideration, or a motor vehicle compliant with the Americans with Disabilities Act which is owned and used by a company that uses a digital network to facilitate prearranged rides to persons with disabilities for compensation, may be used as a TNC vehicle.

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(2) NOT OTHER CARRIERS.—A TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab ~~or for-hire vehicle~~ service. In addition, a TNC driver is not required to register the vehicle that the TNC driver uses to provide prearranged rides as a commercial motor vehicle ~~or a for-hire vehicle~~.

(7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER INSURANCE REQUIREMENTS.—

(b) The following automobile insurance requirements apply while a participating TNC driver is logged on to the digital network but is not engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(c) The following automobile insurance requirements apply while a TNC driver is engaged in a prearranged ride:

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1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least \$1 million for death, bodily injury, and property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(11) TRANSPORTATION NETWORK COMPANY DIGITAL ADVERTISING DEVICE.—

(a) A TNC driver or his or her designee may contract with a company to install a TNC digital advertising device on a TNC vehicle.

(b) A TNC digital advertising device may be enabled with cellular or WiFi-enabled data transmission and equipped with GPS.

(c) A TNC digital advertising device may display advertisements only when the TNC vehicle is turned on.

(d) A TNC digital advertising device must follow the lighting requirements of s. 316.2397.

(e) No portion of the TNC digital advertising device may extend beyond the front or rear windshield of the vehicle, nor may it impact the TNC driver's vision.

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(f) A TNC digital advertising device must display advertisements only to the sides of the vehicle and not to the front or rear of the vehicle. Identification of the provider does not constitute advertising under this paragraph.

(g) A TNC digital advertising device must, at a minimum, meet the requirements of the MIL-STD-810G standard or other reasonable environmental and safety industry standard, as determined through independent safety and durability testing under the review of a licensed professional engineer, before being installed on a TNC vehicle.

(h) A TNC digital advertising device may not display advertisements for illegal products or services or advertisements that include nudity or violent images. All advertisements displayed on a TNC digital advertising device are subject to the Florida Deceptive and Unfair Trade Practices Act.

(i) 1. A TNC driver is immune from liability for the display of an advertisement that violates this section or the Florida Deceptive and Unfair Trade Practices Act unless the TNC driver is the advertiser.

2. The owner or operator of a TNC digital advertising device that displays an advertisement that is in violation of this section or the Florida Deceptive and Unfair Trade Practices Act is immune from liability under this section and the Florida Deceptive and Unfair Trade Practices Act for the violation if the advertisement was displayed in good faith and without actual knowledge of the violation, unless the advertiser is the same person as the owner or operator.

(j) For the purposes of this chapter, a TNC advertising device shall be deemed part of a TNC vehicle.

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(16) LUXURY GROUND TRANSPORTATION NETWORK COMPANIES.—

(a) As used in this section, the term "luxury ground transportation network company" or "luxury ground TNC" means a company that:

1. Meets the requirements of paragraph (b).

2. Notwithstanding other provisions of this section, uses a digital network to connect riders exclusively to drivers who operate for-hire vehicles as defined in s. 320.01(15), including limousines and luxury sedans and excluding taxicabs.

(b) An entity may elect, upon written notification to the department, to be regulated as a luxury ground TNC. A luxury ground TNC must:

1. Comply with all of the requirements of this section applicable to a TNC, including subsection (17), which do not conflict with subparagraph 2. or which do not prohibit the company from connecting riders to drivers who operate for-hire vehicles as defined in 320.01(15), including limousines and luxury sedans and excluding taxicabs.

2. Maintain insurance coverage required in this section when the luxury ground TNC driver is logged on to a digital network or while the luxury ground TNC driver is engaged in a prearranged ride. However, a prospective luxury ground TNC that satisfies minimum financial responsibility at the time of written notification to the department through compliance with s. 324.032(2) by using self-insurance may continue to use self-insurance to satisfy the requirements of this subparagraph.

~~(17)(15)~~ PREEMPTION.—

(a) It is the intent of the Legislature to provide for uniformity of laws governing TNCs, TNC drivers, and TNC

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vehicles, luxury ground TNCs, luxury ground TNC drivers, and
luxury ground TNC vehicles throughout the state. TNCs, TNC
drivers, ~~and~~ TNC vehicles, luxury ground TNCs, luxury ground TNC
drivers, and luxury ground TNC vehicles are governed exclusively
by state law, including in any locality or other jurisdiction
that enacted a law or created rules governing TNCs, TNC drivers,
~~or~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers,
or luxury ground TNC vehicles before July 1, 2017. A county,
municipality, special district, airport authority, port
authority, or other local governmental entity or subdivision may
not:

1. Impose a tax on, or require a license for, a TNC, a TNC
driver, ~~or~~ a TNC vehicle, a luxury ground TNC, a luxury ground
TNC driver, or a luxury ground TNC vehicle if such tax or
license relates to providing prearranged rides;

2. Subject a TNC, a TNC driver, ~~or~~ a TNC vehicle, a luxury
ground TNC, a luxury ground TNC driver, or a luxury ground TNC
vehicle to any rate, entry, operation, or other requirement of
the county, municipality, special district, airport authority,
port authority, or other local governmental entity or
subdivision; or

3. Require a TNC, ~~or~~ a TNC driver, a luxury ground TNC, or
a luxury ground TNC driver to obtain a business license or any
other type of similar authorization to operate within the local
governmental entity's jurisdiction.

(18) LIABILITY.—

(a) A TNC shall not be liable under the law of this state
by reason of owning, operating, or maintaining the digital
network accessed by a TNC driver or rider, or by being the TNC

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affiliated with a TNC driver, for harm to persons or property
that results or arises out of the use, operation, or possession
of a motor vehicle operating as a TNC vehicle while the driver
is logged on to the digital network if:

1. There is no negligence or criminal wrongdoing on the
part of the TNC;

2. The TNC has fulfilled all of its obligations under this
section with respect to the TNC driver; and

3. The TNC is not the owner or bailee of the motor vehicle
that caused harm to persons or property.

(b) This subsection does not alter or reduce the required
insurance coverages or policy limits under subsection (7) or the
liability of any person under any other legal theory.

Section 3. 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: February 12, 2020

I respectfully request that **Senate Bill #1352**, relating to **Transportation Companies**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal line extending to the right.

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)

3/2/2020
Meeting Date

1352
Bill Number (if applicable)

Topic TNC's

Amendment Barcode (if applicable)

Name DAVID RAMBA

Job Title _____

Address 120 S. MONROE ST.

Phone 850 727 7087

Street

TALLAHASSEE

FL

32301

City

State

Zip

Email david@ramba-law.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA LIMOUSINE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20

Meeting Date

SB 1352

Bill Number (if applicable)

Topic TRANSPORTATION NETWORK COMPANIES

Amendment Barcode (if applicable)

Name MEGAN SIKYANE SAMPLES

Job Title SOUTH EAST PUBLIC POLICY MANAGER

Address _____

Street

Phone 561-352-3388

City

State

Zip

Email MEGANSS@WFT.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing WFT

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 1354

INTRODUCER: Senator Brandes

SUBJECT: Statewide Voter Registration Application

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Mitchell</u>	<u>Roberts</u>	<u>EE</u>	Favorable
2. <u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3. <u>Mitchell</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 1354 returns the statutory *felon declaration of voting eligibility* on the uniform statewide voter registration application to its pre-2019 form. The bill and the pre-2019 declaration require those completing a voter registration application to affirm this statement:

“I affirm I have never been convicted of a felony or, if I have been, my rights relating to voting have been restored.”

This change is made to comply with a federal court ruling that invalidated the 2019 legislative changes to the declaration which were adopted to implement Constitutional Ballot Amendment 4 (2018) regarding the restoration of a felon’s voting rights.

The bill codifies and re-adopts the pre-2019 declaration, which the Florida Division of Elections and county supervisors of elections had resorted to using as a stop-gap measure following the federal court ruling.

The bill takes effect upon becoming law.

II. Present Situation:

Amendment 4 (2018) Ballot Measure

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.¹

¹ Article VI, s. 4, FLA. CONST. (2018)

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 conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation.”² The provision excludes a “person convicted of murder or a felony sexual offense” from restoration of voting rights unless and until his or her civil rights are restored.³

Legislative Implementation

With regard to restoration of voting rights, Florida’s statewide voter registration form used to simply require an applicant to mark a checkbox affirming that he or she was not a convicted felon, or, if so, that he or she had his or her voting rights restored.⁴

In 2019, the Legislature adopted Amendment 4 implementing language. This included highly-detailed changes to the felon declaration of voter eligibility in the statewide voter registration application. The changes were designed to more closely track the language of the Amendment.⁵ Specifically, the 2019 bill provided that the statewide voter registration application must elicit:

- (t)1. Whether the applicant has never been convicted of a felony by including the statement “I affirm I have never been convicted of a felony.” and providing a box for the applicant to check to affirm the statement.
2. Whether the applicant has been convicted of a felony, and if convicted, has had his or her civil rights restored through executive clemency, by including the statement “If I have been convicted of a felony, I affirm my voting rights have been restored by the Board of Executive Clemency.” and providing a box for the applicant to check to affirm the statement.
3. Whether the applicant has been convicted of a felony and, if convicted, has had his or her voting rights restored pursuant to s. 4, Art. VI of the State Constitution, by including the statement “If I have been convicted of a felony, I affirm my voting rights have been restored pursuant to s. 4, Art. VI of the State Constitution upon the completion of all terms of my sentence, including parole or probation.” and providing a box for the applicant to check to affirm the statement.⁶

² *Id.* See also Time, ‘Our Voice Will Count.’ Former Felon Praises Florida Passing Amendment 4, Which Will Restore Voting Rights to 1.4 Million People, Alejandro De Le Garza, November 7, 2018, available at <http://time.com/5447051/florida-amendment-4-felon-voting/>.

³ The Department of State, Division of Elections, *Proposed Constitutional Amendments and Revisions for the 2018 General Election*, p. 10-11, <https://dos.myflorida.com/media/699824/constitutional-amendments-2018-general-election-english.pdf>.

⁴ Section 97.052(2)(t), F.S. (2018).

⁵ CH. 2019-166, § 21, Laws of Fla. The Legislature also adopted conforming changes that included a new public records exemption relating to eliciting specifics of the prior felony conviction along with the specific manner of voting rights restoration. *Id.* at § 22; CH. 2019-55, §1, Laws of Fla.

⁶ CH. 2019-166, § 21, Laws of Fla.

Judicial Action

In October 2019, Judge Robert Hinkle of the United States District Court for the Northern District of Florida invalidated the new statutory language. He stated that, not only was the language inartfully drawn but *defective* for failing to “reach felons whose rights have been restored in other states or through other methods, including executive pardons.”⁷ In analyzing the plaintiff’s due process claim, the Judge stated:

Prior to the adoption of SB 7066, Florida’s standard voter-registration form required an applicant to attest that the applicant had never been convicted of a felony or, if the applicant had been convicted of a felony, the right to vote had been restored. . . . This apparently worked without difficulty and, *if used now, would allow a felon who asserts a right to vote to submit an application and thus begin the process that, if there is disagreement, eventually leads to a hearing.*⁸

Subsequently, the Secretary of State represented to Judge Hinkle that Florida’s 67 county supervisors of elections had reverted to accepting the old voter registration felon voting declaration language,⁹ which currently appears on a registration form on the Department of State, Division of Elections’ website.¹⁰

III. Effect of Proposed Changes:

SB 1354 reverts to the pre-2019 *felon declaration of voting eligibility* language on the voter registration application, specifically:

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

As such, the bill adopts the tacit suggestion of the federal district court and the current practice of the Division of Elections and county supervisors of elections in publishing and processing voter registration applications.

The bill also makes conforming changes, including the elimination of a public records exemption specifically created for the application form’s stricken felon voting attestation requirements.

The bill takes effect upon becoming a law.

⁷ See, *Jones v. DeSantis*, 410 F. Supp. 3d 1284, 1308 (N.D. Fla. 2019) (appeal pending).

⁸ *Id.* at 1307-1308 (emphasis added).

⁹ *Id.* at 1308.

¹⁰ See Current Florida Voter Registration Application, available at: <https://dos.myflorida.com/media/702368/dsde39-eng-pre-7066-with-2019-addresses.pdf>.

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

Not applicable. Bills which affect state or local elections are exempt from Article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

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: 97.052, 97.053, and 97.0585.

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: WD	.	
03/03/2020	.	
	.	
	.	
	.	

The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment

Delete lines 23 - 25
and insert:
restored by including the statement "I affirm I am not a
convicted felon, or if I am, my right to vote has been restored
~~have never been convicted of a felony.~~" and providing a box for
the

By Senator Brandes

24-01570-20

20201354__

1 A bill to be entitled
 2 An act relating to the statewide voter registration
 3 application; amending ss. 97.052 and 97.053, F.S.;
 4 revising requirements for the uniform statewide voter
 5 registration application and the acceptance of such
 6 applications; amending s. 97.0585, F.S.; deleting an
 7 exemption from public records requirements for
 8 information related to a voter registration
 9 applicant's or voter's prior felony conviction and his
 10 or her restoration of voting rights to conform to
 11 changes made by the act; providing an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Paragraph (t) of subsection (2) of section
 16 97.052, Florida Statutes, is amended to read:
 17 97.052 Uniform statewide voter registration application.—
 18 (2) The uniform statewide voter registration application
 19 must be designed to elicit the following information from the
 20 applicant:
 21 (t)~~1-~~ Whether the applicant has ~~never~~ been convicted of a
 22 felony, and if convicted, has had his or her voting rights
 23 restored by including the statement "I affirm I have never been
 24 convicted of a felony or, if I have been, my rights relating to
 25 voting have been restored." and providing a box for the
 26 applicant to check to affirm the statement.
 27 ~~2. Whether the applicant has been convicted of a felony,~~
 28 ~~and if convicted, has had his or her civil rights restored~~
 29 ~~through executive clemency, by including the statement "If I~~

Page 1 of 4

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

24-01570-20

20201354__

30 ~~have been convicted of a felony, I affirm my voting rights have~~
 31 ~~been restored by the Board of Executive Clemency."~~ and providing
 32 ~~a box for the applicant to check to affirm the statement.~~
 33 ~~3. Whether the applicant has been convicted of a felony~~
 34 ~~and, if convicted, has had his or her voting rights restored~~
 35 ~~pursuant s. 4, Art. VI of the State Constitution, by including~~
 36 ~~the statement "If I have been convicted of a felony, I affirm my~~
 37 ~~voting rights have been restored pursuant to s. 4, Art. VI of~~
 38 ~~the State Constitution upon the completion of all terms of my~~
 39 ~~sentence, including parole or probation."~~ and providing a box
 40 ~~for the applicant to check to affirm the statement.~~
 41 Section 2. Paragraph (a) of subsection (5) of section
 42 97.053, Florida Statutes, is amended to read:
 43 97.053 Acceptance of voter registration applications.—
 44 (5)(a) A voter registration application is complete if it
 45 contains the following information necessary to establish the
 46 applicant's eligibility pursuant to s. 97.041, including:
 47 1. The applicant's name.
 48 2. The applicant's address of legal residence, including a
 49 distinguishing apartment, suite, lot, room, or dormitory room
 50 number or other identifier, if appropriate. Failure to include a
 51 distinguishing apartment, suite, lot, room, or dormitory room or
 52 other identifier on a voter registration application does not
 53 impact a voter's eligibility to register to vote or cast a
 54 ballot, and such an omission may not serve as the basis for a
 55 challenge to a voter's eligibility or reason to not count a
 56 ballot.
 57 3. The applicant's date of birth.
 58 4. A mark in the checkbox affirming that the applicant is a

Page 2 of 4

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

24-01570-20

20201354__

citizen of the United States.

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

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

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

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

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

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

24-01570-20

20201354__

Section 3. Paragraphs (d), (e), and (f) of subsection (1) of section 97.0585, Florida Statutes, are amended to read:

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

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

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

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

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

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto
Committee on Rules

Subject: Committee Agenda Request

Date: February 4, 2020

I respectfully request that **Senate Bill #1354**, relating to **Statewide Voter Registration Application**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

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)

3/2/20
Meeting Date

1354
Bill Number (if applicable)

Topic Voter Registration

Amendment Barcode (if applicable)

Name Irish Neely

Job Title Consultant

Address 2024 Shangri-la Lane
Street

Phone 850 322 3317

Tally FL 32303
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League Women Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-2-2020

Meeting Date

SB 1354
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name David Ash

Job Title _____

Address PO Box 11201

Phone 850-251-0985

Tallahassee FL 32302
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Common Cause 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/CS/SB 1372

INTRODUCER: Judiciary Committee; Ethics and Elections Committee; and Senator Brandes

SUBJECT: Elections

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Mitchell</u>	<u>Roberts</u>	<u>EE</u>	Fav/CS
2. <u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3. <u>Mitchell</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1372 makes election administration changes that the Florida State Supervisors of Elections Association (FSE) recommends for the 2020 general election cycle. The bill:

- Removes a prohibition against using the address on a voter's identification presented at the polls as the basis for confirming an elector's legal residence.
- Authorizes the testing of vote-tabulating equipment as early as 25 days before early voting begins, rather than 10 days before early voting begins as under current law.
- Eliminates the duplication and substitution of vote-by-mail ballots that contain overvotes, which occurs when a voter makes too many selection in a given race.
- Authorizes the initial mail-out date for domestic ballots in an all-mail, local referendum election to conform with domestic vote-by-mail ballots in other elections.
- Allows a qualifying office with the Department of State or supervisors of elections to accept and hold qualifying papers submitted by a state or county political party executive committee person candidate 14 days before the beginning of the qualifying period.
- Requires a poll watcher to be a qualified and registered elector of the state, broadening the current requirement to be a qualified and registered elector of the county.
- Prohibits for-pay distribution or collection of vote-by-mail ballots, subject to exceptions such as the delivery of the ballot of an immediate family member or other ballot-handling that is expressly authorized in statutory vote-by-mail procedures. The bill also authorizes a warrantless arrest for a violation of this provision.
- Preempts local governmental entities from enacting or adopting any limitation or restriction involving contributions to a political committee or electioneering communications

organization or expenditures for an electioneering communication or an independent expenditure.

II. Present Situation:

“Technical” Election Administration Component of the FSE’s 2020 Legislative Package¹

Voter ID at the Polls

Section 101.043, F.S., governs voter intake at the polls on Election Day and during early voting, including such items as voter identification, signing-in the voter, signature verification, address verification, confirming the voter’s precinct, issuance of the proper ballot, etc.

The FSE’s 2020 legislative package identifies a conflict between the following two paragraphs of subsection (1) of that section.²

(b) If the (voter’s) picture identification does not contain the signature of the elector,³ an additional identification that provides the elector’s signature shall be required. The address appearing on the identification presented by the elector may not be used as the basis to confirm an elector’s legal residence or otherwise challenge an elector’s legal residence. ...

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

The FSE proposes eliminating the underlined language above from paragraph (b).⁴

Logic & Accuracy Testing; Voting Tabulators

Each county election supervisor publicly tests the voting tabulating equipment for proper operation within 10 days before the start of early voting in the county.⁵ Since each supervisor has the discretion to begin early voting from the 10th to the 15th day before the election,⁶ supervisors must conduct logic and accuracy testing sometime between the 20th and 25th days before an election.

In 2019, the Legislature’s major election administration reform act moved up by one week the earliest starting date to canvass vote-by-mail ballots from the 15th to the 22nd day before the start

¹ FSE, *2020 Legislative Priorities and Issues* (on file with the Senate Committee on Ethics and Elections) [hereinafter, *FSE 2020 Legislative Package*]. Note that the change conforming the initial mail-out date for ballots in all-vote-by-mail-ballot elections is not specifically mentioned in the FSE’s written package.

² Section 101.043(1)(b) and (c), F.S.

³ The statute enumerates 12 acceptable types of voter IDs with pictures, some of which may not contain a voter’s signature. Section 101.043(1)(a), F.S.

⁴ *FSE 2020 Legislative Package*, *supra* note 1.

⁵ Section 101.5612 (1) and (2), F.S.

⁶ Section 101.657(1)(d), F.S.

of an election.⁷ The act's oversight in not conforming the overlapping logic and accuracy testing dates, however, means that supervisors who don't start early voting until the 10th, 11th, or 12th day before an election will have to delay starting their vote-by-mail canvass by a couple of days in order to complete logic and accuracy testing.

The FSE's 2020 Legislative Package recommends moving the date for the start of vote-by-mail canvassing to 25 days before the election.⁸

Defective Ballot Duplication

Current law requires poll workers to duplicate two types of defective ballots in the presence of witnesses and to substitute the duplicate ballot for the original:⁹

- Physically damaged ballots that cannot be properly counted by the tabulators; and
- Overvoted and completely undervoted ballots, including all valid votes as determined by the canvassing board based on rules adopted by the Division of Elections.

The FSE's position is that, "(T)his duplication (of overvoted ballots) is very time consuming and completely wasteful."¹⁰

All-Mail-Ballot, Local Issue Elections

While not well-known or often implemented, Florida law does authorize the conduct of local referendum elections through an all-mail-ballot process (the "Mail Ballot Election Act").¹¹ Domestic all-mail ballots may not be sent to voters before the 20th day before the election.¹²

In 2019, the Legislature adopted a major election administration reform act that moved up the authorization date to begin mailing domestic vote-by-mail ballots in candidate elections, from 35 to 40 days before the election.¹³ No corresponding change, however, was made to the initial ballot mailing date for all-mail-ballot elections.

Political Party Committeeperson Qualifying Dates

Candidates for major political party executive committeepersons may qualify at the same time as most state and local partisan candidates, from noon on the 71st day before the primary election through noon on the 67th day before the primary election.¹⁴ The FSE asserts that this qualifying period is "a very busy week for every SOE (supervisor of elections)."¹⁵

⁷ Section 101.68(2)(a), F.S.

⁸ *FSE 2020 Legislative Package*, *supra* note 1.

⁹ Section 101.5614(4)(a), F.S.

¹⁰ *FSE 2020 Legislative Package*, *supra* note 1.

¹¹ See generally §§ 101.6101-101.6107, F.S.

¹² Section 101.6103(1), F.S.

¹³ Section 101.62(4)(b), F.S.

¹⁴ Section 103.091(4), F.S.; see s. 99.061(3), F.S.

¹⁵ *FSE 2020 Legislative Package*, *supra* note 1.

Other Aspects of Florida’s Election Law

Poll Watchers

Section 101.131, F.S., sets forth election day requirements for watchers at polls, including:

- Limitations on the number of watchers per political party, candidate, or political committee;
- Delineations of polling place areas accessible to poll watchers; and
- Necessity for poll watchers to register with supervisors of election.

Current law requires each poll worker to be a qualified and registered elector of the county in which he or she serves.¹⁶

Preemption of Local Government Enactments or Adoptions

Limitations on contributions in elections are governed by s. 106.08, F.S. There are no current statutory preemptions of local governmental entities regarding the adoption by local governments of limitations on contributions to political committees or electioneering communications organizations or on expenditures by those entities.

On November 9, 2017, the St. Petersburg City Council adopted Ordinance No. 306-H, which became effective January 1, 2018. The ordinance amended the St. Petersburg City Code to:

- Impose limits on contributions related to municipal elections from super PACs and foreign-influenced entities; and
- Require increased disclosure of independent expenditures, expenditures for electioneering communications, and other campaign finance matters related to municipal elections.¹⁷

Constitutional Law Relating to Warrantless Arrests

Under the Fourth Amendment to the United States Constitution, a person has the right to be free from an unreasonable search or seizure, including an unreasonable arrest.¹⁸ To be “reasonable,” an arrest in a public place must be based on probable cause, though no arrest warrant is required.¹⁹ To make an arrest in a home, an officer generally also needs an arrest warrant. However, the courts have recognized a number of exceptions to this warrant requirement, such as “exigent circumstances” or when the officer has consent to enter the home.²⁰

¹⁶ Section 101.131(1), F.S.

¹⁷ Ordinance No. 306-H, St. Petersburg City Code (2018).

¹⁸ U.S. CONST. amend. IV.

¹⁹ *State v. Ramos*, 378 So. 2d 1294 (Fla. 3d DCA 1979).

²⁰ See e.g., *U.S. v. Standridge*, 810 F.2d 1034 (11 Cir. 1987) (citing *Payton v. New York*, 445 U.S. 573 (1980)). The court set forth the factors that indicate exigent circumstances:

(1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) a reasonable belief that the suspect is armed; (3) probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that delay could cause the escape of the suspect or the destruction of essential evidence, or jeopardize the safety of officers or the public.

Id. at 1037 (citing *Dorman v. United States*, 435 F.2d 385, 392–93 (D.C.Cir.1970) (en banc); *United States v. Campbell*, 581 F.2d 22, 25–27 (2d Cir.1978); *United States v. Newbern*, 731 F.2d 744, 748–49 (11th Cir.1984); *United States v. Roper*, 681 F.2d 1354, 1357 n. 1 (11th Cir.1982) (dictum), *cert. denied sub nom. Newton v. United States*, 459 U.S. 1207, 103 S.Ct. 1197, 75 L.Ed.2d 440 (1983).

Section 901.15, F.S., is not an exception and does not supersede the constitutional requirements for a lawful arrest.²¹ Accordingly, courts have held the statute unconstitutional *as applied* in situations in which s. 901.15, F.S., was proffered as a basis for a warrantless arrest in a home.²²

III. Effect of Proposed Changes:

The bill makes election administration changes that the Florida State Supervisors of Elections Association (FSE) recommends for the 2020 general election cycle. The bill:

- Removes a prohibition against using the address on a voter's identification presented at the polls as the basis for confirming an elector's legal residence.
- Authorizes the testing of vote-tabulating equipment as early as 25 days before early voting begins, rather than 10 days before early voting begins as under current law.
- Eliminates the duplication and substitution of vote-by-mail ballots that contain overvotes, which occurs when a voter makes too many selection in a given race.
- Authorizes the initial mail-out date for domestic ballots in an all-mail, local referendum election to conform with domestic vote-by-mail ballots in other elections.
- Allows a qualifying office with the Department of State or supervisors of elections to accept and hold qualifying papers submitted by a state or county political party executive committee person candidate 14 days before the beginning of the qualifying period.
- Requires a poll watcher to be a qualified and registered elector of the state, broadening the current requirement to be a qualified and registered elector of the county.
- Prohibits for-pay distribution or collection of vote-by-mail ballots, subject to exceptions such as the delivery of the ballot of an immediate family member or other ballot-handling that is expressly authorized in statutory vote-by-mail procedures. The bill also authorizes a warrantless arrest for a violation of this provision.
- Preempts local governmental entities from enacting or adopting any limitation or restriction involving contributions to a political committee or electioneering communications organization or expenditures for an electioneering communication or an independent expenditure

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None. Laws that affect state or local elections are exempt from Article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

²¹ See e.g., *Bratt v. Genovese*, 660 Fed Appx. 837 (11th Cir. 2016).

²² See e.g., *State v. Perez*, 277 So. 2d 778 (Fla. 1973).

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:

This bill could result in greater participation and contributions from individuals and political committees in local government elections.

C. Government Sector Impact:

Supervisors of elections may realize some cost savings with respect to mailing vote-by-mail ballots in all-mail-ballot, local referenda elections at the same time as partisan candidates. Such savings are expected to be minimal, and will not impact state revenues since such elections are paid for by the local counties and any savings will accrue thereto.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 101.043, 101.131, 101.5612, 101.5614, 101.6103, 103.091, 104.0616, 106.08, and 901.15.

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 February 19, 2020:**

The committee substitute prohibits for-pay distribution or collection of vote-by-mail ballots, subject to exceptions such as the delivery of the ballot of an immediate family member or other ballot-handling that is expressly authorized in statutory vote-by-mail procedures. Additionally, the committee substitute authorizes a warrantless arrest for a violation of this provision. Finally, the committee substitute expands the bill's provisions that prohibit local regulations on political contributions.

CS by Ethics and Elections on February 3, 2020:

The Committee Substitute:

- Instead of removing a prohibition against using the address on a voter's identification presented at the polls as the basis for both confirming and challenging an elector's legal residence as contained in the underlying bill, the CS just removes the prohibition against using the address to confirm an elector's legal residence.
- Requires a poll watcher to be a qualified and registered elector of the state, broadening the current statutory language which requires a poll watcher to be a qualified and registered elector of the county in which he or she serves.
- Allows a qualifying office with the Department of State or supervisors of elections to accept and hold qualifying papers submitted by a state or county political party executive committee person candidate as much as 14 days before the beginning of the qualifying period, to be processed and filed during the qualifying period, instead of language in the underlying bill which would have allowed candidates to qualify to run for office any time before the current deadline of noon on the 67th day preceding the primary election.
- Preempts local governmental entities from enacting or adopting any limitation or restriction involving contributions to a political committee or electioneering communications organization or expenditures for an electioneering communication or an independent expenditure.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Effective January 1, 2021, present subsections
(5) through (46) of section 97.021, Florida Statutes, are
renumbered as subsections (6) through (47), respectively, and a
new subsection (5) is added to that section, to read:

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

(5) "Automatic tabulating equipment" means an apparatus



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that automatically examines, counts, and records votes.

Section 2. Effective upon becoming a law, paragraph (t) of subsection (2) of section 97.052, Florida Statutes, is amended to read:

97.052 Uniform statewide voter registration application.—

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

(t)~~1.~~ Whether the applicant has ~~never~~ been convicted of a felony, and if convicted, has had his or her voting rights restored by including the statement "I affirm I have never been convicted of a felony or, if I have been, my rights relating to voting have been restored." and providing a box for the applicant to check to affirm the statement.

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

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

Section 3. Effective upon becoming a law, paragraph (a) of



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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



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manner prescribed in the uniform statewide voter registration application.

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

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

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

Section 4. Effective upon becoming a law, paragraphs (d), (e), and (f) of subsection (1) of section 97.0585, Florida Statutes, are amended to read:

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

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

(d) ~~Information related to a voter registration applicant's~~



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

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

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

Section 5. Paragraph (b) of subsection (1) of section 101.043, Florida Statutes, is amended to read:

101.043 Identification required at polls.—

(1)

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

Section 6. Subsection (2) of section 101.051, Florida



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Statutes, is amended to read:

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

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

Section 7. Subsection (1) of section 101.131, Florida Statutes, is amended to read:

101.131 Watchers at polls.—

(1) Each political party and each candidate may have one watcher in each polling room or early voting area at any one time during the election. A political committee formed for the specific purpose of expressly advocating the passage or defeat of an issue on the ballot may have one watcher for each polling room or early voting area at any one time during the election. A ~~No~~ watcher may not ~~shall be permitted to~~ come closer to the officials' table or the voting booths than is reasonably necessary to properly perform his or her functions, but is ~~each~~ ~~shall be~~ allowed within the polling room or early voting area to watch and observe the conduct of electors and officials. The poll watchers shall furnish their own materials and necessities and may ~~shall~~ not obstruct the orderly conduct of any election. The poll watchers shall pose any questions regarding polling place procedures directly to the clerk for resolution. They may



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not interact with voters. Each poll watcher must ~~shall~~ be a qualified and registered elector of this state ~~the county in which he or she serves~~.

Section 8. Effective upon becoming a law, subsection (2) of section 101.5612, Florida Statutes, is amended to read:

101.5612 Testing of tabulating equipment.—

(2) On any day not more than 25 ~~10~~ days before ~~prior to~~ the commencement of early voting as provided in s. 101.657, the supervisor of elections shall have the automatic tabulating equipment publicly tested to ascertain that the equipment will correctly count the votes cast for all offices and on all measures. If the ballots to be used at the polling place on election day are not available at the time of the testing, the supervisor may conduct an additional test not more than 10 days before election day. Public notice of the time and place of the test 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 the notice in at least four conspicuous places in the county. The supervisor or the municipal elections official may, at the time of qualifying, give written notice of the time and location of the public preelection test to each candidate qualifying with that office and obtain a signed receipt that the notice has been given. The Department of State shall give written notice to each statewide candidate at the time of qualifying, or immediately at the end of qualifying, that the voting equipment will be tested and advise each candidate to contact the county supervisor of elections as to the time and



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location of the public preelection test. The supervisor or the municipal elections official shall, at least 30 ~~45~~ days before ~~prior to~~ the commencement of early voting as provided in s. 101.657, send written notice by certified mail to the county party chair of each political party and to all candidates for other than statewide office whose names appear on the ballot in the county and who did not receive written notification from the supervisor or municipal elections official at the time of qualifying, stating the time and location of the public preelection test of the automatic tabulating equipment. The canvassing board shall convene, and each member of the canvassing board shall certify to the accuracy of the test. For the test, the canvassing board may designate one member to represent it. The test shall be open to representatives of the political parties, the press, and the public. Each political party may designate one person with expertise in the computer field who shall be allowed in the central counting room when all tests are being conducted and when the official votes are being counted. The designee shall not interfere with the normal operation of the canvassing board.

Section 9. 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 must also ~~shall~~ be made of ~~a vote-by-mail ballot containing an overvoted race or a~~



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marked vote-by-mail ballot in which every race is undervoted,
including ~~which shall include~~ all valid votes as determined by
the canvassing board based on rules adopted by the division
pursuant to s. 102.166(4). Upon request, a physically present
candidate, a political party official, a political committee
official, or an authorized designee thereof, must be allowed to
observe the duplication of ballots. All duplicate ballots shall
be clearly labeled "duplicate," bear a serial number 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 10. Effective January 1, 2021, paragraph (a) of
subsection (4) and subsections (6) and (7) of section 101.5614,
Florida Statutes, as amended by this act, are amended to read:

101.5614 Canvass of returns.—

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



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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.

(6) Vote-by-mail ballots may be counted by the voting system's automatic tabulating equipment if they have been marked in a manner which will enable them to be properly counted by such equipment.

(7) The return printed by the voting system's automatic tabulating equipment, to which has been added the return of write-in, vote-by-mail, and manually counted votes and votes from provisional ballots, shall constitute the official return of the election upon certification by the canvassing board. Upon completion of the count, the returns shall be open to the public. A copy of the returns may be posted at the central counting place or at the office of the supervisor of elections in lieu of the posting of returns at individual precincts.

Section 11. Subsection (1) of section 101.6103, Florida Statutes, is amended to read:

101.6103 Mail ballot election procedure.—

(1) Except as otherwise provided in subsection (7), the supervisor of elections shall mail all official ballots with a secrecy envelope, a return mailing envelope, and instructions sufficient to describe the voting process to each elector entitled to vote in the election not sooner than the 40th ~~20th~~ day before the election and not later than the 10th day before the date of the election. All such ballots shall be mailed by



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first-class mail. Ballots shall be addressed to each elector at the address appearing in the registration records and placed in an envelope which is prominently marked "Do Not Forward."

Section 12. Paragraph (e) of subsection (4) of section 102.031, Florida Statutes, is amended to read:

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

(4)

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

Section 13. Effective January 1, 2021, paragraph (a) of subsection (7) of section 102.141, Florida Statutes, is amended to read:

102.141 County canvassing board; duties.—

(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



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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.

(a) Each canvassing board responsible for conducting a recount shall put each marksense ballot through automatic tabulating equipment and determine whether the returns correctly reflect the votes cast. If any marksense ballot is physically damaged so that it cannot be properly counted by the automatic tabulating equipment during the recount, a true duplicate shall be made of the damaged ballot pursuant to the procedures in s. 101.5614(4). Immediately before the start of the recount, a test of the tabulating equipment shall be conducted as provided in s. 101.5612. If the test indicates no error, the recount tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly. If an error is detected, the cause therefor shall be ascertained and corrected and the recount repeated, as necessary. The canvassing board shall immediately report the error, along with the cause of the error and the corrective measures being taken, to the Department of State. No later than 11 days after the election, the canvassing board shall file a separate incident report with the Department of State, detailing the resolution of the matter and identifying any measures that will avoid a future recurrence of the error. If the automatic tabulating equipment used in a recount is not part of the voting system and the ballots have already been



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processed through such equipment, the canvassing board is not
required to put each ballot through any automatic tabulating
equipment again.

Section 14. Effective January 1, 2021, subsections (1),
(2), and (5) of section 102.166, Florida Statutes, are amended,
and subsection (6) is added to that section, to read:

102.166 Manual recounts of overvotes and undervotes.—

(1) If the second set of unofficial returns pursuant to s.
102.141 indicates that a candidate for any office was defeated
or eliminated by one-quarter 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-quarter 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-quarter of a percent or less of the votes cast
on such measure, a manual recount of the overvotes and
undervotes cast in the entire geographic jurisdiction of such
office or ballot measure shall be ordered unless:

(a) The candidate or candidates defeated or eliminated from
contention by one-quarter of 1 percent or fewer of the votes
cast for such office request in writing that a recount not be
made; or

(b) The number of overvotes and undervotes is fewer than
the number of votes needed to change the outcome of the
election.

The Secretary of State is responsible for ordering a manual
recount for federal, state, and multicounty races. The county
canvassing board or local board responsible for certifying the



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election is responsible for ordering a manual recount for all other races. A manual recount consists of a recount of marksense ballots or of digital images of those ballots by a person.

(2) 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. Overvotes and undervotes must be identified and sorted while recounting ballots pursuant to s. 102.141. Overvotes and undervotes may be identified and sorted physically or digitally.

(5) Procedures for a manual recount are as follows:

(a) The county canvassing board shall appoint as many counting teams of at least two electors as is necessary to manually recount the ballots. A counting team must have, when possible, members of at least two political parties. A candidate involved in the race shall not be a member of the counting team.

(b) Each duplicate ballot prepared pursuant to s. 101.5614(4) or s. 102.141(7) shall be compared with the original ballot to ensure the correctness of the duplicate.

(c) If a counting team is unable to determine whether the ballot contains a clear indication that the voter has made a definite choice, the ballot shall be presented to the county canvassing board for a determination.

(d) The Department of State shall adopt detailed rules prescribing additional recount procedures for each certified voting system which shall be uniform to the extent practicable.



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The rules shall address, at a minimum, the following areas:

1. Security of ballots during the recount process;
2. Time and place of recounts;
3. Public observance of recounts;
4. Objections to ballot determinations;
5. Record of recount proceedings; ~~and~~
6. Procedures relating to candidate and petitioner representatives; and
7. Procedures relating to the certification and the use of automatic tabulating equipment that is not part of a voting system.

(6) Nothing in this section precludes a county canvassing board or local board involved in the recount from comparing a digital image of a ballot to the corresponding physical paper ballot during a manual recount.

Section 15. Effective upon becoming a law, subsection (4) of section 103.091, Florida Statutes, is amended to read:

103.091 Political parties.—

(4) Any political party other than a minor political party may by rule provide for the membership of its state or county executive committee to be elected for 4-year terms at the primary election in each year a presidential election is held. The terms begin ~~shall commence~~ on the first day of the month following each presidential general election, ~~+~~ but the names of candidates for political party offices may ~~shall~~ not be placed on the ballot at any other election. The results of such election shall be determined by a plurality of the votes cast. In such event, electors seeking to qualify for such office shall do so with the Department of State or supervisor of elections no



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~~not~~ earlier than noon of the 71st day, or later than noon of the 67th day, preceding the primary election. Notwithstanding the qualifying period prescribed in this subsection, a qualifying office may accept and hold qualifying papers submitted no earlier than 14 days before the beginning of the qualifying period, to be processed and filed during the qualifying period.

The outgoing chair of each county executive committee shall, within 30 days after the committee members take office, hold an organizational meeting of all newly elected members for the purpose of electing officers. The chair of each state executive committee shall, within 60 days after the committee members take office, hold an organizational meeting of all newly elected members for the purpose of electing officers.

Section 16. Section 104.0616, Florida Statutes, is amended to read:

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

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

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

Section 17. Subsection (17) is added to section 901.15,



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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:

(17) There is probable cause to believe that a person has committed a violation involving a vote-by-mail ballot as provided in s. 104.0616.

Section 18. Subsection (11) is added to section 106.08, Florida Statutes, to read:

106.08 Contributions; limitations on; preemption.—

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

1. Contribution limits that differ from the limitations established in subsection (1);

2. Any limitation or restriction involving contributions to a political committee or an electioneering communications organization; or

3. Any limitation or restriction on expenditures for an electioneering communication or an independent expenditure.

(b) Any existing or future limitation or restriction enacted or adopted by a county, a municipality, or any other local governmental entity which is in conflict with this subsection is void.

Section 19. 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, 2020.

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



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And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to elections; amending s. 97.021,
F.S.; defining the term "automatic tabulating
equipment" for purposes of the Florida Election Code;
amending ss. 97.052 and 97.053, F.S.; revising
requirements for the uniform statewide voter
registration application and the acceptance of such
applications; amending s. 97.0585, F.S.; deleting an
exemption from public records requirements for
information related to a voter registration
applicant's or voter's prior felony conviction and his
or her restoration of voting rights to conform to
changes made by the act; amending s. 101.043, F.S.;
deleting a provision that prohibits the use of an
address appearing on identification presented by an
elector at the polls as a basis to confirm an
elector's legal residence; amending s. 101.051, F.S.;
prohibiting the solicitation of electors to offer
assistance with voting within the no-solicitation zone
surrounding the entrance of a polling place or early
voting site; amending s. 101.131, F.S.; revising
requirements for eligibility to serve as a poll
watcher; amending s. 101.5612, F.S.; revising the
timeframes for conducting public preelection testing
of automatic tabulating equipment; amending s.
101.5614, F.S.; removing the requirement that



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duplicate ballots be made of vote-by-mail ballots containing overvoted races; revising procedures governing the canvassing of returns to specify usage of a voting system's automatic tabulating equipment; amending s. 101.6103, F.S.; revising the timeframe in which the supervisor of elections must mail ballots in elections conducted under the Mail Ballot Election Act; amending s. 102.031, F.S.; prohibiting owners, operators, or lessees of property on which polling places or early voting sites are located from prohibiting the solicitation of voters by a candidate or a candidate's designee outside the no-solicitation zone during polling hours; amending s. 102.141, F.S.; specifying the circumstances under which ballots must be processed through automatic tabulating equipment in a recount; amending s. 102.166, F.S.; specifying the manner by which a manual recount may be conducted; revising requirements for hardware or software used in a manual recount; authorizing overvotes and undervotes to be identified and sorted physically or digitally in a manual recount; revising minimum requirements for Department of State rules to require procedures regarding the certification and use of automatic tabulating equipment for manual recounts; providing construction; amending s. 103.091, F.S.; authorizing a qualifying office to accept and hold qualifying papers for candidates for political party executive committees before the beginning of the qualifying period; amending s. 104.0616, F.S.; prohibiting a



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person from providing, offering to provide, or
accepting a pecuniary or other benefit in exchange for
distributing, ordering, requesting, collecting,
delivering, or otherwise physically possessing any
vote-by-mail ballot; providing exceptions; providing a
penalty; amending s. 901.15, F.S.; authorizing a law
enforcement officer to arrest a person without a
warrant when probable cause exists that the person
committed a specified violation involving a vote-by-
mail ballot; amending s. 106.08, F.S.; preempting
counties, municipalities, and other local governmental
entities from enacting or adopting any limitation or
restriction involving certain contributions and
expenditures, or establishing contribution limits
different than those established in the Florida
Election Code; providing applicability; providing
effective dates.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/02/2020	.	
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The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment to Amendment (883168)

Delete lines 22 - 24
and insert:
restored by including the statement "I affirm I am not a
convicted felon, or if I am, my right to vote has been restored
~~have never been convicted of a felony.~~" and providing a box for
the



626332

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Farmer) recommended the following:

Senate Amendment to Amendment (883168) (with title amendment)

Delete lines 139 - 159.

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

And the title is amended as follows:

Delete lines 499 - 501

and insert:

voting site; amending s. 101.5612, F.S.; revising the



194602

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Brandes) recommended the following:

Senate Amendment to Amendment (883168) (with title amendment)

Delete lines 158 - 159
and insert:
qualified and registered elector of the county in which he or
she serves. A political party of the state may designate a
qualified and registered elector of the state to serve as a poll
watcher in any county.

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



194602

12 And the title is amended as follows:
13 Delete lines 499 - 500
14 and insert:
15 voting site; amending s. 101.131, F.S.; authorizing a
16 political party to designate any qualified and
17 registered elector of the state to serve as a poll

By the Committees on Judiciary; and Ethics and Elections; and
Senator Brandes

590-03952-20

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1 A bill to be entitled
2 An act relating to elections; amending s. 101.043,
3 F.S.; deleting a provision that prohibits the use of
4 an address appearing on identification presented by an
5 elector at the polls as a basis to confirm an
6 elector's legal residence; amending s. 101.131, F.S.;
7 revising requirements for eligibility to serve as a
8 poll watcher; amending s. 101.5612, F.S.; revising the
9 timeframes for conducting public preelection testing
10 of automatic tabulating equipment; amending s.
11 101.5614, F.S.; removing the requirement that
12 duplicate ballots be made of vote-by-mail ballots
13 containing overvoted races; amending s. 101.6103,
14 F.S.; revising the timeframe in which the supervisor
15 of elections must mail ballots in elections conducted
16 under the Mail Ballot Election Act; amending s.
17 103.091, F.S.; authorizing a qualifying office to
18 accept and hold qualifying papers for candidates for
19 political party executive committees before the
20 beginning of the qualifying period; amending s.
21 104.0616, F.S.; prohibiting a person from providing,
22 offering to provide, or accepting a pecuniary or other
23 benefit in exchange for distributing, ordering,
24 requesting, collecting, delivering, or otherwise
25 physically possessing any vote-by-mail ballot;
26 providing exceptions; providing a penalty; amending s.
27 901.15, F.S.; authorizing a law enforcement officer to
28 arrest a person without a warrant when probable cause
29 exists that the person committed a specified violation

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

590-03952-20

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30 involving a vote-by-mail ballot; amending s. 106.08,
31 F.S.; preempting counties, municipalities, and other
32 local governmental entities from enacting or adopting
33 any limitation or restriction involving certain
34 contributions and expenditures, or establishing
35 contribution limits different than those established
36 in the Florida Election Code; providing applicability;
37 providing an effective date.

38
39 Be It Enacted by the Legislature of the State of Florida:

40
41 Section 1. Paragraph (b) of subsection (1) of section
42 101.043, Florida Statutes, is amended to read:

43 101.043 Identification required at polls.—

44 (1)

45 (b) If the picture identification does not contain the
46 signature of the elector, an additional identification that
47 provides the elector's signature shall be required. The address
48 appearing on the identification presented by the elector may not
49 be used as the basis to ~~confirm an elector's legal residence or~~
50 ~~otherwise~~ challenge an elector's legal residence. The elector
51 shall sign his or her name in the space provided on the precinct
52 register or on an electronic device provided for recording the
53 elector's signature. The clerk or inspector shall compare the
54 signature with that on the identification provided by the
55 elector and enter his or her initials in the space provided on
56 the precinct register or on an electronic device provided for
57 that purpose and allow the elector to vote if the clerk or
58 inspector is satisfied as to the identity of the elector.

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Section 2. Subsection (1) of section 101.131, Florida Statutes, is amended to read:

101.131 Watchers at polls.—

(1) Each political party and each candidate may have one watcher in each polling room or early voting area at any one time during the election. A political committee formed for the specific purpose of expressly advocating the passage or defeat of an issue on the ballot may have one watcher for each polling room or early voting area at any one time during the election. A ~~No~~ watcher may not ~~shall be permitted to~~ come closer to the officials' table or the voting booths than is reasonably necessary to properly perform his or her functions, but is ~~each~~ ~~shall be~~ allowed within the polling room or early voting area to watch and observe the conduct of electors and officials. The poll watchers shall furnish their own materials and necessities and may ~~shall~~ not obstruct the orderly conduct of any election. The poll watchers shall pose any questions regarding polling place procedures directly to the clerk for resolution. They may not interact with voters. Each poll watcher must ~~shall~~ be a qualified and registered elector of this state ~~the county in which he or she serves~~.

Section 3. Subsection (2) of section 101.5612, Florida Statutes, is amended to read:

101.5612 Testing of tabulating equipment.—

(2) On any day not more than 25 ~~10~~ days before ~~prior to~~ the commencement of early voting as provided in s. 101.657, the supervisor of elections shall have the automatic tabulating equipment publicly tested to ascertain that the equipment will correctly count the votes cast for all offices and on all

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measures. If the ballots to be used at the polling place on election day are not available at the time of the testing, the supervisor may conduct an additional test not more than 10 days before election day. Public notice of the time and place of the test 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 the notice in at least four conspicuous places in the county. The supervisor or the municipal elections official may, at the time of qualifying, give written notice of the time and location of the public preelection test to each candidate qualifying with that office and obtain a signed receipt that the notice has been given. The Department of State shall give written notice to each statewide candidate at the time of qualifying, or immediately at the end of qualifying, that the voting equipment will be tested and advise each candidate to contact the county supervisor of elections as to the time and location of the public preelection test. The supervisor or the municipal elections official shall, at least 30 ~~15~~ days before ~~prior to~~ the commencement of early voting as provided in s. 101.657, send written notice by certified mail to the county party chair of each political party and to all candidates for other than statewide office whose names appear on the ballot in the county and who did not receive written notification from the supervisor or municipal elections official at the time of qualifying, stating the time and location of the public preelection test of the automatic tabulating equipment. The canvassing board shall convene, and each member of the

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canvassing board shall certify to the accuracy of the test. For the test, the canvassing board may designate one member to represent it. The test shall be open to representatives of the political parties, the press, and the public. Each political party may designate one person with expertise in the computer field who shall be allowed in the central counting room when all tests are being conducted and when the official votes are being counted. The designee shall not interfere with the normal operation of the canvassing board.

Section 4. 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 must also shall be made of a vote-by-mail ballot containing an overvoted race or a marked vote-by-mail ballot in which every race is undervoted, including which shall include all valid votes as determined by the canvassing board based on rules adopted by the division pursuant to s. 102.166(4). Upon request, a physically present candidate, a political party official, a political committee official, or an authorized designee thereof, 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

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that purpose, and the duplicate ballot shall be tallied with the other ballots for that precinct.

Section 5. Subsection (1) of section 101.6103, Florida Statutes, is amended to read:

101.6103 Mail ballot election procedure.—

(1) Except as otherwise provided in subsection (7), the supervisor of elections shall mail all official ballots with a secrecy envelope, a return mailing envelope, and instructions sufficient to describe the voting process to each elector entitled to vote in the election not sooner than the 40th ~~20th~~ day before the election and not later than the 10th day before the date of the election. All such ballots shall be mailed by first-class mail. Ballots shall be addressed to each elector at the address appearing in the registration records and placed in an envelope which is prominently marked "Do Not Forward."

Section 6. Subsection (4) of section 103.091, Florida Statutes, is amended to read:

103.091 Political parties.—

(4) Any political party other than a minor political party may by rule provide for the membership of its state or county executive committee to be elected for 4-year terms at the primary election in each year a presidential election is held. The terms begin ~~shall commence~~ on the first day of the month following each presidential general election, ~~+~~ but the names of candidates for political party offices may ~~shall~~ not be placed on the ballot at any other election. The results of such election shall be determined by a plurality of the votes cast. In such event, electors seeking to qualify for such office shall do so with the Department of State or supervisor of elections no

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175 ~~not~~ earlier than noon of the 71st day, or later than noon of the
 176 67th day, preceding the primary election. Notwithstanding the
 177 qualifying period prescribed in this subsection, a qualifying
 178 office may accept and hold qualifying papers submitted no
 179 earlier than 14 days before the beginning of the qualifying
 180 period, to be processed and filed during the qualifying period.
 181 The outgoing chair of each county executive committee shall,
 182 within 30 days after the committee members take office, hold an
 183 organizational meeting of all newly elected members for the
 184 purpose of electing officers. The chair of each state executive
 185 committee shall, within 60 days after the committee members take
 186 office, hold an organizational meeting of all newly elected
 187 members for the purpose of electing officers.

188 Section 7. Section 104.0616, Florida Statutes, is amended
 189 to read:

190 104.0616 Vote-by-mail ballots and voting; violations.—

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

194 (2) Any person who provides or offers to provide, and any
 195 person who accepts, a pecuniary or other benefit in exchange for
 196 distributing, ordering, requesting, collecting, delivering, or
 197 otherwise physically possessing ~~any more than two~~ vote-by-mail
 198 ballots, ~~except per election in addition to his or her own~~
 199 ballot, ~~or~~ a ballot belonging to an immediate family member, or
 200 ~~except~~ as provided in ss. 101.6105-101.694, commits a
 201 misdemeanor of the first degree, punishable as provided in s.
 202 775.082, s. 775.083, or s. 775.084.

203 Section 8. Subsection (17) is added to section 901.15,

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204 Florida Statutes, to read:

205 901.15 When arrest by officer without warrant is lawful.—A
 206 law enforcement officer may arrest a person without a warrant
 207 when:

208 (17) There is probable cause to believe that a person has
 209 committed a violation involving a vote-by-mail ballot as
 210 provided in s. 104.0616.

211 Section 9. Subsection (11) is added to section 106.08,
 212 Florida Statutes, to read:

213 106.08 Contributions; limitations on; preemption.—

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

217 1. Contribution limits that differ from the limitations
 218 established in subsection (1);

219 2. Any limitation or restriction involving contributions to
 220 a political committee or an electioneering communications
 221 organization; or

222 3. Any limitation or restriction on expenditures for an
 223 electioneering communication or an independent expenditure.

224 (b) Any existing or future limitation or restriction
 225 enacted or adopted by a county, a municipality, or any other
 226 local governmental entity which is in conflict with this
 227 subsection is void.

228 Section 10. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 19, 2020

I respectfully request that **Senate Bill #1372**, relating to **Elections**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal line extending to the right.

Senator Jeff Brandes
Florida Senate, District 24

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 1738

INTRODUCER: Infrastructure and Security Committee and Senator Brandes

SUBJECT: Motor Vehicle Dealers

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Proctor	Miller	IS	Fav/CS
2. Cibula	Cibula	JU	Favorable
3. Proctor	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1738 provides:

- Legislative findings that subjecting motor vehicle dealers and their leasing and rental affiliates to vicarious liability under the dangerous instrumentality doctrine is both unfair and economically disadvantageous to motor vehicle dealers, their leasing and rental affiliates, and state consumers in that it causes dealers and their affiliates to suffer higher insurance costs, which are then passed on to consumers;
- That a motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that provides a temporary replacement vehicle to a customer whose vehicle is being repaired, serviced, or adjusted by the dealer is immune from any cause of action and is not liable, vicariously or directly, under general law. The motor vehicle dealer or affiliate is granted immunity as long as there is no negligent or criminal wrongdoing on the part of the dealer or affiliate;
- The limits on liability do not apply if there is a replacement vehicle mechanical failure or defect; and
- The limits on liability do not apply unless there is a written rental or use agreement that names the drivers and the motor vehicle dealer or the motor vehicle dealer's leasing or rental affiliate obtains from the person receiving the temporary replacement vehicle a copy of the person's driver license and insurance information.

The bill takes effect July 1, 2020.

II. Present Situation:

The court-created dangerous instrumentality doctrine holds an owner strictly liable for injuries caused by another person's negligent use of the owner's property. Specifically, when the owner entrusts a dangerous instrumentality to another person, the owner is responsible for damages caused by the other person. Whether the owner was negligent or at fault is irrelevant. The rationale for holding an innocent person responsible for such damages is that the owner of an instrumentality capable of causing death or destruction should be liable for damages caused by anyone operating it with the owner's consent.¹

The dangerous instrumentality doctrine originated in English common law and was adopted by the Florida Supreme Court in 1920 in *Southern Cotton Oil Company v. Anderson*, 86 So. 629 (1920).² The Court acknowledged the doctrine was originally limited to fire, water, and poisons, but had expanded over time:

It is true that, in the early development of this very salutary doctrine, the dangerous agencies consisted largely of fire, flood, water, and poisons. In *Dixon v. Bell* . . . Lord Ellenborough extended the doctrine to include loaded firearms. With the discovery of high explosives, they were put in the same class. As conditions changed it was extended to include other objects that common knowledge and common experience proved to be as potent sources of danger as those embraced in the earlier classifications. The underlying principle was not changed, but other agencies were included in the classification. Among them are locomotives, push cars, street cars, etc., and it is now well settled that these come within the class of dangerous agencies, and the liability of the master is determined by the rule applicable to them. The reasons for putting these agencies in the class of dangerous instrumentalities apply with equal, if not greater, force to automobiles.³

In a 1990 Florida Supreme Court case, a man leased a car from a lessor and then loaned the leased car to a friend. The friend caused a motor vehicle crash in the leased car, killing another person. The victim's estate sued the lessor of the car directly. The Court held that the lessor was liable for the death of the victim under the dangerous instrumentality doctrine, even though the lessor did not cause the accident. The Court acknowledged that the dangerous instrumentality doctrine was "unique to Florida" but justified the doctrine as necessary "to provide greater financial responsibility to pay for the carnage on our roads."⁴

The Second District Court of Appeal has acknowledged that the dangerous instrumentality doctrine creates "real and perceived inequities" and "has drawn its fair share of criticism."⁵ Once a court decides that an item is a dangerous instrumentality, an owner of such instrumentality is liable for damages the instrumentality causes, even if the owner was not in control of the instrumentality at the time.

¹ *Roman v. Bogle*, 113 So. 3d 1011, 1016 (Fla. 5th DCA 2013).

² *Id.* at 1014.

³ *Southern Cotton Oil Company v. Anderson*, 86 So. 629, 631 (Fla. 1920).

⁴ *Kraemer v. General Motors Acceptance Corp.*, 572 So. 2d 1363, 1365 (Fla. 1990).

⁵ *Fischer v. Alessandrini*, 907 So. 2d 569, 570 (Fla. 2d DCA 2005).

Whether an item is a dangerous instrumentality is a question of law depending on several factors, none of which alone is dispositive, including:

- Whether the instrumentality is a motor vehicle.⁶
- Whether the instrumentality is frequently operated near the public, regardless of whether the incident at issue occurred on public property.
- The instrumentality's peculiar dangers relative to other objects that courts have found to be dangerous instrumentalities.
- The extent to which the Legislature has regulated the instrumentality.⁷

If the court decides an item is a dangerous instrumentality, the owner is liable regardless of the facts of the particular case. Over time, Florida courts have expanded the applicability of the doctrine to include automobiles,⁸ trucks, buses,⁹ tow-motors,¹⁰ golf carts, and other motorized vehicles.¹¹

The Florida Legislature has limited the dangerous instrumentality doctrine by providing that a motor vehicle dealer or rental car company that provides a temporary replacement vehicle to a customer for up to ten days acts as the operator of the vehicle and is liable for damages up to \$100,000 per person and \$300,000 per incident for bodily injury and up to \$50,000 for property damage.¹² If the driver of the vehicle is uninsured or has insurance limits of less than \$500,000 combined property damage and bodily injury liability, the motor vehicle dealer or car rental company is liable for up to an additional \$500,000 in economic damages arising out of the use of the vehicle.¹³

In 2005, Congress passed 49 U.S.C. § 30106, commonly known as the Graves Amendment, to prohibit states from imposing vicarious liability on car rental companies.¹⁴ Vicarious liability is "liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate (such as an employee) based on the relationship between the two parties."¹⁵ To benefit from the Graves Amendment, the "owner" must be "engaged in the business of renting or leasing motor vehicles." A vehicle "owner" may be the titleholder, lessee, or bailee of the vehicle.¹⁶

⁶ A motor vehicle is a "wheeled conveyance that does not run on rails and is self-propelled, especially one powered by an internal combustion engine, a battery or fuel-cell, or a combination of these." *Newton v. Caterpillar Financial Servs. Corp.*, 253 So. 3d 1054, 1056 (Fla. 2018) (quoting Black's Law Dictionary (10th ed. 2014)).

⁷ *Newton*, 253 So. 3d at 1056.

⁸ *S. Cotton Oil*, 86 So. at 629, *supra* at FN 3.

⁹ *Meister v. Fisher*, 462 So. 2d 1071, 1072 (Fla. 1984).

¹⁰ *Eagle Stevedores, Inc. v. Thomas*, 145 So. 2d 551 (Fla. 3d DCA 1962) (where plaintiff was struck in a dock area by a "tow-motor," a small motor-operated vehicle, dangerous instrumentality doctrine applied).

¹¹ *Meister*, 462 So. 2d at 1072.

¹² Section 324.021(9)(b)2. & (c)1., F.S.

¹³ *Id*

¹⁴ Auto Rental News, The Graves Amendment: Challenges, Interpretations, Answers, <https://www.autorentalnews.com/156611/the-graves-amendment-challenges-interpretations-and-answers> (last visited February 7, 2020).

¹⁵ Black's Law Dictionary 427 (3rd pocket ed. 2006).

¹⁶ Auto Rental News, *supra* at n. 14.

The Graves Amendment, however, does not protect a rental company from its own negligence or criminal wrongdoing. If an injury is caused by a rental company's negligent or criminal act, the rental company could still be directly liable for its actions or inactions, even if an accident occurs while a renter is driving the vehicle.¹⁷ Federal law supersedes Florida's dangerous instrumentality doctrine when a rental car company rents a car to a driver who negligently injures another person.¹⁸

In 2011, the Florida Supreme Court held that as it relates to rental car companies the Graves Amendment specifically preempts Florida law¹⁹ and relieves rental car companies, while engaged in the trade or business of renting or leasing motor vehicles, from vicarious liability for harm caused by the driver.²⁰

In 2019, the Fourth District Court of Appeal, relying on the Supreme Court's analysis in *Vargas*, held that the Graves Amendment applies to a motor vehicle dealer that provides a customer with a loaner vehicle while the customer's vehicle is being serviced.²¹ In *Vargas*, it appears that the replacement vehicle was considered to be rented by the customer because the cost of renting the vehicle was built into the dealership's charges for servicing the customer's vehicle.²²

In contrast to *Vargas*, a 2008 trial court opinion from New York indicates that the Graves Amendment which generally makes lessors of motor vehicles immune from liability does not apply to loaner vehicles.²³ The court seemed to indicate that a loaner vehicle is not a rental vehicle governed by the Graves Amendment unless the customer is charged a separate fee for using the vehicle. The court's opinion seemed also to suggest that payments by a manufacturer for warranty work could not implicitly include a rental payment to provide a customer with a temporary replacement vehicle.

III. Effect of Proposed Changes:

The bill provides the following legislative findings:

The Legislature finds that absent negligence or criminal conduct by a motor vehicle dealer, or its leasing or rental affiliates, subjecting motor vehicle dealers and their leasing and rental affiliates to vicarious liability under the dangerous instrumentality doctrine when a temporary replacement vehicle is provided to a consumer is both unfair and economically disadvantageous in that it causes dealers and their leasing or rental affiliates to suffer higher insurance costs, which are then passed on to consumers. Additionally, application of the vicarious liability doctrine in such cases often serves to relieve the actual tortfeasor from liability.

¹⁷ *Id.*

¹⁸ 49 U.S.C. § 30106.

¹⁹ Section 324.021(9)(b)2., F.S.

²⁰ *Vargas v. Enterprise Leasing Co.*, 60 So.3d 1037 (Fla. 2011).

²¹ *Collins v. Auto Partners V, LLC*, 276 So.3d 817 (Fla. 4th DCA 2019).

²² *Id.* at 819 ("The dealership's service manager attested that the car driven by the employee at the time of the accident was a short-term 'rental,' with the dealership 'factor[ing] the cost of the short-term rental vehicle into the price for service on the customer's vehicle.'").

²³ *Zizersky v. Life Quality Motor Sales*, 21 Misc.3d 871, 874-76 (N.Y.Sup.Ct. 2008).

The bill provides that a motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that provides a temporary replacement vehicle at no charge or at a reasonable daily charge to a service customer whose vehicle is being repaired, serviced, or adjusted by the dealer is immune from any cause of action and is not liable, vicariously or directly, under general law by reason of being the owner of the temporary replacement vehicle for harm to persons or property which arises out of the use or operation of the temporary replacement vehicle by any person named in the rental or use agreement during the period the temporary replacement vehicle has been entrusted to the motor vehicle dealer's service customer. This limitation on liability only applies if there is no negligence or criminal wrongdoing on the part of the motor vehicle owner or its leasing or rental affiliate.

The bill provides that the term "service customer" does not include an employee, an agent, or a principal of a motor vehicle dealer or a motor vehicle dealer's leasing or rental affiliate. The bill also provides the limits on liability do not apply if there is a replacement vehicle mechanical failure or defect that is a proximate cause of harm to persons or property which arises out of the use or operation of the temporary replacement vehicle.

The bill further provides the limits on liability do not apply unless there is a written rental or use agreement that names the drivers who will be given possession, control, or use of the temporary replacement vehicle; the rental or use agreement prohibits any person not listed in the agreement from using the temporary replacement vehicle; and the motor vehicle dealer or the motor vehicle dealer's leasing or rental affiliate obtains from the person receiving the temporary replacement vehicle a copy of the person's driver license and insurance information reflecting at least the minimum motor vehicle insurance coverage required in this state.

In sum, the bill essentially makes the immunity protections that apply to a motor vehicle dealer who leases or rents a motor vehicle also applicable if the motor vehicle is loaned to a service customer.

The bill provides an effective date of July 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:

Motor vehicle dealers may see a reduction in insurance premiums and the cost of potential litigation.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following section 324.021, 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 February 10, 2020:

The committee substitute:

- Revises the legislative intent section of the bill to remove references to the federal Graves Amendment and to focus on why dealers should not be vicariously liable for temporary replacement vehicles;
- Removes the provision specifying that notwithstanding any other general law or case law the motor vehicle dealer cannot be held liable (civilly or criminally) if a copy of the driver license and insurance card is obtained; and
- Provides that the bill's limitation on liability only applies if:
 - There is no negligence or criminal acts by the motor vehicle dealer or its leasing or rental affiliates;
 - The customer is not an employee, agent or principal of the motor vehicle dealer or its leasing or rental affiliates;

- There are no mechanical defect or failure;
- There is a written rental or use agreement executed naming the drivers; and
- The motor vehicle dealer, or its leasing or rental affiliates, obtains copies of the driver license and insurance information showing minimum required coverage.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/03/2020	.	
	.	
	.	
	.	

The Committee on Rules (Farmer) recommended the following:

Senate Amendment (with title amendment)

Delete lines 85 - 97
and insert:
customer if the motor vehicle dealer has liability insurance
coverage that complies with sub-subparagraph b. and there is no
negligence or criminal wrongdoing on the part of the motor
vehicle owner or its leasing or rental affiliate.
b. A motor vehicle dealer or a motor vehicle dealer's
leasing or rental affiliate must procure and maintain liability
insurance in limits of not less than \$100,000 per person and



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\$300,000 per incident for bodily injury and \$50,000 for property damage, or not less than \$500,000 for combined property damage and bodily injury, to cover any liability of any driver of a temporary replacement vehicle provided to any person by the motor vehicle dealer or the motor vehicle dealer's leasing or rental affiliate. Maintaining the liability coverage pursuant to this sub-subparagraph is the financial responsibility of the motor vehicle dealer or the motor vehicle dealer's leasing or rental affiliate, and providing a temporary replacement vehicle to any person without such coverage in place constitutes negligent entrustment.

c. For purposes of this subparagraph, the term "service customer" does not include an employee, an agent, or a principal of a motor vehicle dealer or a motor vehicle dealer's leasing or rental affiliate.

d. The limits on liability in this subparagraph do not apply if there is a replacement vehicle mechanical failure or defect that is a proximate cause of harm to persons or property which arises out of the use or operation of the temporary replacement vehicle.

e. The limits on liability in this subparagraph do not

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

And the title is amended as follows:

Delete line 7

and insert:

property under certain circumstances; requiring motor vehicle dealers and their leasing or rental affiliates to procure and maintain liability insurance that meets



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41 certain requirements; providing that maintaining
42 liability converge is the financial responsibility of
43 motor vehicle dealers and their leasing or rental
44 affiliates; providing that providing a temporary
45 replacement vehicle to a person without such coverage
46 constitutes negligent entrustment; defining the

By the Committee on Infrastructure and Security; and Senator Brandes

596-03411-20

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A bill to be entitled

An act relating to motor vehicle dealers; providing legislative findings; amending s. 324.021, F.S.; providing that certain motor vehicle dealers and their leasing or rental affiliates are immune from causes of action and are not liable for harm to persons or property under certain circumstances; defining the term "service customer"; providing exceptions to the limits on liability; providing an effective date.

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

Section 1. The Legislature finds that absent negligence or criminal conduct by a motor vehicle dealer, or its leasing or rental affiliates, subjecting motor vehicle dealers and their leasing and rental affiliates to vicarious liability under the dangerous instrumentality doctrine when a temporary replacement vehicle is provided to a consumer is both unfair and economically disadvantageous in that it causes dealers and their leasing or rental affiliates to suffer higher insurance costs, which are then passed on to consumers. Additionally, application of the vicarious liability doctrine in such cases often serves to relieve the actual tortfeasor from liability.

Section 2. Paragraph (c) of subsection (9) of section 324.021, Florida Statutes, is amended to read:

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances

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where the context clearly indicates a different meaning:

(9) OWNER; OWNER/LESSOR.—

(c) *Application*.—

1. The limits on liability in subparagraphs (b)2. and 3. do not apply to an owner of motor vehicles that are used for commercial activity in the owner's ordinary course of business, other than a rental company that rents or leases motor vehicles. For purposes of this paragraph, the term "rental company" includes only an entity that is engaged in the business of renting or leasing motor vehicles to the general public and that rents or leases a majority of its motor vehicles to persons with no direct or indirect affiliation with the rental company. The term also includes a motor vehicle dealer that provides temporary replacement vehicles to its customers for up to 10 days. The term "rental company" also includes:

a. A related rental or leasing company that is a subsidiary of the same parent company as that of the renting or leasing company that rented or leased the vehicle.

b. The holder of a motor vehicle title or an equity interest in a motor vehicle title if the title or equity interest is held pursuant to or to facilitate an asset-backed securitization of a fleet of motor vehicles used solely in the business of renting or leasing motor vehicles to the general public and under the dominion and control of a rental company, as described in this subparagraph, in the operation of such rental company's business.

2. Furthermore, with respect to commercial motor vehicles as defined in s. 627.732, the limits on liability in subparagraphs (b)2. and 3. do not apply if, at the time of the

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incident, the commercial motor vehicle is being used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq., and that is required pursuant to such act to carry placards warning others of the hazardous cargo, unless at the time of lease or rental either:

a. The lessee indicates in writing that the vehicle will not be used to transport materials found to be hazardous for the purposes of the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq.; or

b. The lessee or other operator of the commercial motor vehicle has in effect insurance with limits of at least \$5,000,000 combined property damage and bodily injury liability.

3.a. A motor vehicle dealer or a motor vehicle dealer's leasing or rental affiliate that provides a temporary replacement vehicle at no charge or at a reasonable daily charge to a service customer whose vehicle is being held for repair, service, or adjustment by the motor vehicle dealer is immune from any cause of action and is not liable, vicariously or directly, under general law by reason of being the owner of the temporary replacement vehicle for harm to persons or property which arises out of the use or operation of the temporary replacement vehicle by any person named in the rental or use agreement during the period the temporary replacement vehicle has been entrusted to the motor vehicle dealer's service customer if there is no negligence or criminal wrongdoing on the part of the motor vehicle owner or its leasing or rental affiliate.

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b. For purposes of this subparagraph, the term "service customer" does not include an employee, an agent, or a principal of a motor vehicle dealer or a motor vehicle dealer's leasing or rental affiliate.

c. The limits on liability in this subparagraph do not apply if there is a replacement vehicle mechanical failure or defect that is a proximate cause of harm to persons or property which arises out of the use or operation of the temporary replacement vehicle.

d. The limits on liability in this subparagraph do not apply unless there is a written rental or use agreement that names the drivers who will be given possession, control, or use of the temporary replacement vehicle; the rental or use agreement prohibits any person not listed in the agreement from using the temporary replacement vehicle; and the motor vehicle dealer or the motor vehicle dealer's leasing or rental affiliate obtains from the person receiving the temporary replacement vehicle a copy of the person's driver license and insurance information reflecting at least the minimum motor vehicle insurance coverage required in this state.

Section 3. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 19, 2020

I respectfully request that **Senate Bill #1738**, relating to **Motor Vehicle Dealers**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

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)

Meeting Date _____

1738
Bill Number (if applicable)

Topic Vic liability for motor veh dealers

Amendment Barcode (if applicable)

Name TED SMITH

Job Title PRESIDENT

Address 410 N. Meridian St.
Street

Phone 850 445-0435

TALLA FL 32301
City State Zip

Email teds@flada.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL Automobile Dealers 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

3/2/2020

Meeting Date

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

SB1738

Bill Number (if applicable)

Topic Autodealers

Amendment Barcode (if applicable)

Name Mark Delegal

Job Title Counsel

Address 315 S. Calhoun St., #200

Phone 850-224-7000

Street

Tallahassee

City

FL

State

32301

Zip

Email _____

Speaking: ☒ For ☒ Against ☒ Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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 1582

INTRODUCER: Commerce and Tourism Committee and Senator Simmons

SUBJECT: Asbestos Trust Claims

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Elsesser	Cibula	JU	Favorable
2. McKay	McKay	CM	Fav/CS
3. Elsesser	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1582 requires a claimant filing an asbestos injury lawsuit to notify all parties to the action of any claims made against and funds received from an asbestos trust. The bill provides that a defendant in an asbestos claim may obtain through discovery certain materials the claimant has filed with an asbestos trust. The bill bars asbestos claimants from claiming that the materials filed with the trust are privileged.

II. Present Situation:

In 2005, the Legislature passed the Asbestos and Silica Compensation Fairness Act (the Act), with the purpose of giving “priority to true victims of asbestos and silica, claimants who can demonstrate actual physical impairment caused by exposure to asbestos or silica;” fully preserving “the rights of claimants who were exposed to asbestos or silica to pursue compensation if they become impaired in the future as a result of the exposure;” enhancing “the ability of the judicial system to supervise and control asbestos and silica litigation;” and conserving “the scarce resources of the defendants to allow compensation to cancer victims and others who are physically impaired by exposure to asbestos or silica while securing the right to similar compensation for those who may suffer physical impairment in the future.”¹ “These statements demonstrate that the Act is intended to reverse years of common law precedent ... holding that a diagnosis of asbestos-related disease and injury, without regard to any particular

¹ Section 774.202(1-4), F.S.

threshold level of impairment suffered, constitutes an accrued cause of action that provides citizens vested rights to file actions based on the injuries.”²

At least 56 trusts have been established on behalf of asbestos defendant companies that have declared bankruptcy, and the largest 26 trusts have paid at least \$10.9 billion on 2.4 million claims.³

Section 774.207(2), F.S., requires asbestos claimants to disclose the amounts of payments received from any collateral sources, which include payments from an asbestos trust. That section permits a court to setoff a jury award by the amount received from a collateral source.

Section 774.209(2)(b), F.S., states that the act does not affect the rights of any claimant who is entitled to file a claim against an asbestos trust.

Section 774.204, F.S., details the proof an injured claimant must present upon filing in order to establish a prima facie asbestos claim. That section requires evidence that a qualifying physician has taken an exposure history of the claimant, and the section details the physical medical findings the claimant must present to link his or her exposure to different ailments. This evidence differs for cancers of the lung, larynx, pharynx, or esophagus; cancers of the colon, rectum, or stomach; and for mesothelioma. “This requirement clearly serves the purpose of providing priority to plaintiffs who can demonstrate physical impairment caused by exposure to asbestos.”⁴ “Prior to the Act, the common law did not require any particular symptoms to constitute ‘manifestation’ in connection with asbestos injuries.”⁵ “[T]he main purpose of the Act is to alter the common law elements for an action arising from asbestos-related disease.”⁶

The Act bars punitive damage awards for asbestos claims.

III. Effect of Proposed Changes:

The bill governs the actions of plaintiffs who have filed an asbestos lawsuit and have filed or are preparing to file a separate claim against an asbestos trust. The bill states that, within 30 days after filing an asbestos claim⁷, a plaintiff must provide all parties with a sworn statement identifying all claims the plaintiff has made to an “asbestos trust.” The bill also requires a plaintiff to make such a disclosure within 30 days if he or she files an additional trust claim, supplements an existing claim, or receives additional information related to the trust claim.

The bill permits the asbestos defendant to seek discovery materials from an asbestos trust if a plaintiff has made a claim to that trust. These materials include proof that a plaintiff filed a claim with the trust and supplemental materials such as an affidavit, a deposition or trial testimony,

² *American Optical Corp. v. Spiewak*, 73 So. 3d 120, 130 (Fla. 2011).

³ Rand Institute for Civil Justice, *Bankruptcy Trusts, Asbestos Compensation, and the Courts* at 1, available at: https://www.rand.org/pubs/research_briefs/RB9603/index1.html (last visited February 17, 2020).

⁴ *In re Asbestos Litigation*, 933 So. 2d 613, 617 (Fla. 3d DCA 2006).

⁵ *Spiewak*, 73 So. 3d at 127.

⁶ *Id.*

⁷ The bill provides that “asbestos claim” has the same meaning as in s. 774.203, F.S. That section defines as asbestos claim as “a claim for damages or other civil or equitable relief presented in a civil action, arising out of, based on, or related to the health effects of exposure to asbestos, including loss of consortium, wrongful death, and any other derivative claim made by or on behalf of an exposed person or a representative, spouse, parent, child, or other relative of an exposed person.”

work history, an exposure allegation, medical records, documents showing the status of a claim against the trust, and any document related to the settlement of a trust claim. The bill bars an asbestos plaintiff from claiming that these materials are privileged and requires the plaintiff to provide consent to the trust to release the discovery materials. The bill states that the admissibility at trial of these materials is still subject to the Florida Evidence Code.

The bill allows a trial court to adjust an asbestos claim judgment to reflect payment received by the plaintiff from an asbestos trust, if the plaintiff filed the trust claim after he or she obtained a judgment but before that judgment was satisfied.

The bill contains a severability clause, providing that if any portion of the act is held invalid, the invalidity does not affect other provisions of the bill.

The bill takes effect July 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 774.301 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 Commerce and Tourism on February 18, 2020:

The CS removes the definition for “trust governance document,” a phrase that is not used in any substantive provision of the bill.

- B. Amendments:

None.

By the Committee on Commerce and Tourism; and Senator Simmons

577-03866-20

20201582c1

A bill to be entitled

An act relating to asbestos trust claims; creating s. 774.301, F.S.; defining terms; requiring a plaintiff who files an asbestos claim to provide certain information to the parties of the action within a specified timeframe; requiring the plaintiff to supplement the information and materials under certain circumstances within a specified timeframe; authorizing the defendant to seek discovery from an asbestos trust; prohibiting the plaintiff from claiming privilege or confidentiality to bar discovery of such materials; providing that asbestos trust claim materials are admissible in evidence under certain circumstances; providing for the adjustment of a judgment under certain circumstances; providing for severability; providing an effective date.

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

Section 1. Section 774.301, Florida Statutes, is created to read:

774.301 Asbestos trust claim disclosures.—

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

(a) "Asbestos claim" has the same meaning as in s. 774.203.

(b) "Asbestos trust" means a government-approved or court-approved trust, qualified settlement fund, compensation fund, or claims facility that is created as a result of an administrative or legal action or a court-approved bankruptcy, or under 11 U.S.C. s. 524(g), 11 U.S.C. s. 1121(a), or other applicable law,

Page 1 of 3

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

577-03866-20

20201582c1

and that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos.

(c) "Trust claim materials" means a final, executed proof of claim and any other document or information submitted to or received from an asbestos trust, including a claim form or supplementary material, an affidavit, a deposition or trial testimony, a work history, an exposure allegation, a medical or health record, or a document reflecting the status of a claim against an asbestos trust and, if the trust claim has been settled, any document relating to the settlement of the trust claim.

(2) Within 30 days after filing an asbestos claim, a plaintiff shall provide all parties with a sworn statement identifying all asbestos trust claims made by the plaintiff and all material submitted to or received from an asbestos trust.

(3) A plaintiff must supplement the information required under subsection (2) within 30 days after the plaintiff files an additional asbestos trust claim, supplements an existing asbestos trust claim, or receives additional information related to an asbestos trust claim.

(4) A defendant in an asbestos claim may seek discovery from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar discovery and shall provide consent or other expression of permission that may be required by the asbestos trust to release the information sought by the defendant.

(5) Asbestos trust claim materials are admissible in evidence only to the extent permissible under the Florida

Page 2 of 3

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

577-03866-20

20201582c1

59 Evidence Code.

60 (6) If a plaintiff files an asbestos trust claim after the
61 plaintiff obtains a judgment in an asbestos claim and before
62 satisfaction of the judgment, and the asbestos trust was in
63 existence at the time of the judgment, the trial court, upon
64 motion by a defendant, may only adjust the judgment by the
65 amount of any payments obtained by the plaintiff as a result of
66 such after-filed claim to the extent permissible under Florida
67 law.

68 Section 2. If any provision of this act or its application
69 to any person or circumstance is held invalid, the invalidity
70 does not affect other provisions or applications of the act
71 which can be given effect without the invalid provision or
72 application, and to this end the provisions of this act are
73 severable.

74 Section 3. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 18, 2020

I respectfully request that **Senate Bill 1582**, relating to Asbestos Trust Claims, be placed on the:

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

Thank you for your consideration.

A handwritten signature in black ink, appearing to read "David Simmons", is written over a horizontal line.

Senator David Simmons
Florida Senate, District 9

THE FLORIDA SENATE
APPEARANCE RECORD

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

02 Mar 2020
Meeting Date

HD 1582
Bill Number (if applicable)

Topic ASSTO

Amendment Barcode (if applicable)

Name ANTONIO Bailey

Job Title Veteran

Address 132 Lagoon RD
Street

Phone 757 788-9159

Winter Haven FL 33884
City State Zip

Email antonio.bailey13@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Voices of Veterans

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/2020
Meeting Date

HB 1582
Bill Number (if applicable)

Topic abseos

Amendment Barcode (if applicable)

Name Tanya Bailey

Job Title liason

Address 132 Lagoon Rd
Street

Phone 757-788-9496

Winter Haven FL 33884
City State Zip

Email bailey.tanya@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Voices of Veterans

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3 2 20

Meeting Date

1582

Bill Number (if applicable)

Topic ASBESTOS TRUSTS

Amendment Barcode (if applicable)

Name Dan Hendrickson

Job Title vol. pres. Tallahassee Veterans Legal Collaborative

Address PO Box 1201

Phone 850/570-1967

Street

Tallahassee

Fl

32302

Email danbhendrickson@comcast.net

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing TALLAHASSEE VETERANS LEGAL COLLABORATIVE

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)

3/2/20 1582
Meeting Date *Bill Number (if applicable)*

Topic Asbestos Trust Claims
Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St Phone 224-7173

Street

Tallahassee

FL

32301

City

State

Zip

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/1

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/2020
Meeting Date

SB 1582
Bill Number (if applicable)

Topic Asbestos

Amendment Barcode (if applicable)

Name Mark Delegal

Job Title Counsel

Address 315 S. Calhoun Street, #200 Phone 850-224-7000
Street
Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

1582
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name TIM MEENAN

Job Title _____

Address 300 W. Duval St -

Phone (850) 925-4000

Tallahassee FL 32312
City State Zip

Email TIM@MEENANFAN.COM

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Insurance Council

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3-2-20

Meeting Date

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

1582

Bill Number (if applicable)

Topic Asbestos Trusts

Amendment Barcode (if applicable)

Name Robert Davie

Job Title Vice Commander American Legion

Address 2306 Alder Dr.

Phone 850-583-4146

Street Tallahassee FL 32303
City State Zip

Email tdavie@amlegion.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Legion & TVLC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/20

Meeting Date

1582

Bill Number (if applicable)

Topic Asbestos

Amendment Barcode (if applicable)

Name Jim Ferraro

Job Title _____

Address _____

Street

Phone _____

Miami

FL

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Ferraro Law 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: SJR 7062

INTRODUCER: Judiciary Committee

SUBJECT: Citizen Initiative

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
<u>Cibula</u>	<u>Cibula</u>		JU Submitted as Comm. Bill/FAV
1. <u>Cibula</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

I. Summary:

SJR 7062 is a joint resolution to amend the Florida Constitution to change the geographic distribution requirement for signatures on citizen initiative petitions. To place an initiative on the ballot, initiative proponents will be required to show that an initiative has some public support in all, instead of half, of the state's 27 congressional districts.

Proponents must demonstrate sufficient public support by collecting signatures on initiative petitions from each congressional district of the state in a number equal to 8 percent of the votes cast in each district in the last presidential election. Under the current geographic distribution requirement in the Constitution, signatures must satisfy the 8 percent threshold in at least half of the state's 27 congressional districts.

The joint resolution does not change the total number of signatures on petitions that must be obtained to place a citizen initiative amendment on the ballot.

II. Present Situation:

The Florida Constitution authorizes five methods by which proposed amendments may be submitted to the electors for approval.¹ These methods of amendment allow proposals to be submitted to the electors by the Legislature, the constitution revision commission, the taxation and budget reform commission, a constitutional convention, and a citizen initiative.

The authorization for citizen initiatives is set forth in Article XI, section 3 of the Florida Constitution, which states:

The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision

¹ FLA. CONST. Art. XI.

or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith. It may be invoked by filing with the custodian of state records a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.

The Constitution requires the proponents of a citizen initiative amendment to demonstrate that the initiative has sufficiently broad public support. Public support is demonstrated by collecting signatures of registered voters equal to 8 percent of the voters voting in the last presidential election. This means that at least 766,200 valid signatures must be collected to place an initiative on the 2020 General Election Ballot.² Additionally, the 8 percent threshold must also be met in at least half or 14 of the state's 27 congressional districts as shown in the table below.³

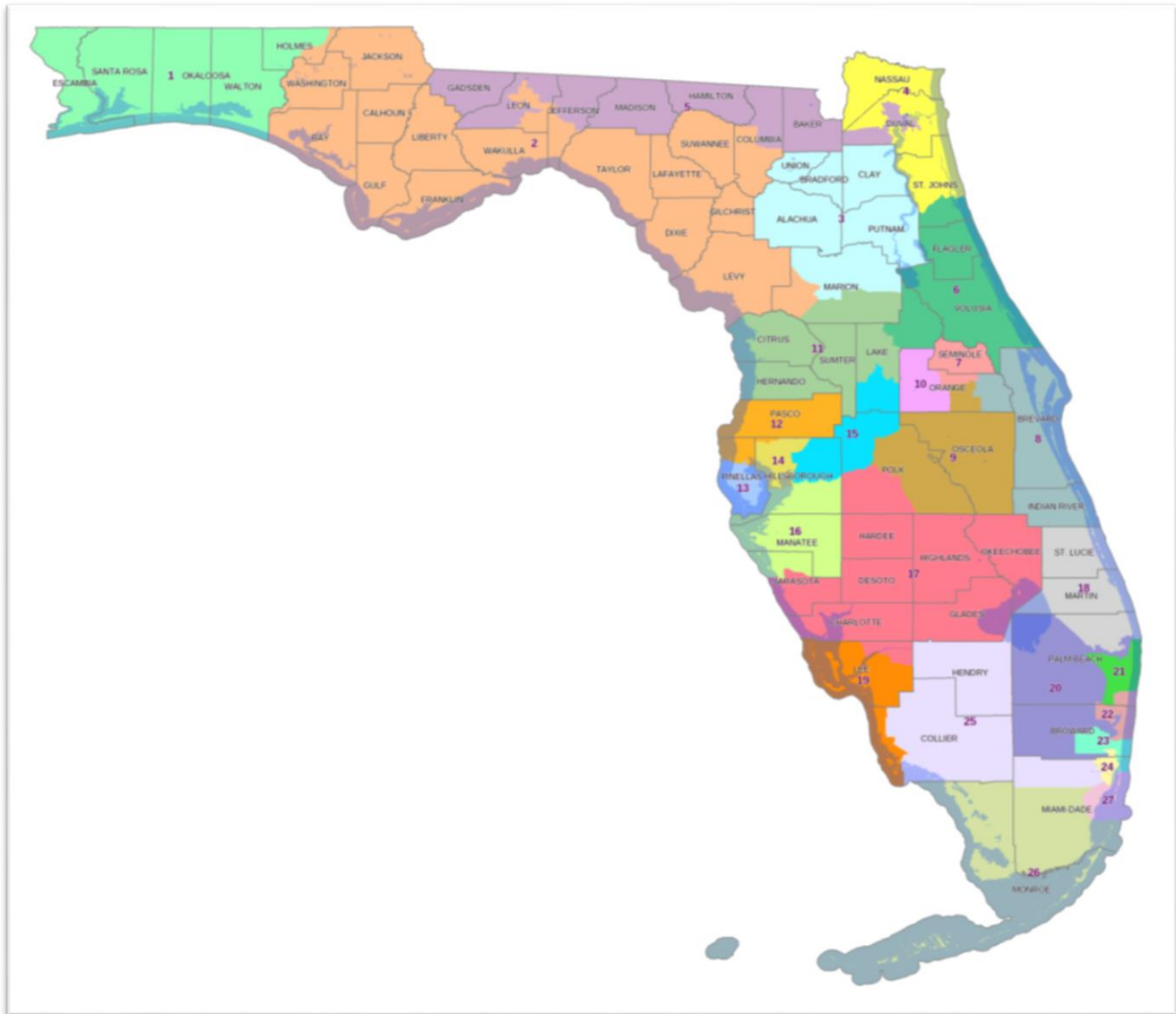
Congressional District	Votes Cast in 2016 Presidential Election	8% Threshold (for Ballot Position)
First	386,504	30,921
Second	360,098	28,808
Third	356,715	28,538
Fourth	428,190	34,256
Fifth	316,115	25,290
Sixth	385,918	30,874
Seventh	370,466	29,638
Eighth	409,569	32,766
Ninth	362,593	29,008
Tenth	320,548	25,644
Eleventh	417,253	33,381
Twelfth	386,775	30,942
Thirteenth	367,818	29,426
Fourteenth	336,289	26,904
Fifteenth	340,331	27,227
Sixteenth	403,805	32,305
Seventeenth	360,061	28,805
Eighteenth	388,772	31,102
Nineteenth	389,415	31,154
Twentieth	291,984	23,359
Twenty-First	355,842	28,468
Twenty-Second	361,305	28,905
Twenty-Third	342,784	27,423
Twenty-Fourth	269,446	21,556
Twenty-Fifth	269,983	21,599
Twenty-Sixth	294,742	23,580
Twenty-Seventh	304,012	24,321
Total	9,577,333	766,200

² Division of Elections, Florida Department of State, *2018 Initiative Petition Handbook* (last updated Dec. 29, 2017) <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf>.

³ *Id.* at Appendix B.

Source: Division of Elections, 2018 Initiative Petition Handbook.

A map of the state's congressional districts is shown below.



Geographic distribution requirements for petition signatures reflect the view that they are important because they “force initiative proponents to demonstrate that their proposal has support statewide, not just among the citizens of the state’s most populous region.”⁴ In states lacking a geographic distribution requirement for signatures, “it is not only possible but common for initiative proponents to gather all their signatures in the state’s largest city. The voters in the largest city, therefore, may decide for the state as a whole what issues make the ballot and what issues do not.”⁵

⁴ *Angle v. Miller*, 673 F.3d 1122, 1135 (9th Cir. 2012) (quoting National Conference of State Legislatures, *Initiative Petition Signature Requirements* (Apr. 7, 1010)).

⁵ National Conference of State Legislatures, *Initiative Petition Signature Requirements* (Sept. 20 2012), <https://www.ncsl.org/research/elections-and-campaigns/signature-requirements.aspx>.

III. Effect of Proposed Changes:

This joint resolution proposes an amendment to the Florida Constitution to change the geographic distribution requirement for signatures on citizen initiative petitions. To place an initiative on the ballot, initiative proponents will be required to show that an initiative has some public support in all of the state's 27 congressional districts instead of half of the state's congressional districts.

Proponents must demonstrate sufficient public support by collecting signatures on an initiative petition from each congressional district of the state in a number equal to 8 percent of the votes cast in each district in the last presidential election. Under the current geographic distribution requirement in the Constitution, signatures must satisfy the 8 percent threshold in at least half, or 14, of the state's 27 congressional districts. The joint resolution does not change the total number of signatures on petitions that must be obtained to place a citizen initiative amendment on the ballot.

If approved by at least 60 percent of the electors voting on the measure at the 2020 general election, the joint resolution will take effect January 5, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Because this joint resolution proposes an amendment to the Florida Constitution, it must be approved by a three-fifths vote of the membership of each house of the Legislature in order for the amendment to be submitted to the electors.⁶

⁶ FLA. CONST. s. 1, Art. X.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This amendment will likely increase costs of proponents to place a citizen initiative amendment to the Florida Constitution on the ballot. It is likely more cost effective for petition circulators to collect signatures in densely populated congressional districts than it is for them to collect signatures in rural areas having lower population densities.⁷

C. Government Sector Impact:

The new geographic distribution requirements may result in supervisors of elections in rural areas overlooked in past initiative campaigns having to verify more signatures on initiatives. Conversely, supervisors of elections in densely populated areas will likely see a decrease in the number of petitions submitted for verification.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This joint resolution substantially amends Article XI, section 3 of the Florida Constitution.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁷ See *Semple v. Griswold*, 934 F.3d 1134, 1142 (10th Cir. 2019) (quoting difficulties claimed by plaintiffs challenging a requirement that signatures for initiative petitions be collected in each of Colorado's Senate districts).

By the Committee on Judiciary

590-03976-20

20207062__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 3 of Article XI of the State Constitution to revise threshold requirements for the number of petitions signed by electors needed in order for a citizen initiative to amend or revise the State Constitution to be placed on the ballot.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 3 of Article XI of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE XI

AMENDMENTS

SECTION 3. Initiative.—The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith. It may be invoked by filing with the custodian of state records a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each ~~of one-half~~ of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

590-03976-20

20207062__

presidential electors were chosen.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE XI, SECTION 3

PETITION THRESHOLD REQUIREMENTS FOR CITIZEN INITIATIVES.—
Proposing an amendment to the State Constitution to require that a specified number of petitions must be signed by the electors in each congressional district of the state in order for a citizen initiative to amend or revise the State Constitution to be placed on the ballot.

Page 2 of 2

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 1634

INTRODUCER: Education Committee and Senator Stargel

SUBJECT: Parental Rights

DATE: February 24, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2. <u>Brick</u>	<u>Sikes</u>	<u>ED</u>	Fav/CS
3. <u>Davis</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1634 establishes the “Parents’ Bill of Rights.” The bill provides that the state, its political subdivisions, any other governmental entity, or other institution may not infringe upon the fundamental rights of a parent to direct the upbringing, education, health care, and mental health of a minor child. If those entities infringe upon a parent’s fundamental right, they must demonstrate that the action is reasonable and necessary to achieve a compelling state interest, and the action must be narrowly tailored and not otherwise served by less restrictive means.

The bill enumerates a list of rights that a parent possesses in order to direct the education of his or her child and be informed about the child’s educational programs. The bill also requires the school district to promote parental involvement in the public school system by providing access to the child’s studies and instructional materials while also recognizing a parent’s right to withdraw the child from objectionable portions of the school’s curriculum.

The bill also requires a parent’s permission before a health care practitioner may provide services, prescribe medicine to the child, or perform a medical procedure, unless otherwise provided by law. The bill provides a misdemeanor penalty for a health care practitioner or similar person who violates the health care provisions and subjects these persons to disciplinary actions.

The bill takes effect July 1, 2020.

II. Present Situation:

Constitutional Rights of Parents

Parental Guarantees in the United States Constitution

The Fourteenth Amendment to the U.S. Constitution provides that no State

[S]hall deprive any person of life, *liberty*, or property, without due process of law.

The U.S. Supreme Court has recognized that the Due Process clause includes an additional component that provides a heightened level of protection against any governmental interference where certain fundamental rights and liberty interests are involved. In *Troxel v. Granville*,¹ a case to terminate parental rights, the Court noted that the Fourteenth Amendment “liberty interest” at issue – the interest that parents had in the care, custody, and control over their children – was perhaps the oldest of any fundamental liberty interest that the Court had recognized.

The Court reflected that, in a 1923 decision,² it determined that the “liberty” interest protected by the Due Process Clause included the right of parents to “establish a home and bring up children” and “to control the education of their own.”

The Court also noted as early as 1925³ that a child was not simply the creature of the State and that the people who nurture the child and direct the child’s destiny have the right, and the high duty, to recognize and prepare the child for additional obligations. In 1944, the Court confirmed the right of parents to direct the upbringing of their children when it stated:

It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.⁴

Finally, in recounting the history of parental authority in 1979, the Court stated, “We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected.”⁵

Parental Guarantees in the State Constitution

Similarly, the Florida Supreme Court has determined that the fundamental liberty interest in parenting one’s child “is protected by the Florida and federal constitutions. In Florida, it is specifically protected by our privacy provision.”⁶ The Court also stated that the state constitutional privacy provision contained in Article I, section 23 affords greater protection than that of the federal constitution.

¹ *Troxel v. Granville*, 530 U.S. 57 (2000).

² *Troxel* quoting *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923).

³ *Troxel* quoting *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925).

⁴ *Troxel* quoting *Prince v. Massachusetts*, 321 U.S. 158 (1944).

⁵ *Troxel* quoting *Parham v. J.R.* 442 U.S. 584, 602 (1979).

⁶ *Beagle v. Beagle*, 678 So. 2d 1271, 1275 (Fla. 1996).

The court wrote in *Winfield v. Division of Pari-Mutuel Wagering*⁷ that the standard of review that must be used to evaluate whether a state has intruded into a citizen's private life is the compelling state interest standard. Under that test, the burden of proof is on the state to justify its intrusion on privacy. The burden can be met by the state if it demonstrates that the regulation being challenged serves a compelling state interest and the regulation accomplishes its goal by using the least intrusive means.⁸

Statutory Rights of Parents of Students

Mandatory Attendance

All children who turn 6 years by February 1 of any school year and have not attained the age of 16 years are required to attend school regularly during the entire school term.⁹ Parents have the option to comply with school attendance laws by enrolling the student in a public school; a parochial, religious, or denominational school; a private school; a home education program; or a private tutoring program.¹⁰ The district school superintendent may authorize certificates of exemptions from school attendance requirements in certain situations.¹¹ A student who holds a valid certificate of exemption is exempt from attending school. A certificate of exemption expires at the end of the school year.¹²

A parent of a K-12 student is afforded numerous statutory rights.¹³ Each school district is required to:

- Provide a parent with specific information about his or her child's educational progress, comprehensive information about opportunities for involvement in the child's education, and a framework for building and strengthening partnerships among parents and school district personnel.¹⁴
- Afford a parent the opportunity to enroll his or her child in instruction for exceptional students or challenge a district school board's determination of the child's eligibility for a gifted or special education program.¹⁵
- Establish a policy enabling a parent to object to and contest specific instructional materials.¹⁶
- Notify a parent and obtain his or her consent before a public school student may be transported in a privately owned motor vehicle to a school function or referred to contraceptive services at school facilities.¹⁷

⁷ *Winfield v. Division of Pari-Mutual Wagering*, 477 So. 2d 544, 548 (Fla. 1985).

⁸ *Id.*

⁹ Section 1003.21, F.S.

¹⁰ Section 1002.20(2)(b), F.S.

¹¹ Section 1003.21, F.S.

¹² *Id.*

¹³ Section 1002.20, F.S.

¹⁴ Section 1002.23, F.S.

¹⁵ Section 1003.57, F.S.

¹⁶ Section 1006.28(1)(a)2.-3., F.S.

¹⁷ Sections 1002.20(3)(e) and (22)(c), F.S.

No educational agency or institution may collect, obtain, or retain information on the political affiliation, voting history, religious affiliation, or biometric information of a student or a parent or sibling of the student.¹⁸ In addition, a parent may exempt his or her child from:¹⁹

- A health examination on religious grounds.
- School immunization requirements on religious or certain health grounds.²⁰
- Performing surgery or dissection in a biological science class.
- Receiving instruction on reproductive health or any disease, including HIV/AIDS.²¹
- Reciting the pledge of allegiance.
- Reciting the Declaration of Independence.²²

Access to Records and Information

The rights of students and their parents with respect to education records created, maintained, or used by public educational institutions and agencies are protected.²³ Specifically, a parent of a K-12 student has the right to:²⁴

- Receive accurate and timely information regarding the student's academic progress and must be informed of ways a parent can help a student succeed in school.
- Access the student's education records, including the right to inspect and review those records.
- Challenge the content of education records in order to ensure that the records are not inaccurate, misleading, or otherwise a violation of privacy or other rights.
- Privacy with respect to the student's records and reports.
- Receive annual notice of the parent's rights with respect to education records.
- Receive report cards on a regular basis that clearly depict and grade the student's academic performance in each class or course, the student's conduct, and the student's attendance.²⁵
- Receive reports at regular intervals of the academic progress and other needed information regarding the student.
- Receive timely notification of any verified report of a substance abuse violation by the student.
- Access information relating to the school district's policies for promotion or retention, including high school graduation requirements.²⁶
- Access information relating to student eligibility to participate in extra-curricular activities.²⁷
- Access information relating to the state public education system, standards, and requirements.²⁸

¹⁸ Section 1002.222(1)(a), F.S.

¹⁹ Section 1002.20, F.S.

²⁰ Section 1002.20(3)(b), F.S.

²¹ Section 1002.20(3)(d), F.S.

²² Section 1003.421(4), F.S.

²³ Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g; and s. 1002.22, F.S.

²⁴ Sections 1002.20, 1002.22(2), and 1006.28, F.S.

²⁵ Section 1002.20(14), F.S.

²⁶ Section 1008.25, F.S.

²⁷ Section 1006.195, F.S.

²⁸ Section 1002.23, F.S.

- Access, review, object to, and challenge instructional and supplemental education materials.²⁹

Parental Consent for Health Care

Any medical decision made to address a student's needs is a matter between the student, the student's parent, and a competent health care professional chosen by the parent.³⁰ The right to consent to medical treatment for a child resides with a parent.³¹ District school boards may adopt policies to ensure an appropriate response in emergency situations and the provision of first aid and emergency medical care.³² A parent has the right to be notified and give consent for proposed medical procedures on his or her child, unless, within a reasonable degree of medical certainty, delay in the provision of emergency medical care would endanger the health or physical well-being of the child, and the emergency medical care or treatment is administered in a licensed hospital or college health service.³³

III. Effect of Proposed Changes:

Sections 1 and 2 – The Parents’ Bill of Rights

The bill creates a new chapter in the Florida Statutes, chapter 1014, which is entitled “Parents’ Bill of Rights” and contains sections 1014.01 – 1014.06, F.S.

Section 3 – Legislative Findings and Definition

Section 3 contains the legislative findings and a definition. In these provisions, the Legislature finds that:

- It is a fundamental right of parents to direct the upbringing, education, and care of their minor children;
- Important information relating to a minor child should not be withheld, either inadvertently or purposefully, from a parent, including information regarding the minor child’s health, well-being, and education, while the child is in the custody of the school district; and
- It is necessary to establish a consistent mechanism for parents to be notified of information relating to the health and well-being of their minor children.

A parent is defined to be a person who has legal custody of a minor child as a natural or adoptive parent or a legal guardian.

Section 4 – The Infringement of Parental Rights

The bill provides that the following entities may not infringe on the fundamental rights of a parent to direct the upbringing, education, health care, and mental health of a parent’s minor child:

- The state;

²⁹ Sections 1002.20(19) and 1006.28, F.S.

³⁰ Section 1006.0625, F.S.

³¹ *O’Keefe v. Orea*, 731 So. 2d 680, 686 (Fla. 1st DCA 1998).

³² Section 1001.43, F.S.

³³ Section 743.0645, F.S.

- State political subdivisions;
- Any other governmental entity; or
- Any other institution.

If any of these entities infringes on a parent's fundamental right, it must demonstrate that the action is reasonable and necessary to achieve a compelling state interest and the action is narrowly tailored and is not otherwise served by a less restrictive means. This "compelling interest" standard is discussed above in the Present Situation.

Section 5 – Parental Rights

Rights Reserved to the Parent of a Minor Child

This section establishes that all parental rights are reserved to the parent of a minor child "without obstruction or interference" by any of the above-referenced governmental entities. Those rights include, but are not limited to the right to:

- Direct the education and care of the minor child.
- Direct the upbringing and the moral or religious training of the minor child.
- Enroll the minor child in a public school or, as an alternative to public education, a private school, religious school, a home education program, or other available option.
- Access and review all school records relating to the minor child.
- Make health care decisions for the minor child, unless otherwise prohibited by law.
- Access and review all medical records of the minor child, unless prohibited by law or if the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement agency or official requests that the information not be released.
- Consent in writing before a biometric scan of the minor child is made, shared, or stored.
- Consent in writing before any record of the minor child's blood or deoxyribonucleic acid (DNA) is created, stored, or shared, except as required by general law or authorized pursuant to a court order.
- Consent in writing before the state or any of its political subdivisions makes a video or voice recording of the minor child unless the recording is made during or as part of a court proceeding, or is made as part of a forensic interview in a criminal or Department of Children and Families investigation, or is to be used solely for the following purposes:
 - A safety demonstration, including the maintenance of order and discipline in the common areas of a school or on student transportation vehicles;
 - A purpose related to a legitimate academic or extracurricular activity;
 - A purpose related to regular classroom instructions;
 - Security or surveillance of buildings or grounds; or
 - A photo identification card.
- Be notified promptly if an employee of the state, any of its political subdivisions, any other governmental entity, or any other institution suspects that a criminal offense has been committed against his or her minor child, unless the incident has first been reported to a law enforcement agency or the Department of Children and Families and notifying the parent would impede the investigation.

The bill clarifies that the rights expressed in this section do not:

- Authorize a parent of a minor child to engage in conduct that is unlawful or to abuse or neglect his or her minor child in violation of general law;
- Condone, authorize, approve, or apply to a parental action or decision that would end life;
- Prohibit a court of competent jurisdiction, law enforcement officer, or employee of a government agency that is responsible for child welfare from acting in his or her official capacity within the reasonable and prudent scope of his or her authority; or
- Prohibit a court of competent jurisdiction from issuing an order that is otherwise permitted by law.

Discipline

Any employee of any of the above-referenced entities who encourages or coerces, or attempts to encourage or coerce a minor child to withhold information from his or her parent may be subject to disciplinary action.

Inalienable Rights

The final subsection states that a parent of a minor child has inalienable rights that are more comprehensive than those enumerated in this section, unless those rights have been legally waived or terminated. The bill also provides that the chapter does not prescribe all of a parent's rights and unless required by law, a parent's rights may not be limited or denied. Additionally, the chapter may not be construed to apply to a parental action or decision that would end life.

Section 6 – School District Notifications on Parental Rights

The bill requires each school board, in consultation with parents, teachers, and administrators, to develop and then adopt a policy that promotes parental involvement in the public school system. The policy must include:

- A plan, pursuant to s. 1002.23, F.S., for parental participation to improve parent and teach cooperation in areas such as homework, school attendance, and discipline.
- A procedure, pursuant to s. 1002.20(19)(b), F.S., for a parent to learn about the minor child's course of study, including the source of any supplemental education materials.
- Procedures for a parent to object to instructional material, which includes all classroom materials and school activities, pursuant to s 1006.28(2)(a)2., F.S. and a process for withdrawing the child from the activity, class, or program. The objections may be based on beliefs regarding morality, sex, and religion or the belief that the materials or activities are harmful. Instructional materials are defined to include, but are not limited to, textbooks, workbooks and worksheets, handouts, software, applications, Internet courses, and any and all digital media available to students pursuant to their role as a student in public school.
- Procedures, pursuant to s. 1002.20(3)(d), F.S. for a parent to withdraw the minor child from any portion of the school district's plan as required under s. 1003.42(2)(n), F.S., which relates to sex education or instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality if the parent provides a written objection to the child's participation. The procedures must provide for a parent to be notified in advance of the course content so that he or she may withdraw the child from those portions of the course.
- Procedures, pursuant to s. 1006.195(1)(a), F.S., for a parent to learn about the nature and purpose of clubs and activities at the child's school, including those that are extracurricular or part of the school curriculum.

- Procedures for a parent to learn about parental rights and responsibilities under general law, including all of the following:
 - The right to opt the minor child out of any portion of the school district's comprehensive health education required by statute that relates to sex education instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality.
 - A plan to disseminate information about school choice options, including open enrollment.
 - The right of a parent to exempt the minor child from immunizations.
 - The right of a parent to review statewide, standardized assessment results.
 - The right to enroll the minor child in gifted or special education programs.
 - The right of a parent to inspect school district instructional materials.
 - The right to of a parent to access information relating to the school district's policies for promotion or retention, including high school graduation requirements.
 - The right of a parent to receive a school report card and be informed of the child's attendance requirements.
 - The right of a parent to access information relating to the state public education system, state standards, report card requirements, attendance requirements, and instructional materials requirements.
 - The right of a parent to participate in parent-teacher association and organizations sanctioned by a district school board or the Department of Education.
 - The right of a parent to opt out of any district-level data collection relating to the minor child that is not required by law.

The information required in this section may be provided by the district school board electronically or posted on its website.

A parent may request, in writing, from the district school superintendent, the information required under this section. The superintendent must provide the information to the parent within 10 days. If the superintendent denies a parent's request for information or does not respond to the parent's request within 10 days, the parent may appeal the denial to the district school board. The parent's appeal must be placed on the agenda for the board's next public meeting. If it is too late for a parent's appeal to be placed on the agenda at the next meeting, it must be included on the agenda for the following meeting.

Section 7 – Parental Consent for Health Care Services

Unless the law provides otherwise,

- A health care practitioner, as defined in s. 456.001, F.S., may not provide, solicit, or arrange to provide health care services or prescribe medicine to the minor child without first obtaining written consent from the parent.
- A person, as defined by statute to include individuals, children, firms, associations, joint adventures, partnership, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations, or individual employed by the person, may not provide or solicit or arrange to provide health care services or prescribe medicine to a minor child without first obtaining written parental consent.

Except for services provided by a clinical laboratory that are not delivered through a direct encounter with the minor at the clinical laboratory facility, and unless otherwise provided by law or a court order, a provider,³⁴ as defined in s. 408.803, F.S., may not allow a medical procedure to be performed on a minor child in its facility without first obtaining written consent from the parent.

Exception

The provisions of this section which addresses parental consent for health care services do not apply to abortion, which is governed by chapter 390.

Penalties

A health care practitioner or other person who violates this section is subject to disciplinary action pursuant to s. 408.813 or s. 456.072, F.S., sections 8 and 9 of the bill, and commits a first degree misdemeanor which is punishable by up to one year imprisonment and a fine not to exceed \$1,000.³⁵

Section 8 – Administrative Fines and Violations

The Agency for Health Care Administration may impose an administrative fine for a violation of the provisions regarding the parental consent for health care services. The violation is an unclassified violation and the fine may not exceed \$500 for each violation.

Section 9 – Grounds for Discipline

The Department of Health may take disciplinary action against someone who fails to comply with the parental consent requirements for health care services. The disciplinary actions range from refusing to certify a license or certify the license with restrictions, suspending or permanently revoking a license, restricting a license, imposing an administrative fine not to exceed \$10,000 for each offense, issuing a reprimand or letter of concern, placing the licensee on probation, taking corrective action, imposing an administrative fine for violations of patient rights, requiring the refund of fees billed and collected, and requiring that the practitioner undergo remedial education.³⁶

Section 10 – Effective Date

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

³⁴ Section 408.803(11), F.S., defines a provider to mean any activity, service, agency, or facility regulated by the agency and listed in s. 408.802, F.S.

³⁵ Sections 775.082(4)(a) and 775.083(1)(d), F.S.

³⁶ Section 456.072(1), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 408.813 and 456.072.

This bill creates the following sections of the Florida Statutes: 1014.01, 1014.02, 1014.03, 1014.04, 1014.05, and 1014.06.

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 Education on February 17, 2020:

The committee substitute clarifies that the provision of the bill prohibiting health care practitioners from providing or soliciting or arranging to provide health care services or prescribe medicinal drugs to a minor child without first obtaining written parental consent does not apply to services provided by a clinical laboratory, unless the services are delivered through a direct encounter with the minor at the clinical laboratory facility.

The committee substitute provides that the term “clinical laboratory” has the same meaning as otherwise provided in law related to clinical laboratory personnel of health testing services.

- B. **Amendments:**

None.



694008

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/03/2020	.	
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The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment

Delete lines 102 - 103
and insert:

(e) The right to make health care decisions consistent with
the established standard of care for his or her minor child,
unless otherwise prohibited by law.



957918

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/03/2020	.	
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The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment

Delete lines 140 - 162
and insert:
her minor child in violation of general law, or is otherwise
harmful to the mental, physical, and emotional well-being of a
minor or contrary to the minor's best interest;

(b) Condone, authorize, approve, or apply to a parental
action or decision that would end life or endanger the health,
safety, or well-being of the minor child;

(c) Prohibit a court of competent jurisdiction, a law



957918

enforcement officer, or an employee of a government agency that
is responsible for child welfare from acting in his or her
official capacity within the reasonable and prudent scope of his
or her authority; or

(d) Prohibit a court of competent jurisdiction from issuing
an order that is otherwise authorized by law.

(3) An employee of the state, any of its political
subdivisions, or any other governmental entity who encourages or
coerces, or attempts to encourage or coerce, a minor child to
withhold information from his or her parent may be subject to
disciplinary action.

(4) A parent of a minor child in this state has inalienable
rights that are more comprehensive than those listed in this
section, unless such rights have been legally waived or
terminated. This chapter does not prescribe all rights to a
parent of a minor child in this state. Unless required by law,
the rights of a parent of a minor child in this state may not be
limited or denied. This chapter may not be construed to apply to
a parental action or decision that would end life or endanger
the health, safety, or well-being of the minor child.



820782

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/03/2020	.	
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The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment

Delete lines 147 - 149
and insert:
authority;

(d) Prohibit a court of competent jurisdiction from issuing
an order that is otherwise permitted by law; or

(e) Limit the constitutional privacy rights of students and
parents, including those rights pursuant to s. 1002.22(2), under
the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C.
s. 1232g, and its implementing regulations.



232476

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/03/2020	.	
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The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment

Delete line 179
and insert:
activities, pursuant to s. 1006.28(2)(a)2., and except in
required courses or instruction, pursuant to s. 1003.42, a
process for



888014

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/03/2020	.	
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The Committee on Rules (Stargel) recommended the following:

Senate Substitute for Amendment (232476)

Delete lines 177 - 188
and insert:

(c) Procedures, adopted pursuant to s. 1006.28(2)(a)2., to allow a parent to object to instructional materials and other materials used in the classroom. Such objections may be based on beliefs regarding morality, sex, and religion or the belief that such materials are harmful. For purposes of this section, the term "instructional materials" has the same meaning as in s. 1006.29(2) and may include other materials used in the



888014

12 classroom, including workbooks and worksheets, handouts,
13 software, applications, and any digital media made available to
14 students.



396696

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/03/2020	.	
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The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Delete lines 263 - 268

and insert:

parental consent, unless obtaining such consent would
endanger the health, safety, or well-being of the minor child.

(b) Except as otherwise provided by law, a person, as
defined in s. 1.01, or an individual employed by such person may
not provide or solicit or arrange to provide health care
services or prescribe medicinal drugs to a minor child without
first obtaining written parental consent, unless obtaining such



396696

consent would endanger the health, safety, or well-being of the
minor child.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 31

and insert:

permission; providing exceptions; prohibiting certain
entities from taking

By the Committee on Education; and Senator Stargel

581-03785-20

20201634c1

1 A bill to be entitled
 2 An act relating to parental rights; creating chapter
 3 1014, F.S.; creating s. 1014.01, F.S.; providing a
 4 short title; creating s. 1014.02, F.S.; providing
 5 legislative findings; defining the term "parent";
 6 creating s. 1014.03, F.S.; providing that the state,
 7 its political subdivisions, other governmental
 8 entities, or other institutions may not infringe on
 9 parental rights without demonstrating specified
 10 information; creating s. 1014.04, F.S.; providing that
 11 a parent of a minor child has specified rights
 12 relating to his or her minor child; prohibiting the
 13 state from infringing upon specified parental rights;
 14 prohibiting specified parental rights from being
 15 limited or denied; providing that certain actions by
 16 specified individuals are grounds for disciplinary
 17 actions against those individuals; providing
 18 construction; creating s. 1014.05, F.S.; requiring
 19 each district school board in consultation with
 20 parents, teachers, and administrators, to develop and
 21 adopt a policy to promote parental involvement in the
 22 public school system; providing requirements for such
 23 policy; defining the term "instructional materials";
 24 authorizing a district school board to provide such
 25 policy electronically or on its website; authorizing a
 26 parent to request certain information in writing;
 27 providing a procedure for appealing the denial of such
 28 information requests; creating s. 1014.06, F.S.;
 29 prohibiting certain health care practitioners from

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 taking specified actions without a parent's written
 31 permission; prohibiting certain entities from taking
 32 specified actions relating to a minor's health care
 33 without a parent's written permission; prohibiting a
 34 health care facility from allowing certain actions
 35 without a parent's written permission; providing
 36 exceptions; providing for disciplinary actions and
 37 criminal penalties; amending s. 408.813, F.S.;
 38 providing that certain violations relating to parental
 39 consent are grounds for administrative fines for
 40 health care facilities; amending s. 456.072, F.S.;
 41 providing that failure to comply with certain parental
 42 consent requirements is grounds for disciplinary
 43 action for health care practitioners; providing an
 44 effective date.

45
 46 Be It Enacted by the Legislature of the State of Florida:

47
 48 Section 1. Chapter 1014, Florida Statutes, consisting of
 49 ss. 1014.01-1014.06, is created and shall be entitled "Parents'
 50 Bill of Rights."

51 Section 2. Section 1014.01, Florida Statutes, is created to
 52 read:

53 1014.01 Short title.—This section and ss. 1014.02-1014.06
 54 may be cited as the "Parents' Bill of Rights."

55 Section 3. Section 1014.02, Florida Statutes, is created to
 56 read:

57 1014.02 Legislative findings and definition.—

58 (1) The Legislature finds that it is a fundamental right of

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parents to direct the upbringing, education, and care of their minor children. The Legislature further finds that important information relating to a minor child should not be withheld, either inadvertently or purposefully, from his or her parent, including information relating to the minor child's health, well-being, and education, while the minor child is in the custody of the school district. The Legislature further finds it is necessary to establish a consistent mechanism for parents to be notified of information relating to the health and well-being of their minor children.

(2) For purposes of this chapter, the term "parent" means a person who has legal custody of a minor child as a natural or adoptive parent or a legal guardian.

Section 4. Section 1014.03, Florida Statutes, is created to read:

1014.03 Infringement of parental rights.—The state, any of its political subdivisions, any other governmental entity, or any other institution may not infringe on the fundamental rights of a parent to direct the upbringing, education, health care, and mental health of his or her minor child without demonstrating that such action is reasonable and necessary to achieve a compelling state interest and that such action is narrowly tailored and is not otherwise served by a less restrictive means.

Section 5. Section 1014.04, Florida Statutes, is created to read:

1014.04 Parental rights.—

(1) All parental rights are reserved to the parent of a minor child in this state without obstruction or interference

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from the state, any of its political subdivisions, any other governmental entity, or any other institution, including, but not limited to, all of the following rights of a parent of a minor child in this state:

(a) The right to direct the education and care of his or her minor child.

(b) The right to direct the upbringing and the moral or religious training of his or her minor child.

(c) The right, pursuant to s. 1002.20(2)(b) and (6), to enroll his or her minor child in a public school or, as an alternative to public education, a private school, religious school, a home education program, or other available options.

(d) The right, pursuant to s. 1002.20(13), to access and review all school records relating to his or her minor child.

(e) The right to make health care decisions for his or her minor child, unless otherwise prohibited by law.

(f) The right to access and review all medical records of his or her minor child, unless prohibited by law or if the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement agency or official requests that the information not be released.

(g) The right to consent in writing before a biometric scan of his or her minor child is made, shared, or stored.

(h) The right to consent in writing before any record of his or her minor child's blood or deoxyribonucleic acid (DNA) is created, stored, or shared, except as required by general law or authorized pursuant to a court order.

(i) The right to consent in writing before the state or any of its political subdivisions makes a video or voice recording

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of his or her minor child unless such recording is made during
or as part of a court proceeding or is made as part of a
forensic interview in a criminal or Department of Children and
Families investigation or is to be used solely for the following
purposes:

1. A safety demonstration, including the maintenance of
order and discipline in the common areas of a school or on
student transportation vehicles;

2. A purpose related to a legitimate academic or
extracurricular activity;

3. A purpose related to regular classroom instructions;

4. Security or surveillance of buildings or grounds; or

5. A photo identification card.

(j) The right to be notified promptly if an employee of the
state, any of its political subdivisions, any other governmental
entity, or any other institution suspects that a criminal
offense has been committed against his or her minor child,
unless the incident has first been reported to law enforcement
or the Department of Children and Families and notifying the
parent would impede the investigation.

(2) This section does not:

(a) Authorize a parent of a minor child in this state to
engage in conduct that is unlawful or to abuse or neglect his or
her minor child in violation of general law;

(b) Condone, authorize, approve, or apply to a parental
action or decision that would end life;

(c) Prohibit a court of competent jurisdiction, law
enforcement officer, or employee of a government agency that is
responsible for child welfare from acting in his or her official

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capacity within the reasonable and prudent scope of his or her
authority; or

(d) Prohibit a court of competent jurisdiction from issuing
an order that is otherwise permitted by law.

(3) An employee of the state, any of its political
subdivisions, or any other governmental entity who encourages or
coerces, or attempts to encourage or coerce, a minor child to
withhold information from his or her parent may be subject to
disciplinary action.

(4) A parent of a minor child in this state has inalienable
rights that are more comprehensive than those listed in this
section, unless such rights have been legally waived or
terminated. This chapter does not prescribe all rights to a
parent of a minor child in this state. Unless required by law,
the rights of a parent of a minor child in this state may not be
limited or denied. This chapter may not be construed to apply to
a parental action or decision that would end life.

Section 6. Section 1014.05, Florida Statutes, is created to
read:

1014.05 School district notifications on parental rights.—

(1) Each district school board shall, in consultation with
parents, teachers, and administrators, develop and adopt a
policy to promote parental involvement in the public school
system. Such policy must include:

(a) A plan, pursuant to s. 1002.23, for parental
participation in schools to improve parent and teacher
cooperation in such areas as homework, school attendance, and
discipline.

(b) A procedure, pursuant to s. 1002.20(19)(b), for a

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parent to learn about his or her minor child's course of study, including the source of any supplemental education materials.

(c) Procedures for a parent to object to instructional materials, including all classroom materials and school activities, pursuant to s. 1006.28(2)(a)2., and a process for withdrawing his or her minor child from the activity, class, or program in which such materials or activities are used. Such objections may be based on beliefs regarding morality, sex, and religion or the belief that such materials or activities are harmful. The term "instructional materials" includes, but is not limited to, textbooks, workbooks and worksheets, handouts, software, applications, Internet courses, and any and all digital media available to students pursuant to their role as a student in public school.

(d) Procedures, pursuant to s. 1002.20(3)(d), for a parent to withdraw his or her minor child from any portion of the school district's comprehensive health education required under s. 1003.42(2)(n) that relates to sex education or instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality if the parent provides a written objection to his or her minor child's participation. Such procedures must provide for a parent to be notified in advance of such course content so that he or she may withdraw his or her minor child from those portions of the course.

(e) Procedures, pursuant to s. 1006.195(1)(a), for a parent to learn about the nature and purpose of clubs and activities offered at his or her minor child's school, including those that are extracurricular or part of the school curriculum.

(f) Procedures for a parent to learn about parental rights

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and responsibilities under general law, including all of the following:

1. Pursuant to s. 1002.20(3)(d), the right to opt his or her minor child out of any portion of the school district's comprehensive health education required under s. 1003.42(2)(n) that relates to sex education instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality.

2. A plan to disseminate information, pursuant to s. 1002.20(6), about school choice options, including open enrollment.

3. In accordance with s. 1002.20(3)(b), the right of a parent to exempt his or her minor child from immunizations.

4. In accordance with s. 1008.22, the right of a parent to review statewide, standardized assessment results.

5. In accordance with s. 1003.57, the right of a parent to enroll his or her minor child in gifted or special education programs.

6. In accordance with s. 1006.28(2)(a)1., the right of a parent to inspect school district instructional materials.

7. In accordance with s. 1008.25, the right of a parent to access information relating to the school district's policies for promotion or retention, including high school graduation requirements.

8. In accordance with s. 1002.20(14), the right of a parent to receive a school report card and be informed of his or her minor child's attendance requirements.

9. In accordance with s. 1002.23, the right of a parent to access information relating to the state public education

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system, state standards, report card requirements, attendance requirements, and instructional materials requirements.

10. In accordance with s. 1002.23(4), the right of a parent to participate in parent-teacher associations and organizations that are sanctioned by a district school board or the Department of Education.

11. In accordance with s. 1002.222(1)(a), the right of a parent to opt out of any district-level data collection relating to his or her minor child not required by law.

(2) A district school board may provide the information required in this section electronically or post such information on its website.

(3) A parent may request, in writing, from the district school superintendent the information required under this section. Within 10 days, the district school superintendent must provide such information to the parent. If the district school superintendent denies a parent's request for information or does not respond to the parent's request within 10 days, the parent may appeal the denial to the district school board. The district school board must place a parent's appeal on the agenda for its next public meeting. If it is too late for a parent's appeal to appear on the next agenda, the appeal must be included on the agenda for the subsequent meeting.

Section 7. Section 1014.06, Florida Statutes, is created to read:

1014.06 Parental consent for health care services.—

(1)(a) Except as otherwise provided by law, a health care practitioner, as defined in s. 456.001, may not provide or solicit or arrange to provide health care services or prescribe

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medicinal drugs to a minor child without first obtaining written parental consent.

(b) Except as otherwise provided by law, a person, as defined in s. 1.01, or an individual employed by such person may not provide or solicit or arrange to provide health care services or prescribe medicinal drugs to a minor child without first obtaining written parental consent.

(2) Except as otherwise provided by law or a court order, a provider, as defined in s. 408.803, may not allow a medical procedure to be performed on a minor child in its facility without first obtaining written parental consent.

(3) This section does not apply to an abortion, which is governed by chapter 390.

(4) This section does not apply to services provided by a clinical laboratory, unless the services are delivered through a direct encounter with the minor at the clinical laboratory facility. For purposes of this subsection, the term "clinical laboratory" has the same meaning as provided in s. 483.803.

(5) A health care practitioner or other person who violates this section is subject to disciplinary action pursuant to s. 408.813 or s. 456.072, as applicable, and commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 8. Paragraph (f) is added to subsection (3) of section 408.813, Florida Statutes, to read:

408.813 Administrative fines; violations.—As a penalty for any violation of this part, authorizing statutes, or applicable rules, the agency may impose an administrative fine.

(3) The agency may impose an administrative fine for a

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291 violation that is not designated as a class I, class II, class
292 III, or class IV violation. Unless otherwise specified by law,
293 the amount of the fine may not exceed \$500 for each violation.
294 Unclassified violations include:

295 (f) Violating the parental consent requirements of s.
296 1014.06.

297 Section 9. Paragraph (pp) is added to subsection (1) of
298 section 456.072, Florida Statutes, to read:

299 456.072 Grounds for discipline; penalties; enforcement.—

300 (1) The following acts shall constitute grounds for which
301 the disciplinary actions specified in subsection (2) may be
302 taken:

303 (pp) Failure to comply with the parental consent
304 requirements of s. 1014.06.

305 Section 10. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

- 3/2/20
Meeting Date

1634
Bill Number (if applicable)

Topic Parental Bill of Rights

Amendment Barcode (if applicable)

Name STEVE VERNON

Job Title BOARD MEMBER

Address 7631 Desert Sun Way
Lakewood Ranch, FL 34602
Street City State Zip

Phone 941-321-0616

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Citizens Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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)

March 2, 2020
Meeting Date

SB 1634
Bill Number (if applicable)

Topic Parental Rights

Amendment Barcode (if applicable)

Name Joan Fowinkle

Job Title Retired HS. English Teacher

Address 4068 Mc Laughlin
Street

Phone 850 228 4834

Tallahassee FL 32309
City State Zip

Email joaniefowinkle@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2020

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

CS/1634

Bill Number (if applicable)

Topic

Parents' Bill of Rights

Amendment Barcode (if applicable)

Name

Barbara Berry

Job Title

Address

2622 Noble Drive

Phone

850-728-3805

Street

Tallahassee

FL

32308

City

State

Zip

Email

hakataga171@outlook.com

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Myself and other likeminded parents

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/2/2020

Meeting Date

CS/1634

Bill Number (if applicable)

Topic PARENT'S BILL OF RIGHTS

Amendment Barcode (if applicable)

Name JOHN BERRY

Job Title

Address 2672 NOBLE DRIVE

Street

Phone 850-766-5527

TALLAHASSEE

City

FLA

State

32308

Zip

Email JOHN.BERRY@G.O.FL.COM

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing MYSELF AND LIKE MINDED PARENTS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-02-20

Meeting Date

11231

Bill Number (if applicable)

Topic Parental Rights

Amendment Barcode (if applicable)

Name Jonnie Blaylock

Job Title _____

Address 517 Sequoia Ave
Street

Phone _____

Ft. Walton Beach FL 32547
City State Zip

Email jonnieandbirdie@cox.net

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)

3-02-20

Meeting Date

11634

Bill Number (if applicable)

Topic Parental Rights

Amendment Barcode (if applicable)

Name Vallie Osborne

Job Title Educator

Address 1 Spencer Ct

Street

Phone _____

H. Walton Bch

City

FL

State

32547

Zip

Email v Osborne@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3/2/2020

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1634

Bill Number (if applicable)

Topic Parent's Bill Of Rights

Amendment Barcode (if applicable)

Name Patti Sullivan

Job Title _____

Address 187 Mabry Street

Phone 772-913-2375

Street

Sebastian

Florida

32958

Email pattisullivan77@gmail.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ParentalRights.org Florida (Florida Coordinator)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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

2 MARCH 2020

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1634

Bill Number (if applicable)

Topic PARENTAL RIGHTS

Amendment Barcode (if applicable)

Name BILL SNYDER

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 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
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-2

Meeting Date

He 34

Bill Number (if applicable)

Topic Parental Bill of Rights

Amendment Barcode (if applicable)

Name Ken Kneppmann

Job Title Associate

Address 201 W. Park

Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Conference Catholic Bishops

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/2/2020

Meeting Date

1634

Bill Number (if applicable)

Topic Parental Rights

Amendment Barcode (if applicable)

Name Ron Watson

Job Title Lobbyist

Address 3738 Mardon Way

Phone 850.567-1202

Street

Tallahassee

City

FL

State

32309

Zip

Email Watson.Strategies@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Freedom Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/20/20
Meeting Date

1634
Bill Number (if applicable)

Topic PARENTAL RIGHTS

Amendment Barcode (if applicable)

Name BEV KILMER

Job Title PRESIDENT

Address 301 E. COLLEGE AVE.
Street

Phone 850-933-6476

TALCAHASSEE FL 32301
City State Zip

Email bfree@freedom
speaks.us

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FREEDOM SPEAKS COALITION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

APPEARANCE RECORD

3.2-20

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB

1634

Bill Number (if applicable)

Topic

Parental Bill of Rights

Amendment Barcode (if applicable)

Name

Barry Webster

Job Title

Address

350 Milestone Drive

Phone

850-591-9877

Street

Tallahassee, FL

32312

City

State

Zip

Email

BarryJWebster@

aol.com

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Self-Concerned Parent

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2020

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1634

Bill Number (if applicable)

Topic Parents' Rights

Amendment Barcode (if applicable)

Name Isabel Ruano

Job Title

Address 2631 Yarmouth Lane

Street

Tallahassee

City

FL

State

32309

Zip

Phone

Email

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing N/A

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-2-20

Meeting Date

11034
Bill Number (if applicable)

Topic Parental Rights

Amendment Barcode (if applicable)

Name Ms Barbara Devane

Job Title Ms

Address 625 E. Bernard St
Street

Phone 251-4280

Tallahassee FL 32308
City State Zip

Email barbdevane1@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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)

03/02/20

Meeting Date

1639

Bill Number (if applicable)

Topic PARENTAL RIGHTS

Amendment Barcode (if applicable)

Name BEATRIZ MACIA

Job Title CITIZEN

Address 2632 BEDFORD WAY
Street

Phone 850-688-8914

TALLAHASSEE FL 32308-3804
City State Zip

Email maciab50@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-2-20

Meeting Date

1634

Bill Number (if applicable)

Topic

Parental Rights

Amendment Barcode (if applicable)

Name

Devon Graham

Job Title

Assistant State Director (American Atheists)

Address

2624 Malin Dr.

Phone

Street

Tallahassee

FL

State

32309

Zip

Email

devon.graham@atheists.org

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

(The Chair will read this information into the record.)

Representing

American Atheists

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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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)

3/2/2020

Meeting Date

SB1634

Bill Number (if applicable)

Topic Parents Rights

Amendment Barcode (if applicable)

Name Lakey Love

Job Title _____

Address 1511 Melvin St

Street

Phone 850-345-0018

Tallahassee FL 32301

City

State

Zip

Email lakey@lovejustworks.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/2/20

Meeting Date

SB 1634

Bill Number (if applicable)

Topic Few Parents Dictating School Curriculum

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director

Address 4343 West Flagler St.

Phone 786-363-4436

Street

Miami

FL

33134

Email kgross@aclufl.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing American Civil Liberties Union 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

03/02/2020

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1634

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Nataly Malco Lopez

Job Title Student

Address 509B W Jefferson

Phone _____

Street

Tallahassee

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)

3/2/20

Meeting Date

1636

Bill Number (if applicable)

Topic Parental Rights

Amendment Barcode (if applicable)

Name Trish Neely

Job Title Consultant

Address 2024 Shangri La Lane

Phone 850 322 3317

Tally FL 32303

City

State

Zip

Email

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing League Women Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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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)

3/2/2020

Meeting Date

1634

Bill Number (if applicable)

Topic

Parental Rights

Amendment Barcode (if applicable)

Name

Ida V. Eskamani

Job Title

Address

Street

Phone

City

State

Zip

Email

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

(The Chair will read this information into the record.)

Representing

Organize Florida + New Florida majority

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)

3/2/20

Meeting Date

1634

Bill Number (if applicable)

Topic Parental Rights

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Policy Director

Address P.O. Box 10788

Phone 334-224-4309

Street

Tallahassee

FL

32302

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Southern Poverty Law Action 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.

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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)

3-2-2020
Meeting Date

CS/SB 1634
Bill Number (if applicable)

Topic PARENTAL RIGHTS

Amendment Barcode (if applicable)

Name JIM AKIN

Job Title EXECUTIVE DIRECTOR

Address 1931 DELWOOD DRIVE
Street

Phone 850-224-2400

TALLAHASSEE FL 32303
City State Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing NATIONAL ASSN. OF SOCIAL WORKERS - 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)

3/2/20

Meeting Date

1634

Bill Number (if applicable)

Topic PARENTAL RIGHTS

Amendment Barcode (if applicable)

Name JONATHAN WEBBER

Job Title Deputy Director

Address 1700 W. Monroe St. #11-286

Phone 954-593-4449

Street

TALLAHASSEE

City

FL

State

32303

Zip

Email JWEBBER@FCVOTERS.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing FLORIDA CONSERVATION VOTERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/2/2020

Meeting Date

SB1634

Bill Number (if applicable)

Topic Parental Rights

Amendment Barcode (if applicable)

Name Charo Valero

Job Title Policy Director

Address 1951 NW 7th Ave

Street

Miami

City

FL

State

33138

Zip

Phone (786) 442-8199

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Latina Institute for Repro. Health

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)

March 9th, 2020
Meeting Date

SB 1634
Bill Number (if applicable)

Topic Parental Rights

Amendment Barcode (if applicable)

Name Annie Filkowski

Job Title Legislative Representative

Address

Phone (239) 849-2644

Street

Tallahassee

FL

32311

City

State

Zip

Email anniejac.filkowski@ppsentfl.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing The Florida Alliance of Planned Parenthood Affiliates

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)

3/2/20

Meeting Date

SB 1634

Bill Number (if applicable)

Topic "Parental Rights"

Amendment Barcode (if applicable)

Name Jon Harris Maurer

Job Title Public Policy Dir.

Address 201 E. Park Ave., Ste. 200

Street

Phone 850-681-0980

Tallahassee FL 32301

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Equality Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2 March 2020
Meeting Date

1634
Bill Number (if applicable)

Topic Parental Rights

Amendment Barcode (if applicable)

Name Melina Rayna Sranhild Farley Barrott

Job Title Legislative Director

Address 8689 SE 69 Ter

Phone 352-226-7477

Street

Trenton
City

FL
State

32693
Zip

Email _____

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

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/2/2020
Meeting Date

1634
Bill Number (if applicable)

Topic Parental Rights

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Exec. Director

Address 579 E. Coll St.

Phone 850-321-9386

Tallahassee FL 32301
City State Zip

Email kcfep@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing FL Center for Fiscal & Economic Policy

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
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3/2/20

Meeting Date

SB 1634

Bill Number (if applicable)

Topic "Parental Rights"

Amendment Barcode (if applicable)

Name Devon Graham

Job Title volunteer

Address 2750 Taylor Ave., Ste. A-36
Street

Phone _____

Orlando FL 32806
City State Zip

Email fletcher.flacounseling@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Counseling 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

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3-2-20
Meeting Date

1634
Bill Number (if applicable)

Topic Parental Rights

Amendment Barcode (if applicable)

Name Brian Lee

Job Title Florida Legislative Director

Address 1203 Buckingham Dr.
Street

Phone 850-766-7309

Tallahassee, FL 32309
City State Zip

Email blee@fwwatch.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Food & Water Watch

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3-2-20

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1634

Bill Number (if applicable)

Topic SB 1634

Amendment Barcode (if applicable)

Name Parent's Bill of Rights

Job Title Teacher

Address 2711 Allen Rd

Street

Tallahassee FL

City

State

32312

Zip

Phone (850) 736-0417

Email ceb13k@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Tallahassee Coalition for Transgender Liberation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-2-20

~~2-20-20~~

Meeting Date

1634

~~1634~~

Bill Number (if applicable)

Topic

~~Govt. Affairs~~ Parents right

Amendment Barcode (if applicable)

Name

Greg Pound

Job Title

Address

9166 Sunrise Dr.

Phone

Street

Largo

FL

State

33773

Zip

Email

Speaking:

☐

For

☐

Against

☒

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Saving families

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/CS/SB 1876

INTRODUCER: Rules Committee; Innovation, Industry, and Technology Committee; Agriculture Committee; and Senator Montford

SUBJECT: State Hemp Program

DATE: March 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Becker	Becker	AG	Fav/CS
2.	Oxamendi	Imhof	IT	Fav/CS
3.	Becker	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1876 makes changes to the state hemp program. Specifically, the bill:

- Includes hemp extract in the definition of “food” in the Florida Food Safety Act;
- Requires persons who operate minor food outlets (which sell only commercially prepackaged food that is not potentially hazardous, or not time or temperature controlled for safety, if the shelf space for those items does not exceed 12 total linear feet) that sell hemp extract to obtain a food permit from the Department of Agriculture and Consumer Services (department);
- Excludes a substance or compound that is intended for ingestion which contains less than trace amounts of cannabidiol and includes a substance or compound that is intended for inhalation in the definition of “hemp extract;”
- Exempts synthetic cannabidiol (CBD) oil and seeds and seed-derived ingredients that are generally recognized as safe by the United States Food and Drug Administration from the definition of “hemp extract;”
- Provides that, if the plan submitted by the department to the Secretary of the U.S. Department of Agriculture (USDA) is rejected and the plan may be revised without statutory

changes, the department must consult with the Administration Commission¹ and submit an amended plan to the USDA.

- Modifies how delta-9-tetrahydrocannabinol (THC) is measured in hemp extract;
- Clarifies that a hemp extract container must contain the number of milligrams of each cannabinoid per serving;
- Repeals the requirement that a package of hemp extract must contain a statement that the product's total THC concentration does not exceed 0.3 percent on a dry-weight basis.
- Provides that hemp extract that does not meet certain requirements is considered adulterated or misbranded;
- Prohibits the sale of products that are intended for inhalation and made from hemp extract to a person who is under 21 years of age;
- Provides that the report to the department's monthly report to the USDA must include total acreage and the amount of hemp planted, harvested, and if applicable, destroyed by each license;
- Allows the department to contract with entities to provide sample collection, laboratory testing, and disposal services;
- Provides a process for the department to notify a licensee when hemp is produced with a THC level that exceeds 0.3 percent as well as removal and destruction procedures. Damages may not be awarded for the destruction of the plants;
- Requires that the department's rules for disposal of hemp plants must be in accordance with the federal Controlled Substances Act and regulations of the Drug Enforcement Administration.
- Provides staggered initial appointment terms for members of the Industrial Hemp Council (council);
- Provides that the chair of the council serves for a one-year term; and
- Requires the department to submit a report to the Legislature by December 1, 2020 providing recommendations for initial license and license renewal fees, including a separate cost breakdown if the fees do not cover cost of inspections and testing.

The bill takes effect upon becoming law.

II. Present Situation:

Industrial Hemp

Industrial hemp is a *Cannabis sativa* plant (cannabis) that has been cultivated for approximately 10,000 years as a fiber and grain crop. It is used for fiber, building materials, forages (animal feed), and pain relief as a topical oil.²

¹ Section 14.202, F.S. The Administration Commission is part of the Executive Office of the Governor and is composed of the Governor and Cabinet (the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, as specified in s. 4, Art. IV of the State Constitution).

² See University of Florida, *UF/IFAS Industrial Hemp Pilot Project* at: <https://programs.ifas.ufl.edu/hemp/> (last visited February 10, 2020).

Cannabis

Cannabis is a Schedule I controlled substance.³ It is a felony of the third degree⁴ to sell, manufacture, deliver, or possess with intent to sell, manufacture, or deliver, cannabis in Florida.⁵ As a controlled substance in ch. 893, F.S., “cannabis” is defined to mean: all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include “marijuana,” as defined in s. 381.986, F.S., if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with s. 381.986, F.S., [the Compassionate Medical Cannabis Act of 2014], hemp as defined in s. 581.217, F.S., [the state hemp program], or industrial hemp as defined in s. 1004.4473, F.S., [industrial hemp pilot projects].⁶

Medical Marijuana

On November 4, 2016, Amendment 2 was approved by the electors and is codified in Article X, section 29, of the Florida Constitution. This section of the constitution became effective on January 3, 2017, and created several exemptions from criminal and civil liability for:

- Qualifying patients medically using marijuana in compliance with the amendment;
- Physicians, solely for issuing physician certifications with reasonable care and in compliance with the amendment; and
- Medical marijuana treatment centers (MMTCs), their agents, and employees for actions or conduct under the amendment and in compliance with rules promulgated by the Florida Department of Health.

Subsequently, the Legislature passed SB 8-A in Special Session A of 2017.⁷ The bill revised the Compassionate Medical Cannabis Act of 2014⁸ in s. 381.986, F.S., to implement Article X, section 29 of the Florida Constitution.

The term medical marijuana includes two distinct forms of the plant genus *Cannabis*:

- Marijuana without any limitation or restriction on the percentage of THC;⁹ and
- “Low-THC cannabis” in which the percentage of THC is limited to 0.8 percent or less and has more than 10 percent of cannabidiol¹⁰ weight for weight.¹¹

³ Section 893.03(1)(c)7., F.S.

⁴ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

⁵ Section 893.13(1)(a)2., F.S.

⁶ Section 893.02(3), F.S.

⁷ Chapter 2017-232, Laws of Fla.

⁸ Chapter 2014-157, Laws of Fla.

⁹ THC, or tetrahydrocannabinol, is the main active ingredient in cannabis and is responsible for most of the psychological effects of cannabis.

¹⁰ Cannabidiol (CBD) is a chemical compound, known as a cannabinoid, found in cannabis. CBD does not have the same psychoactivity as THC. See Michael J Breus, *Despite What You May Think... CBD Is Not Weed* (Sept. 20, 2018), Psychology Today, available at: <https://www.psychologytoday.com/us/blog/sleep-newzzz/201809/despite-what-you-may-think-cbd-is-not-weed> (last visited February 10, 2020).

¹¹ See ss. 381.986(1)(e) and (f), F.S.

The Coalition for Medical Marijuana Research and Education located at the H. Lee Moffitt Cancer Center and Research Institute, Inc., is authorized to conduct medical marijuana research and education.¹²

A MMTC and a qualified patient or caregiver are specifically exempt from the criminal prohibition against the possession of cannabis.¹³

2014 Federal Farm Bill and State Industrial Hemp Pilot Programs

The Agricultural Improvement Act of 2014 (2014 Farm Bill) defined industrial hemp and allowed state departments of agriculture or universities to grow and produce industrial hemp as part of research or pilot programs. Specifically, the law allowed universities and state departments of agriculture to grow or cultivate industrial hemp if:

- The industrial hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research; and
- The growing or cultivating of industrial hemp is allowed under the laws of the state in which such institution of higher education or state department of agriculture is located and such research occurs.¹⁴

The 2014 Farm Bill defines “industrial hemp” to mean:

...the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.¹⁵

Section 1004.4473, F.S., authorizes the Florida Department of Agriculture and Consumer Services (department) to oversee the development of industrial hemp pilot projects for the Institute of Food and Agricultural Sciences (IFAS) at the University of Florida, Florida Agricultural and Mechanical University, any land grant university in the state that has a college of agriculture, and any Florida College System institution or state university that has an established agriculture, engineering, or pharmacy program.¹⁶ The purpose of the pilot projects is to cultivate, process, test, research, create, and market safe and effective commercial applications for industrial hemp in the agricultural sector in this state. The department has adopted a rule addressing safety, compliance, and accountability and other concerns.¹⁷

¹² Section 1004.4351, F.S.

¹³ See s. 381.986(14), F.S.

¹⁴ Agricultural Improvement Act of 2014, Pub. L. No. 113-79, s. 7606, 128 Stat. 912 (2014) (codified at 7 U.S.C. s. 5940).

¹⁵ *Id.*

¹⁶ Section 1004.4473(2)(a), F.S.

¹⁷ Fla. Admin. Code R. 5B-57.013 (2018).

2018 Federal Farm Bill

In the 2018 Farm Bill, the U.S. Congress legalized industrial hemp as an agricultural product by removing hemp's classification as a controlled substance.¹⁸ The 2018 Farm Bill defines "hemp" to mean:

...the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.¹⁹

The 2018 Farm Bill allows a state department of agriculture or an Indian tribe to submit a plan to the United States Secretary of Agriculture and apply for primary regulatory authority over the production of hemp in their state or tribal territory. A state or tribal plan must include:

- A procedure for tracking land upon which hemp will be produced;
- Testing methods for determining THC concentration levels of hemp;
- Methods for effective disposal of noncompliant products;
- Enforcement procedures;
- Inspection procedures; and
- Certification procedures for the persons authorized to produce hemp producers, test hemp products, inspect hemp producers, and enforce the provisions of the state or tribal plan.²⁰

State Hemp Program

The state hemp program was created within the department to regulate the cultivation of hemp in Florida.²¹

Section 581.217(3)(d), F.S., defines the term "hemp" to mean:

...the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, that has a total delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

Section 581.217(3)(e), F.S., defines the term "hemp extract" to mean "a substance or compound intended for ingestion that is derived from or contains hemp and that does not contain other controlled substances."

¹⁸ Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 12619, 132 Stat. 409 (2018) (codified at 21 U.S.C. 802(16)).

¹⁹ Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 10113, 132 Stat. 409 (2018) (codified at 7 U.S.C. s. 1639o).

²⁰ Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 10113, 132 Stat. 409 (2018) (codified at 7 U.S.C. s. 1639p).

²¹ See s 581.217, F.S.

The department is required to seek federal approval of the state plan for the regulation of the cultivation of hemp with the United States Secretary of Agriculture (USDA) in accordance with the Agricultural Improvement Act of 2018 within 30 days of adopting rules.²² A license is required to cultivate hemp²³ and to obtain a license a person must apply to the department and submit a full set of fingerprints.²⁴ A person seeking to cultivate hemp must provide the department with a legal land description and GPS coordinates of where the hemp will be cultivated.²⁵ The department must deny an application under certain circumstances.²⁶

Florida Seed Law

The duty to administer the Florida Seed Law²⁷ and enforce its provisions and requirements is vested in the department.²⁸ The Florida Seed Law is intended as a comprehensive and exclusive regulation of seed. The department must sample, inspect, analyze, and test agricultural, vegetable, flower, tree, or shrub seed transported, sold, offered or exposed for sale, or distributed in the state for sowing or planting purposes.²⁹

Generally Recognized as Safe

Under sections 201(s) and 409 of the Federal Food, Drug and Cosmetic Act, any substance that is intentionally added to food is a food additive that is subject to premarket review and approval by the U.S. Food and Drug Administration (FDA). A substance may not be offered for sale as food unless the substance is generally recognized, among qualified experts, as having been adequately shown to be safe under the conditions of its intended use, or unless the use of the substance is otherwise excepted from the definition of a food additive.³⁰ The FDA has evaluated three products by Fresh Hemp Foods, Ltd. and determined that hulled hemp seed, hemp seed protein powder, and hemp seed oil were generally recognized as safe.³¹ This applies to products from other companies if they are manufactured in a way that is consistent with the evaluated products and the products meet the listed specifications.³²

Hemp Extract

Hemp extract is a substance or compound intended for ingestion that is derived from or contains hemp and that does not contain controlled substances.³³ Hemp extract may only be sold in in this

²² Section 581.217(4), F.S.

²³ Section 581.217(5)(a), F.S.

²⁴ Section 581.217(5)(b), F.S.

²⁵ Section 581.217(5)(d), F.S.

²⁶ Section 581.217(5)(e), F.S.

²⁷ Chapter 578, F.S.

²⁸ Section 578.11(1), F.S.

²⁹ Section 578.11(1), F.S.

³⁰ See U.S. Food & Drug Administration *Generally Recognized as Safe* at: <https://www.fda.gov/food/food-ingredients-packaging/generally-recognized-safe-gras> (last visited February 10, 2020).

³¹ See *FDA Responds to Three GRAS Notices for Hemp-Seed Derived Ingredients for Use in Human Food* at: <https://www.fda.gov/food/generally-recognized-safe-gras/about-gras-notification-program> (last visited February 10, 2020).

³² *Id.*

³³ Section 581.217(3)(e), F.S.

state if the product has a certificate of analysis prepared by an independent testing laboratory and is distributed or sold in packaging that meets certain requirements.³⁴

III. Effect of Proposed Changes:

CS/CS/CS/SB 1876 makes a number of changes to the state hemp program.

The bill amends s. 500.03(1)(n), F.S., to include hemp extract in the definition of “food” in the Florida Food Safety Act.

The bill amends s. 500.12(1)1., F.S., to require persons who operate minor food outlets³⁵ that sell hemp extract to obtain a food permit from the department.

The definition of the term “hemp extract” in s. 581.217(3)(e), F.S., is amended by the bill to exclude substances intended for ingestion that contain less than trace amount of cannabidiol and include the substances or compounds intended for inhalation. Current law limits the definition of the term to products intended for consumption.

Section 581.217(3)(e), F.S., is also amended to exclude synthetic CBD and seeds and seed-derived ingredients that are generally recognized as safe by the FDA from the definition of “hemp extract.”

The bill amends s. 581.217(4), F.S., revises the requirements for the plan the department must submit for the approval of the Secretary of the USDA. The bill provides that, if the plan submitted to the Secretary of the USDA is rejected and the plan may be revised without statutory changes, the department must consult with the Administration Commission³⁶ and submit an amended plan to the USDA.

The bill removes the requirement in s. 581.217(7), F.S., that hemp extract be tested on a dry-weight basis. It also clarifies that the distribution and labeling requirements in s. 581.217(7), F.S., apply to containers of hemp extract instead of to packaging. The bill requires that a container of hemp extract must contain the number of milligrams of each cannabinoid per serving.

The bill also amends s. 581.217(7), F.S., to repeal the requirement that a package of hemp extract must contain a statement that the products total THC concentration does not exceed 0.3 percent on a dry-weight basis.

The bill provides that hemp extract sold in violation of s. 581.217, F.S. is considered misbranded or adulterated.

³⁴ Section 581.217(7), F.S.

³⁵ Section 500.12(1)(a), F.S., exempts the operator of a minor food outlet from the requirement to have food permit issued by the department. A minor food mart sells commercially prepackaged food that is not potentially hazardous and not time or temperature controlled for safety, if the shelf space for those items does not exceed 12 total linear feet and other food is sold by the minor food outlet.

³⁶ *Supra*, note 1.

The bill prohibits the sale of products that are intended for inhalation and made from hemp extract to a person who is under 21 years of age. However, the bill does not provide a penalty for a violation of this prohibition.

Section 581.217(9), F.S., dealing with the monthly report the department must submit to the USDA, is amended by the bill to require the department to include in the report the total acreage of hemp planted, harvested, and if applicable, disposed of by each licensee.

Section 581.217(11), F.S., is amended by the bill to allow the department to contact with entities to provide sample collection, laboratory testing, and disposal services.

The bill requires the department to notify a licensee when hemp is produced with a THC level that exceeds the allowable limit of 0.3 percent. Under the bill, the licensee must remove and destroy the plants that are out of compliance within 10 days of receiving the notice from the department. If the licensee fails to comply, the department must destroy the plants at the expense of the licensee. Damages may not be awarded to the licensee for the destruction of the plants.

The bill amends s. 581.217(12), F.S., dealing with the provisions that the department must include in the rules for the State Hemp Program, to

- Delete the requirement that the department initiate rulemaking by August 1, 2019.
- Require that the department's rules for disposal of hemp plants must be in accordance with the federal Controlled Substances Act and regulations of the Drug Enforcement Administration.

Section 581.217(14), F.S., relating to the Industrial Hemp Council (council), to provide:

- That a function of the council is to provide information to the department.
- That members of the council serve four-year terms.
- Staggered initial appointment terms for members of the council.
- That the chair of the council serves for a one-year term.
- That the department must submit a report to the Legislature by December 1, 2020 with recommendations for initial license and license renewal fees, including a separate cost breakdown if the fees do not cover cost of inspections and testing.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Small food retailers will now need to obtain a food permit if they sell hemp extract.

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: 500.03, 500.12, and 581.217.

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 March 2, 2020:

The CS excludes substances intended for ingestion that contain less than trace amount of cannabidiol from the definition of hemp extract.

CS/CS by Innovation, Industry, and Technology on February 17, 2020:**The CS:**

- Deletes from the bill the provision to removing a reference in current law to the Department of Health’s medical marijuana regulations in the definition of the term “contaminants unsafe for human consumption.”
- Provides that, if the plan submitted by the Department of Agriculture and Consumer Services (DACS) to the Secretary of the U.S. Department of Agriculture (USDA) is rejected and the plan may be revised without statutory changes, the DACS must consult with the Administration Commission and submit an amended plan to the USDA.
- Repeals the requirement that a package of hemp extract must contain a statement that the products total THC concentration does not exceed 0.3 percent on a dry-weight basis.
- Requires the DACS to include the total acreage of hemp planted, harvested, and if applicable, disposed of by each licensee in its monthly report to the USDA.
- Deletes the requirement that the DACS initiate rulemaking by August 1, 2019.
- Requires that the DACS’s rules disposal of hemp plants must be in accordance with the federal Controlled Substances Act and regulations of the Drug Enforcement Administration.
- Provides that a function of the Industrial Hemp Council (Council) is to provide information to the DACS.
- Provides that members of the council serve four-year terms.
- Provides staggered initial appointment terms for members of the Council.
- Provides that the chair of the council serves for a one-year term.
- Requires the DACS to submit a report to the Legislature by December 1, 2020 providing recommendations for initial license and license renewal fees, including a separate cost breakdown if the fees do not cover cost of inspections and testing.
- Changes the effective date to upon becoming law (instead of on July 1, 2020).

CS by Agriculture on February 4, 2020:

- Reverts seed certification requirements back to current law;
- Adds hemp extract to the definition of “food” in the Florida Food Safety Act;
- Requires small food retailers who are normally exempt from a food permit to obtain one if they sell hemp extract.
- Adds products that are inhaled to the definition of “hemp extract” and prohibits those products from being sold to someone under the age of 21;
- Deletes the prohibition on selling products that contain hemp extract to someone under the age of 18;
- Removes synthetic CBD oil from the definition of “hemp extract;” and
- Allows the department to contract for sample collection, laboratory testing, and disposal services.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



492230

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2020	.	
	.	
	.	
	.	

The Committee on Rules (Montford) recommended the following:

Senate Amendment

Delete line 95
and insert:
for ingestion, containing more than trace amounts of
cannabidiol, or for inhalation which ~~that~~ is derived from or

By the Committees on Innovation, Industry, and Technology; and
Agriculture; and Senators Montford and Gibson

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1 A bill to be entitled
2 An act relating to the state hemp program; amending s.
3 500.03, F.S.; revising the definition of the term
4 "food" to include hemp extract for purposes of the
5 Florida Food Safety Act; amending s. 500.12, F.S.;
6 providing that a person operating a minor food outlet
7 that sells hemp extract is not exempt from certain
8 food permit requirements; amending s. 581.217, F.S.;
9 redefining the term "hemp extract"; directing the
10 Department of Agriculture and Consumer Services, in
11 consultation with the Administration Commission, to
12 submit an amended plan for the state program to the
13 United States Secretary of Agriculture under certain
14 circumstances; providing that hemp extract that does
15 not meet certain requirements will be considered
16 adulterated or misbranded; prohibiting the sale of
17 certain hemp extract products to individuals under a
18 specified age; revising the contents of the
19 department's required monthly report to the United
20 States Secretary of Agriculture; authorizing the
21 department to contract with entities to provide
22 certain collection, testing, and disposal services;
23 providing that such contracts are exempt from
24 specified provisions; requiring the director of the
25 Division of Plant Industry to notify a licensee of
26 certain findings; requiring such licensee or, if the
27 licensee fails to act within a specified timeframe,
28 authorizing the director, to remove and destroy
29 certain plants; requiring that expenses associated

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 with such removal or destruction be assessed,
31 collected, and enforced against the licensee;
32 prohibiting the award of certain damages; requiring
33 program rules to include specified sampling and
34 disposal procedures; providing terms for advisory
35 council members and the council chair; providing
36 requirements for filling advisory council vacancies;
37 directing the department to submit a report that
38 provides recommendations for program fees to the
39 Legislature by a specified date; providing an
40 effective date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. Paragraph (n) of subsection (1) of section
45 500.03, Florida Statutes, is amended to read:
46 500.03 Definitions; construction; applicability.—
47 (1) For the purpose of this chapter, the term:
48 (n) "Food" includes:
49 1. Articles used for food or drink for human consumption;
50 2. Chewing gum;
51 3. Articles used for components of any such article;
52 4. Articles for which health claims are made, which claims
53 are approved by the Secretary of the United States Department of
54 Health and Human Services and which claims are made in
55 accordance with s. 343(r) of the federal act, and which are not
56 considered drugs solely because their labels or labeling contain
57 health claims; ~~and~~
58 5. Dietary supplements as defined in 21 U.S.C. s.

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321(ff) (1) and (2); and

6. Hemp extract as defined in s. 581.217.

The term includes any raw, cooked, or processed edible substance; ice; any beverage; or any ingredient used, intended for use, or sold for human consumption.

Section 2. Paragraph (a) of subsection (1) of section 500.12, Florida Statutes, is amended to read:

500.12 Food permits; building permits.—

(1)(a) A food permit from the department is required of any person who operates a food establishment or retail food store, except:

1. Persons operating minor food outlets that sell food, except hemp extract, that is commercially prepackaged, not potentially hazardous, and not time or temperature controlled for safety, if the shelf space for those items does not exceed 12 total linear feet and no other food is sold by the minor food outlet.

2. Persons subject to continuous, onsite federal or state inspection.

3. Persons selling only legumes in the shell, either parched, roasted, or boiled.

4. Persons selling sugar cane or sorghum syrup that has been boiled and bottled on a premise located within the state. Such bottles must contain a label listing the producer's name and street address, all added ingredients, the net weight or volume of the product, and a statement that reads, "This product has not been produced in a facility permitted by the Florida Department of Agriculture and Consumer Services."

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Section 3. Paragraph (e) of subsection (3) and subsections (4), (7), (9), (11), (12), and (14) of section 581.217, Florida Statutes, are amended, and subsection (15) is added to that section, to read:

581.217 State hemp program.—

(3) DEFINITIONS.—As used in this section, the term:

(e) "Hemp extract" means a substance or compound intended for ingestion or inhalation which ~~that~~ is derived from or contains hemp and which ~~that~~ does not contain other controlled substances. The term does not include synthetic CBD or seeds or seed-derived ingredients that are generally recognized as safe by the United States Food and Drug Administration.

(4) FEDERAL APPROVAL.—The department shall seek approval of the state plan for the regulation of the cultivation of hemp with the United States Secretary of Agriculture in accordance with 7 U.S.C. s. 1639p within 30 days after adopting rules. If the state plan is not approved by the United States Secretary of Agriculture, the Commissioner of Agriculture, in consultation with and with final approval from the Administration Commission, shall develop a recommendation to amend the state plan and submit the recommendation to the Legislature. If revisions to the state plan may be made without statutory changes, the department, in consultation with and with final approval from the Administration Commission, must submit an amended plan to the United States Secretary of Agriculture.

(7) DISTRIBUTION AND RETAIL SALE OF HEMP EXTRACT.—

(a) Hemp extract may only be distributed and sold in the state if the product:

1. (a) Has a certificate of analysis prepared by an

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independent testing laboratory that states:

~~a.1-~~ The hemp extract is the product of a batch tested by the independent testing laboratory;

~~b.2-~~ The batch contained a total delta-9-tetrahydrocannabinol concentration that did not exceed 0.3 percent ~~on a dry-weight basis~~ pursuant to the testing of a random sample of the batch; and

~~c.3-~~ The batch does not contain contaminants unsafe for human consumption.

~~2.(b)-~~ Is distributed or sold in a container ~~packaging~~ that includes:

~~a.1-~~ A scannable barcode or quick response code linked to the certificate of analysis of the hemp extract batch by an independent testing laboratory;

~~b.2-~~ The batch number;

~~c.3-~~ The Internet address of a website where batch information may be obtained;

~~d.4-~~ The expiration date; and

~~e.5-~~ The number of milligrams of each marketed cannabinoid ~~per serving hemp extract; and~~

~~6. A statement that the product contains a total delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.~~

(b) Hemp extract distributed or sold in violation of this section shall be considered adulterated or misbranded pursuant to chapter 500, chapter 502, or chapter 580.

(c) Products that are intended for inhalation and contain hemp extract may not be sold in this state to a person who is under 21 years of age.

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(9) DEPARTMENT REPORTING.—The department shall submit monthly to the United States Secretary of Agriculture a report of the locations in the state where hemp is cultivated or has been cultivated within the past 3 calendar years. The report must include the contact information for each licensee and the total acreage of hemp planted, harvested, and, if applicable, disposed of by each licensee.

(11) ENFORCEMENT.—

(a) The department shall enforce this section.

(b) Every state attorney, sheriff, police officer, and other appropriate county or municipal officer shall enforce, or assist any agent of the department in enforcing, this section and rules adopted by the department.

(c) The department, or its agent, is authorized to enter any public or private premises during regular business hours in the performance of its duties relating to hemp cultivation.

(d) The department shall conduct random inspections, at least annually, of each licensee to ensure that only certified hemp seeds are being used and that hemp is being cultivated in compliance with this section. The department may contract with entities to provide sample collection, laboratory testing, and disposal services to implement this section. The contracts are exempt from chapter 287.

(e) If the department finds that *Cannabis sativa L.* was produced with a total delta-9-tetrahydrocannabinol concentration that exceeds 0.3 percent, the director shall notify the licensee of such result. The licensee shall, within 10 days after receiving the notice, cause the removal and destruction of the plants in accordance with methods adopted by the department. If

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the licensee refuses or neglects to comply with the terms of the notice within 10 days after receiving it, the director or her or his authorized representative may, under authority of the department, proceed to destroy the plants. The expense of the removal or destruction shall be assessed, collected, and enforced against the licensee by the department. Damages may not be awarded to the licensee for the destruction of the plants under this paragraph.

(12) RULES.—~~By August 1, 2019,~~ The department, in consultation with the Department of Health and the Department of Business and Professional Regulation, shall initiate rulemaking to administer the state hemp program. The rules must provide for:

(a) A procedure that uses post-decarboxylation or other similarly reliable methods and a measure of uncertainty for testing the delta-9-tetrahydrocannabinol concentration of cultivated hemp. This procedure must meet the requirements of the rules adopted by the United States Department of Agriculture.

(b) A procedure for the effective disposal of plants, whether growing or not, that are cultivated in violation of this section or department rules, and products derived from those plants. The procedure must provide for the disposal of such plants in accordance with the federal Controlled Substances Act and regulations of the Drug Enforcement Administration.

(14) INDUSTRIAL HEMP ADVISORY COUNCIL.—An Industrial Hemp Advisory Council, an advisory council as defined in s. 20.03, is established to provide information, advice, and expertise to the department with respect to plans, policies, and procedures

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applicable to the administration of the state hemp program.

(a) The advisory council is adjunct to the department for administrative purposes.

(b) The advisory council shall be composed of all of the following members:

1. Two members appointed by the Commissioner of Agriculture.

2. Two members appointed by the Governor.

3. Two members appointed by the President of the Senate.

4. Two members appointed by the Speaker of the House of Representatives.

5. The dean for research of the Institute of Food and Agricultural Sciences of the University of Florida or his or her designee.

6. The president of Florida Agricultural and Mechanical University or his or her designee.

7. The executive director of the Department of Law Enforcement or his or her designee.

8. The president of the Florida Sheriffs Association or his or her designee.

9. The president of the Florida Police Chiefs Association or his or her designee.

10. The president of the Florida Farm Bureau Federation or his or her designee.

11. The president of the Florida Fruit and Vegetable Association or his or her designee.

(c) Each advisory council member shall be appointed to a 4-year term, and any vacancy in the membership of the council must be filled in the same manner as the original appointment for the

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233 remainder of the unexpired term. For the purpose of achieving
234 staggered terms, the initial members appointed to the council
235 shall serve the following terms:

- 236 1. Four years for members appointed by the Governor.
237 2. Three years for members appointed by the President of
238 the Senate or the Speaker of the House of Representatives.
239 3. Three years for members appointed by the Commissioner of
240 Agriculture.

- 241 4. Two years for all other appointed members.
242 (d)(e) The advisory council shall elect by a two-thirds
243 vote of the members one member to serve as chair of the council.
244 The chair shall serve for a term of 1 year.

245 (e)(d) A majority of the members of the advisory council
246 constitutes a quorum.

247 (f)(e) The advisory council shall meet at least once
248 annually at the call of the chair.

249 (g)(f) Advisory council members shall serve without
250 compensation and are not entitled to reimbursement for per diem
251 or travel expenses.

252 (15) FEES.—By December 1, 2020, the department shall submit
253 a report to the President of the Senate and the Speaker of the
254 House of Representatives which provides recommendations for
255 initial license application fees and license renewal fees
256 sufficient to cover the costs of implementing and administering
257 this section. If such fees do not cover the costs of inspections
258 and testing, the department shall include a separate cost
259 breakdown for any other program fees that the department
260 recommends and anticipates are necessary.

261 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)

3-2-2020

Meeting Date

1876
Bill Number (if applicable)

492230
Amendment Barcode (if applicable)

Topic Item P

Name Tanya Bailey

Job Title Veteran Liaison

Address 132 Lagoon Rd
Street

Phone 757-788-9496

Winter Haven FL 33884
City State Zip

Email bailey.tanyam@gmail.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Voices for Veterans

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-2-2020

Meeting Date

1876

Bill Number (if applicable)

492230

Amendment Barcode (if applicable)

Topic Hemp

Name Jodi James

Job Title Legislative Director

Address 1375 Cypress Ave

Street

Melbourne

City

FL

State

32935

Zip

Phone 321 890 7802

Email jodi@FLCAN.org

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Cannabis Action Network

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

7/2/20

Meeting Date

1876

Bill Number (if applicable)

Topic State Hemp Program - CBD

499230

Amendment Barcode (if applicable)

Name Melissa Villar

Job Title Executive Director

Address PO Box 11254

Street

TEH

City

FL

State

32202

Zip

Phone (810) 354-8424

Email NORMLTallahas
eg maliron

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing NORM Tallahassee

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

March 2, 2020
Meeting Date

1876
Bill Number (if applicable)

Topic Hemp

492230
Amendment Barcode (if applicable)

Name Grace Lovett

Job Title Government Affairs VP

Address 227 S. Adams St
Street
Tallahassee FL 32301
City State Zip

Phone 850 222 4082

Email grace@frf.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

March 2, 2020
Meeting Date

1876
Bill Number (if applicable)

Topic Hemp

Amendment Barcode (if applicable)

Name Grace Lovett

Job Title Gov. Affairs VP

Address 227 S. Adams St.
Street

Phone 850 222 4082

Tallahassee FL 32301
City State Zip

Email grace@frf.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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)

8/2/70

Meeting Date

1876

Bill Number (if applicable)

Topic State Hemp Program

Amendment Barcode (if applicable)

Name Melissa Villar

Job Title Executive Director

Address Po Box 11254

Street

JHU

City

FL

State

32302

Zip

Phone ⁽⁸⁵⁰⁾ 354-8424

Email normetallahesser@gmail.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Norme Tallahesser

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 7002

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: OGSR/State Child Abuse Death Review Committee

DATE: February 24, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Delia</u>	<u>Hendon</u>		CF Submitted as Committee Bill
1.	<u>Ponder</u>	<u>McVane</u>	<u>GO</u>	Favorable
2.	<u>Delia</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 7002 amends s. 383.412, F.S., to save from repeal the current public records and public meetings exemptions for certain identifying information held by the State Child Abuse Death Review Committee or a local child abuse death review committee. Section 383.412, F.S., provides that any information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by and which information is held by the State Child Abuse Death Review Committee or a local committee is confidential and exempt from public disclosure. Portions of meetings of the State Child Abuse Death Review Committee or a local committee at which this confidential and exempt information is discussed are exempt from public meeting requirements. The bill removes the scheduled repeal date, resulting in the continuation of the public records and public meetings exemptions.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 1, 2020.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id.* See, e.g., *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁶ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.¹⁷ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts or special districts.¹⁸

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the “Government in the Sunshine Law,”¹⁹ or the “Sunshine Law,”²⁰ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.²¹ The board or commission must provide the public reasonable notice of such meetings.²² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.²³ Minutes of a public meeting must be promptly recorded and open to public

not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ FLA. CONST., art. I, s. 24(b).

¹⁷ *Id.*

¹⁸ 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.”

¹⁹ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

²⁰ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

²¹ Section 286.011(1)-(2), F.S.

²² *Id.*

²³ Section 286.011(6), F.S.

inspection.²⁴ Failure to abide by open meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.²⁵ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁶

The Legislature may create an exemption to open meetings requirements by passing a general law by at least a two-thirds vote of each house of the Legislature.²⁷ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.²⁸ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records exemptions,³⁰ with specified exceptions.³¹ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.³² The Act provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.³³

Open Government Sunset Review Act

The Open Government Sunset Review Act³⁴ (the Act) prescribes a legislative review process for newly created or substantially amended³⁵ public records or open meetings exemptions, with specified exceptions.³⁶ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.³⁷

²⁴ Section 286.011(2), F.S.

²⁵ Section 286.011(1), F.S.

²⁶ Section 286.011(3), F.S.

²⁷ FLA. CONST., art. I, s. 24(c).

²⁸ *Id.*

²⁹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

³⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

³¹ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

³² Section 119.15(3), F.S.

³³ Section 119.15(6)(b), F.S.

³⁴ Section 119.15, F.S.

³⁵ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

³⁶ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

³⁷ Section 119.15(3), F.S.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.³⁸ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;³⁹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;⁴⁰ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.⁴¹

The Act also requires specified questions to be considered during the review process.⁴² In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.⁴³ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.⁴⁴

Child Abuse Death Review

Current law establishes the State Child Abuse Death Review Committee (State Committee) and local child abuse review committees (Local Committees) (collectively, the Committees) within the Department of Health.⁴⁵ The Committees must review the facts and circumstances of all

³⁸ Section 119.15(6)(b), F.S.

³⁹ Section 119.15(6)(b)1., F.S.

⁴⁰ Section 119.15(6)(b)2., F.S.

⁴¹ Section 119.15(6)(b)3., F.S.

⁴² Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁴³ See generally s. 119.15, F.S.

⁴⁴ Section 119.15(7), F.S.

⁴⁵ Section 383.402, F.S.

deaths of children from birth to age 18 which occur in this state and are reported to the central abuse hotline of the Department of Children and Families.⁴⁶

The State Committee must prepare a comprehensive annual statistical report regarding deaths from child abuse.⁴⁷ The report, at a minimum, must include:

- Descriptive statistics, including demographic information regarding victims and caregivers, and the causes and nature of deaths;
- A detailed statistical analysis of the incidence and causes of deaths;
- Specific issues identified within current policy, procedure, rule, or statute and recommendations to address those issues from both the state and local committees; and
- Other recommendations to prevent deaths from child abuse based on an analysis of the data presented in the report.⁴⁸

The law provides the Committees with broad access to and use of information related to a child whose death is under review and that is necessary for the Committee to carry out its duties, including:

- Medical, dental or mental health treatment records;
- Records in in possession of a state agency or political subdivision; and
- Records of law enforcement which are not part of an active investigation.⁴⁹

Exemptions Under Review

Current law provides both a public records and a public meetings exemption for the State Committee and a Local Committee.⁵⁰

Information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by the State Committee or a Local Committee is confidential and exempt from public records requirements.⁵¹ In addition, confidential or exempt information obtained by the Committee or a Local Committee retains its confidential or exempt status.⁵² The State and Local Committees may share with each other any relevant confidential or exempt information regarding case reviews.⁵³ Any person who knowingly or willfully violates the public records exemption commits a misdemeanor of the first degree.^{54,55}

Portions of meetings of the State Committee or a Local Committee at which confidential and exempt information is discussed are exempt from open meetings requirements.⁵⁶ The closed

⁴⁶ Section 383.402(1), F.S.

⁴⁷ Section 383.402(4), F.S.

⁴⁸ Section 383.402(5), F.S.

⁴⁹ Section 383.402(5)(a) and (b), F.S.

⁵⁰ Section 383.412, F.S.

⁵¹ Section 383.412(2)(a), F.S.

⁵² Section 383.412(2)(b), F.S.

⁵³ Section 383.412(4), F.S.

⁵⁴ Section 383.412(5), F.S.

⁵⁵ A misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year and a fine not to exceed \$1,000. See 775.082(4)(a) and 775.083(1)(d), F.S.

⁵⁶ Section 383.412(3), F.S.

portion of a meeting must continue to be recorded and no portion of the closed meeting is permitted to be off the record.⁵⁷ The recording of a closed meeting is exempt from public records requirements.⁵⁸

Pursuant to the Act, these exemptions are repealed October 2, 2020, unless saved from repeal by the Legislature.⁵⁹

The public records and public meetings exemptions were initially enacted by the Legislature in 1999 and amended and reenacted, thereafter in 2005, 2010, and 2015.^{60, 61} The 2015 amendment narrowed the public records exemption for identifying information related to cases of verified abuse and neglect to information that identifies the deceased child's siblings.⁶² It also expanded the public records exemption to include information held by the State Committee or a Local Committee which reveals the identity of a deceased child whose death is not the result of verified abuse or neglect as well as the identity of the surviving siblings, family members, or others living in the home.⁶³ This amendment also authorized the release of confidential information to a governmental agency in furtherance of its duties or a person or entity for research or statistical purposes.⁶⁴

The Legislature's stated purpose for the public records exemption was "to increase the potential for reduced morbidity or mortality of children and reduce the potential for poor outcomes for children, thereby improving the overall quality of life for children."⁶⁵ Additionally, the Legislature found it was a public necessity for portions of the Committees' meetings, wherein confidential and exempt information is discussed, to be made exempt from the public meetings requirements.⁶⁶ Without such an exemption, the Legislature found the open communication and coordination among the parties would be hampered, and the release of confidential and exempt information in a public meeting would defeat the purpose of the public records exemption.⁶⁷ Thus, the Legislature found the harm resulting from the release of such information substantially outweighed any public benefit.⁶⁸

Senate Review of s. 383.412, F.S.

In the course of conducting the Open Government Sunset Review of s. 383.412, F.S., the Senate Children, Families, and Elder Affairs Committee staff met with representatives from the

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Section 383.412(6), F.S.

⁶⁰ See Chs. 99-210, 2005-190, 2010-40, and 2015-77, Laws of Fla.

⁶¹ The initial act sunset in 2004 when legislation to reenact the exemption failed to pass both chambers of the Legislature. See Florida Senate, *Website Archive*, Senate 0462: Relating to Child Fatalities/Pub. Rec./OGSR http://archive.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2004&billnum=462 (last visited Oct. 31, 2019).

⁶² Ch. 2015-77, Laws of Fla.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Ch. 99-210, s. 2, Laws of Fla.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

Department of Health (DOH) and the Department of Children and Families (DCF) and conducted surveys of each of the 23 Local Committees.

DOH and DCF staff stated that the exemptions have been effective and recommended making no changes to the public records and public meeting exemptions. Similarly, surveys of the 23 Local Committees showed near unanimous support for keeping the exemptions in place and unchanged.⁶⁹

Based upon a review of the public records and public meetings exemptions found in s. 383.412, F.S., under the Open Government Sunset Review Act, as well as discussions with and recommendations of DOH and DCF and survey results from the 23 local committees, the professional staff of the Senate Children, Families, and Elder Affairs Committee recommends the Legislature retain both the public records and public meetings exemptions established in s. 383.412, F.S.

III. Effect of Proposed Changes:

The bill is based on an Open Government Sunset Review of a public records and public meetings exemption for personal identifying information held by the DOH and by the Committees, and for portions of meetings of the Committees at which such confidential and exempt information is discussed.

The bill amends s. 383.412, F.S., to continue the current public records and public meetings exemptions. Records containing the specified personal identifying information will continue to be exempt from public disclosure. Additionally, those portions of meetings of the State Committee or a Local Committee at which such confidential and exempt information is discussed will continue to be exempt from the public meetings requirement.⁷⁰

By removing the scheduled repeal of the exemptions, the exemptions are no longer subject to review under the Open Government Sunset Review Act.

The bill takes effect October 1, 2020.

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.

⁶⁹ Summary of 2019 Local Child Abuse Death Review Committee Surveys. On file with the Senate Committee on Children, Families, and Elder Affairs.

⁷⁰ Section 383.412(3)(a), F.S.

B. Public Records/Open Meetings Issues:***Vote Requirement***

Article I, s. 24(c) of the State Constitution requires two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. The bill continues a current public records and public meetings exemption beyond its current date of repeal. The bill does not create or expand an exemption. Thus, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements or the open meeting requirements to state with specificity the public necessity justifying the exemption. The bill continues a current public records and public meetings exemption without an expansion. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements and the open meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the exemptions is to protect personal identifying information related to the surviving family members in child abuse-related death cases. The exemptions do not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

Governmental agencies will continue to incur costs related to the redaction of records in responding to public records requests. Additionally, governmental agencies will continue to incur costs associated with recording the closed portion of meetings held by the Committees wherein confidential and exempt information is discussed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 383.412 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs

586-01483-20

20207002__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 383.412, F.S., relating to an exemption from public records and meeting requirements for certain identifying information held or discussed by the State Child Abuse Death Review Committee or a local committee; removing the scheduled repeal of the exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) of section 383.412, Florida Statutes, is amended to read:

383.412 Public records and public meetings exemptions.—

(1) For purposes of this section, the term "local committee" means a local child abuse death review committee or a panel or committee assembled by the State Child Abuse Death Review Committee or a local child abuse death review committee pursuant to s. 383.402.

(2) (a) Any information held by the State Child Abuse Death Review Committee or a local committee which reveals the identity of the surviving siblings of a deceased child whose death occurred as the result of a verified report of abuse or neglect is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Any information held by the State Child Abuse Death Review Committee or a local committee which reveals the identity of a deceased child whose death has been reported to the central abuse hotline but determined not to be the result of abuse or

586-01483-20

20207002__

neglect, or the identity of the surviving siblings, family members, or others living in the home of such deceased child, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) Information made confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution which is obtained by the State Child Abuse Death Review Committee or a local committee shall retain its confidential or exempt status.

(3) (a) Portions of meetings of the State Child Abuse Death Review Committee or a local committee at which information made confidential and exempt pursuant to subsection (2) is discussed are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. The closed portion of a meeting must be recorded, and no portion of the closed meeting may be off the record. The recording shall be maintained by the State Child Abuse Death Review Committee or a local committee.

(b) The recording of a closed portion of a meeting is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4) The State Child Abuse Death Review Committee and local committees may share information made confidential and exempt by this section:

(a) With each other;

(b) With a governmental agency in furtherance of its duties; or

(c) With any person or entity authorized by the Department of Health to use such relevant information for bona fide research or statistical purposes. A person or entity who is authorized to obtain such relevant information for research or

586-01483-20

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statistical purposes must enter into a privacy and security agreement with the Department of Health and comply with all laws and rules governing the use of such records and information for research or statistical purposes. Anything identifying the subjects of such relevant information must be treated as confidential by the person or entity and may not be released in any form.

(5) Any person who knowingly or willfully makes public or discloses to any unauthorized person any information made confidential and exempt under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

~~(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, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/26/20

~~2-28-20~~

Meeting Date

SB 7002

Bill Number (if applicable)

Topic ~~Family Issues~~ Child Abuse

Amendment Barcode (if applicable)

Name Greg Pound

Job Title

Address 9166 Sunrise Dr

Street

Phone

Largo

FL

33773

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Saving 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
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 7052

INTRODUCER: Innovation, Industry and Technology Committee

SUBJECT: Office of Public Counsel

DATE: February 24, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
Wiehle	Imhof		IT Submitted as a Comm.Bill/Fav
1. Wiehle	Phelps	RC	Favorable

I. Summary:

SB 7052 establishes a four-year term for the Public Counsel beginning March 1, 2021. The bill clarifies the Public Counsel serves at the pleasure of the joint committee and is appointed by a majority vote of the committee appointees of each house, and provides the committee may remove the Public Counsel with a majority vote of the committee appointees of each house.

The bill requires the joint committee to receive applications, conduct interviews, and appoint a Public Counsel to a four-year term beginning on March 1, 2021, and every four years thereafter. The Public Counsel may continue in office beyond the four-year limit until his or her successor is appointed and takes office, unless removed by the committee. In no event may a person serve as the Public Counsel for more than 12 consecutive years.

The bill takes effect July 1, 2020.

II. Present Situation:

The Joint Committee on Public Counsel Oversight is a standing joint committee established by the Joint Rules of the Florida Legislature.¹ No fewer than five and no more than seven members of each house must be appointed to serve on the joint committee.² The joint committee has the authority to appoint a Public Counsel.³

The Public Counsel must be an attorney admitted to practice before the Florida Supreme Court. The Public Counsel is appointed by the joint committee and serves at the pleasure of the joint committee, subject to biennial reconfirmation.⁴

¹ Joint Rule 4.1(1)(b), Joint Rules of the Florida Legislature.

² Joint Rule 4.1(3), Joint Rules of the Florida Legislature.

³ Joint Rule 4.7, Joint Rules of the Florida Legislature, and s. 350.061, F.S.

⁴ Section 350.061(1), F.S.

The Public Counsel has the statutory duty to provide legal representation for the people of the state in proceedings before the Florida Public Service Commission and in proceedings concerning a water or wastewater utility before counties that have opted out of PSC jurisdiction over such utilities.⁵

The Public Counsel is under the legislative branch, and the Governor has no power to release or withhold funds appropriated to it or to determine the number, or fix the compensation, of the employees of the Public Counsel or to exercise any control over them.⁶

The Public Counsel is appointed by and serves at the pleasure of the committee, and is subject to biennial reconfirmation. Vacancies in the office are to be filled in the same manner as the original appointment. The Public Counsel is to perform his or her duties independently.⁷

III. Effect of Proposed Changes:

The bill establishes a four-year term for the Public Counsel beginning March 1, 2021. The bill provides that the Public Counsel is to be appointed by a majority vote of the committee appointees of each house and the joint committee may remove the Public Counsel with a majority vote of the committee appointees of each house.

The bill requires the joint committee to receive applications, conduct interviews, and appoint a Public Counsel to a four-year term beginning on March 1, 2021, and every four years thereafter. The Public Counsel may continue in office beyond the four-year limit until his or her successor is appointed and takes office, unless removed by the committee. In no event may a person serve as the Public Counsel for more than 12 consecutive years.

The bill takes effect July 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.

⁵ Section 350.0611, F.S.

⁶ Section 350.0614, F.S.

⁷ Section 350.061, F.S.

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 350.061 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By the Committee on Innovation, Industry, and Technology

580-03378-20

20207052__

A bill to be entitled

An act relating to the Office of Public Counsel;
amending s. 350.061, F.S.; providing term limits for
the Public Counsel; providing for the appointment and
removal of the Public Counsel; requiring the Committee
on Public Counsel Oversight to receive applications,
conduct interviews, and appoint a Public Counsel by a
specified date every 4 years; providing for the
filling of vacancies; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 350.061, Florida
Statutes, is amended to read:

350.061 Public Counsel; appointment; oath; restrictions on
Public Counsel and his or her employees.—

(1) The committee designated by joint rule of the
Legislature or by agreement between the President of the Senate
and the Speaker of the House of Representatives as the Committee
on Public Counsel Oversight shall appoint a Public Counsel to
represent the general public of Florida before the Florida
Public Service Commission. The Public Counsel shall be an
attorney admitted to practice before the Florida Supreme Court,
~~and shall be appointed for a term of 4 years, and may be~~
reappointed thereafter, provided that a person appointed as the
Public Counsel may not serve more than 12 consecutive years in
the position. The Public Counsel shall be appointed by a
majority vote of the committee appointees of each house and may
be removed from office by a majority vote of the committee

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-03378-20

20207052__

appointees of each house. A person may continue as Public
Counsel beyond the 4-year term until his or her successor is
appointed and takes office, unless the person is removed by a
vote of the committee. The Committee on Public Counsel Oversight
shall receive applications, conduct interviews, and appoint a
Public Counsel to a 4-year term beginning on March 1, 2021, and
every 4 years thereafter ~~serve at the pleasure of the Committee~~
~~on Public Counsel Oversight, subject to biennial reconfirmation~~
~~by the committee.~~ The Public Counsel shall perform his or her
duties independently. Vacancies in the office shall be filled
for the remainder of the unexpired term in the same manner as
the original appointment.

Section 2. This act shall take effect July 1, 2020.

Page 2 of 2

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)

3/2/2020

Meeting Date

7052

Bill Number (if applicable)

Topic Public Counsel

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Exec. Director

Address 579 E. Coll St.

Phone 850-321-9386

Street

Tallahassee FL 32301

City

State

Zip

Email fafep@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/2/20

Meeting Date

7052

Bill Number (if applicable)

Topic Office of Public Counsel

Amendment Barcode (if applicable)

Name Brian Lee

Job Title Florida Legislative Director

Address 1203 Buckingham Dr.

Phone 850.766.7309

Street

Tallahassee

FL

State

32308

Zip

Email blee@fwwatch.org

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Food & Water Watch

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/2/20

Meeting Date

7052

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 104-2 CREST ST
Street

Phone 941.323.2404

TEL FL 32301
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

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3.2.2020

Meeting Date

7052

Bill Number (if applicable)

Topic OFFICE OF PUBLIC COUNSEL

Amendment Barcode (if applicable)

Name JORDAN LUEBKEMANN

Job Title ATTORNEY

Address 111 S MLK BLVD.
Street

Phone 450.681.0031

TLH FL 37312
City State Zip

Email juebkemann@earthjustice.org

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing EARTHJUSTICE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/2/2020
Meeting Date

7052
Bill Number (if applicable)

Topic Office of Public Counsel

Amendment Barcode (if applicable)

Name JONATHAN WEBBER

Job Title Deputy Director

Address 1700 N. Monroe St. #11-286

Phone 954-593-4449

Tallahassee FL 32303
City State Zip

Email JWEBBER@FLUTERS.ORG

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing FLORIDA CONSERVATION VOTERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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 5301

INTRODUCER: Justice Appropriations Subcommittee and Representatives Yarborough and Beltran

SUBJECT: Judges

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Jameson	Phelps	RC	Favorable

I. Summary:

HB 5301 establishes six new county court judges (four in Hillsborough County, one in Lee County and one in Orange County), and four new circuit court judgeships (one in the First Judicial Circuit, two in the Ninth Judicial Circuit and one in the Fourteenth Judicial Circuit).

The bill has a fiscal impact and is funded in HB 5001, House General Appropriations Act, Fiscal Year 2020-2021. See Section V

The bill takes effect July 1, 2020.

II. Present Situation:

Article V, s. 9 of the Florida Constitution requires the Florida Supreme Court to submit recommendations to the Legislature when there is a need to increase or decrease the number of judges.¹ The constitutional provision further directs the Court to base its recommendations on uniform criteria adopted by court rule.

¹ Article V, section 9 of the Florida Constitution states:

Determination of number of judges.—The supreme court shall establish by rule uniform criteria for the determination of the need for additional judges except supreme court justices, the necessity for decreasing the number of judges and for increasing, decreasing or redefining appellate districts and judicial circuits. If the supreme court finds that a need exists for increasing or decreasing the number of judges or increasing, decreasing or redefining appellate districts and judicial circuits, it shall, prior to the next regular session of the legislature, certify to the legislature its findings and recommendations concerning such need. Upon receipt of such certificate, the legislature, at the next regular session, shall consider the findings and recommendations and may reject the recommendations or by law implement the recommendations in whole or in part; provided the legislature may create more judicial offices than are recommended by the supreme court or may decrease the number of judicial offices by a greater number than recommended by the court only upon a finding of two-thirds of the membership of both houses of the legislature, that such a need exists. A decrease in the number of judges shall be effective only after the expiration of a term. If the supreme court fails to make findings as provided above when need exists, the legislature may by concurrent resolution request the court to certify its findings and recommendations and upon the failure of the court to certify its findings for nine consecutive months, the legislature may, upon a finding of two-thirds of the membership of both houses of the legislature that a need exists, increase or decrease the number of judges or increase, decrease or redefine appellate districts and judicial circuits.

The Court's rule setting forth criteria for assessing judicial need at the trial court level is based primarily upon the application of case weights to circuit and county court caseload statistics.² These weights are a quantified measure of judicial time spent on case-related activity. The judicial workload is then based on judicial caseloads adjusted in the relative complexity of various case types.

In addition to the statistical information, the Court, in weighing the need for trial court judges, will also consider the factors below, which primarily relate to the resources available to a judicial circuit:

- The availability and use of county court judges in circuit court.
- The availability and use of senior judges to serve on a particular court.
- The availability and use of magistrates and hearing officers.
- The extent of use of alternative dispute resolution.
- The number of jury trials.
- Foreign language interpretations.
- The geographic size of a circuit, including travel times between courthouses in a particular jurisdiction.
- Law enforcement activities in the court's jurisdiction, including any substantial commitment of additional resources for state attorneys, public defenders, and local law enforcement.
- The availability and use of case-related support staff and case management policies and practices.
- Caseload trends.³

In addition to the weighted caseload statistics, the Court will also consider the time to perform other judicial activities, such as reviewing appellate decisions, reviewing petitions and motions for post-conviction relief, hearing and disposing of motions, and participating in meetings with those involved in the justice system.⁴ Finally, the Court will consider any request for an increase or decrease in the number of judges that the chief judge of the circuit "feels are required."⁵

Following its criteria for determining the need for judges, on November 27, 2019, the Florida Supreme Court issued an order certifying the need for additional judges for the 2020-2021 fiscal year.⁶

The Legislature may, after considering the Court's recommendations and findings, either implement or reject those findings. If the Legislature rejects the Court's findings and recommendations by legislation creating additional judgeships in jurisdictions not requested by the Court, the legislation must be approved by two-thirds of the membership of both houses.⁷

² Fla. R. Jud. Adm. 2.240(b)(1)(A).

³ Fla. R. Jud. Admin. 2.240(b)(1)(B).

⁴ Fla. R. Jud. Admin. 2.240(c).

⁵ Fla. R. Jud. Admin. 2.240(d).

⁶ *In Re: Certification of Need for Additional Judges*, S. Ct. No. SC19-1907.

<https://www.floridasupremecourt.org/content/download/543926/6129104/file/sc19-1907.pdf>

⁷ *In re Advisory Opinion to the Governor Request of June 29, 1979*, 374 So. 2d 959 (Fla. 1979); See also Article V, s. 9 of the Florida Constitution *supra* at 1.

The Supreme Court consists of seven justices, pursuant to Article V, section 3. Currently, the statewide aggregated number of judges in each level of court below the Supreme Court are as follows:

- 64 judges in the 5 District Courts of Appeal⁸
- 601 judges in the 20 judicial circuits⁹
- 324 judges in the 67 counties¹⁰

Article V, s. 11(b) of the Florida Constitution provides:

The governor shall fill each vacancy on a circuit court or on a county court, wherein the judges are elected by a majority vote of the electors, by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission. An election shall be held to fill that judicial office for the term of the office beginning at the end of the appointed term.

III. Effect of Proposed Changes:

This bill amends s. 26.031, F.S., to establish four new circuit judgeships (one each in the First and Fourteenth Judicial Circuits, and two in the Ninth Judicial Circuit)¹¹ and six county judgeships (one in Lee County, one in Orange County and four in Hillsborough County, effective July 1, 2020).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁸ <https://www.flcourts.org/content/download/528017/5866210/20190627-dca-judges-as-of-june-2019-20190627mk.pdf> (last visited January 28, 2020).

⁹ <https://www.flcourts.org/content/download/528021/5866240/20190627-circuit-judges-with-dates-as-of-june-2019-20190627mk.pdf> (last visited January 28, 2020).

¹⁰ <https://www.flcourts.org/content/download/528020/5866234/20190627-county-judges-with-dates-as-of-june-2019-20190627-mk.pdf> (last visited January 28, 2020).

¹¹ The First Judicial Circuit includes Escambia, Okaloosa, Santa Rosa and Walton counties. The Fourteenth Judicial Circuit includes Bay, Calhoun, Gulf, Holmes, Jackson, and Washington counties. The Ninth Judicial Circuit includes Orange and Osceola counties. Section 26.021 (1),(4) and (9), F.S.

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:

This bill will result in a cost for FY 2020-2021 of \$3,418,513 and 21 full-time equivalent positions (ten judges, ten judicial assistants and one law clerk), with an annual recurring cost of \$3,368,134. Funding and positions to implement the bill are included in the HB 5001, House General Appropriations Act, Fiscal Year 2020-2021:

The cost to fund four circuit court judgeships, four judicial assistants, and one law clerk is:

\$1,404,305	salaries and benefits (recurring)
\$ 29,640	expense (recurring) (this includes human resources)
<u>\$ 21,591</u>	expense (non-recurring)
\$1,455,536	Total all funds

The cost to fund six county court judgeships and six judicial assistants is:

\$1,885,589	salaries and benefits (recurring)
\$ 41,520	expense (recurring) (this includes human resources)
<u>\$ 28,788</u>	expense (non-recurring)
\$1,955,897	Total all funds

Article V, s. 14(c) of the Florida Constitution and s. 29.008, F.S., require counties to provide the court system, including the state attorney and the public defender, with facilities, security, and communication services, including information technology. Under the bill, the counties would incur an indeterminate amount of costs associated with providing those services to the new judges and judicial staff.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 26.031 and 34.022 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.

HB 5301

2020

1 A bill to be entitled
2 An act relating to judges; amending s. 26.031, F.S.;
3 revising the number of circuit court judges in certain
4 circuits; amending s. 34.022, F.S.; revising the
5 number of county court judges in certain counties;
6 providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Subsections (1), (9), and (14) of section
11 26.031, Florida Statutes, are amended to read:
12 26.031 Judicial circuits; number of judges.—The number of
13 circuit judges in each circuit shall be as follows:
14 JUDICIAL CIRCUIT TOTAL
15 (1) First.....25 ~~24~~
16 (9) Ninth.....46 ~~44~~
17 (14) Fourteenth.....12 ~~11~~
18 Section 2. Subsections (28), (35), and (48) of section
19 34.022, Florida Statutes, are amended to read:
20 34.022 Number of county court judges for each county.—The
21 number of county court judges in each county shall be as
22 follows:
23 COUNTY TOTAL
24 (28) Hillsborough.....21 ~~17~~
25 (35) Lee.....9 ~~8~~

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb5301-00

HB 5301

2020

26 (48) Orange.....19 ~~18~~
27 Section 3. This act shall take effect July 1, 2020.

Page 2 of 2

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hb5301-00

THE FLORIDA SENATE
APPEARANCE RECORD

March 2, 2020

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

HB 5301

Bill Number (if applicable)

Topic Judges

Amendment Barcode (if applicable)

Name Lisa Kiel

Job Title State Courts Administrator

Address 500 South Duval Street

Street

Phone 850-922-5081

Tallahassee

FL

32399

City

State

Zip

Email osca@flcourts.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing State Courts System

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
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 7049

INTRODUCER: Transportation and Tourism Appropriations Subcommittee and Representative Trumbull

SUBJECT: International Affairs

DATE: March 3, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Ponder	Phelps	RC	Fav/1 amendment

Please see Section IX. for Additional Information:

AMENDMENTS - Significant amendments were recommended

I. Summary:

HB 7049 amends s. 15.01, F.S., to provide that the Secretary of State shall serve as the state protocol officer. The bill revises s. 15.182, F.S., such that the Department of State is the only entity that shall receive notice of intent to travel internationally by state-funded musical, cultural, or artistic organizations.

The bill creates s. 288.8165, F.S., providing for the establishment of citizen support organizations to assist the Office of International Affairs within the Department of State by providing assistance, funding and promotional support for intergovernmental programs.

The bill may have a minimal impact on government expenditures in the establishment of citizen support organizations. However, the Department of State will also experience a slightly positive impact as private resources from citizen support organizations augment the purpose and programs of the Office of International Affairs. The private sector will experience an indeterminate fiscal impact in establishing citizen support organizations as well as meeting the audit, transparency and reporting requirements.

The bill takes effect July 1, 2020.

II. Present Situation:

The Department of State and the Secretary of State

The Secretary of State (the Secretary) holds a statutorily created office whose duties are “as provided by law.”¹ The Secretary serves as the head of the Department of State.² The Department of State consists of the following six divisions:

- Division of Elections;
- Division of Historical Resources;
- Division of Corporations;
- Division of Library and Information Services;
- Division of Cultural Affairs; and the
- Division of Administration.³

The Secretary is appointed by the Governor, subject to confirmation by the Senate and performs the functions conferred by the State Constitution upon the custodian of state records.⁴ Pursuant to Chapter 15, F.S., the Secretary of State is the custodian of the constitution, the Great Seal of this state, the original statutes, and of the resolutions of the Legislature, and of all the official correspondence of the Governor.⁵ The Department of State is required to maintain a register and an index of all official letters, orders, communications, messages, documents and other official acts issued or received by the Governor or the Secretary of State, and record these in a book numbered in chronological order.⁶ Before issuing any order or transmission of an official letter, communication or document from the executive office or promulgation of any official act or proceeding, except military orders, the Governor is required to deliver the same or a copy thereof to the Department of State for recordation.⁷

Notice of International Travel

The Department of Economic Opportunity (DEO) “assist[s] the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities to all Floridians.”⁸

In accordance with s. 15.182, F.S., if a musical, cultural or artistic organization that receives state funding is traveling internationally for a presentation, performance, or other significant public viewing, including an organization associated with a college or university, such an organization is required to notify the DEO of its intention to travel as well as the date, time and location of

¹ FLA. CONST. art. XII, s. 24. The Office of the Secretary of State was created in 1845, under the State Constitution.

² Section 20.10(1), F.S. See FLA. CONST. art. XII, s. 24.

³ Section 20.01(2), F.S.

⁴ Section 20.10(1), F.S.

⁵ Section 15.01, F.S.

⁶ Section 15.01, F.S.

⁷ *Id.*

⁸ Section 20.60, F.S.

each appearance. DEO, in conjunction with Enterprise Florida, Inc.⁹ (EFI), is required to act as an intermediary between artistic organizations and Florida businesses to encourage and coordinate joint undertakings, such as the sponsoring of cultural events.¹⁰

Section 15.182(3), F.S., requires an organization to provide notice to the Department of State at least 30 days prior to the date international travel is to commence. If the intention to travel internationally is not formed 30 days in advance, notice to the Department of State shall be given as soon as feasible.¹¹ Thus, under this section, notice of intent to travel internationally by state-funded organizations must be given to both DEO and the Department of State.

Section 15.182(3), F.S., further requires that the Department of State take “an active role in informing such groups of the responsibility to notify the [D]epartment [of State] of travel intentions.”

The State Protocol Officer

The Governor, pursuant to s. 288.012(7), F.S., may designate a state protocol officer (SPO) who shall be housed within the Executive Office of the Governor. The SPO is required to develop maintain, publish, and distribute the state protocol manual.¹² The SPO is responsible for consular operations and the sister city and sister state program as well as serving as a liaison with foreign, federal and other international organizations and with local governments.¹³ The SPO must maintain consular relations between the state and all foreign governments doing business in Florida and has the duty to ensure all federal treaties regarding foreign privileges and immunities are properly observed by monitoring federal laws and directives.

Additionally, the SPO is required to:

- Establish a viable system of registration for foreign government officials residing or having jurisdiction in the state;¹⁴
- Maintain and systematically update a current and accurate list of all such foreign governmental officials, consuls, or consulates;
- Issue certificates to such foreign governmental officials after verification pursuant to proper investigations through U.S. Department of State sources and the appropriate foreign government;
- Verify entitlement to sales and use tax exemptions pursuant to U.S. Department of State guidelines and identification methods;
- Verify entitlement to issuance of special motor vehicle license plates by the Department of Highway Safety and Motor Vehicles to honorary consuls or such other officials representing

⁹ Enterprise Florida, Inc., created by s. 288.901, F.S., serves as the state’s economic development organization, operating under a contract with DEO. Enterprise Florida, Inc., is a nonprofit corporation, governed by a board of directors chaired by the Governor.

¹⁰ Section 15.182(2), F.S.

¹¹ Section 15.182(3), F.S.

¹² Section 288.012(7), F.S.

¹³ Section 288.816(1), F.S.

¹⁴ This provision instructs that an emphasis shall be placed on maintaining active communication between the SPO and the U.S. Department of State in order to be currently informed regarding foreign governmental personnel stationed in, or with official responsibilities for, Florida. Active dialogue shall also be maintained with foreign countries which historically have had dealings with Florida in order to keep them informed of the proper procedure for registering with the state.

foreign governments who are not entitled to issuance of special Consul Corps license plates by the U.S. Government;

- Establish a system of communication to provide all state and local law enforcement agencies with information regarding proper procedures relating to the arrest or incarceration of a foreign citizen;
- Request the Department of Law Enforcement to provide transportation and protection services when necessary pursuant to s. 943.68;
- Coordinate, when necessary, special activities between foreign governments and Florida state and local governments (such as Consular Corps Day, Consular Corps conferences, and various other social, cultural, or educational activities); and
- Notify all newly arrived foreign governmental officials of the services offered by the SPO.¹⁵

The duties of the SPO also include the operation of the sister city and sister state program and establishing such new programs as needed to further global understanding through the interchange of people, ideas, and culture between Florida and the world. In order to accomplish this purpose, the SPO has the power and authority to:

- Coordinate and carry out activities designed to encourage the state and its subdivisions to participate in sister city and sister state affiliations with foreign countries and their subdivisions;¹⁶
- Encourage cooperation with and disseminate information pertaining to the Sister Cities International Program and any other program whose object is to promote linkages with foreign countries and their subdivisions;
- Maximize any aid available from all levels of government, public and private agencies, and other entities to facilitate such activities;
- Establish a viable system of registration for sister city and sister state affiliations between the state and foreign countries and their subdivisions. Such system shall include a method to determine that sufficient ties are properly established as well as a method to supervise how these ties are maintained; and
- Maintain a current and accurate listing of all such affiliations.¹⁷

The SPO serves as a contact for the state with the Florida Washington Office, the Florida Congressional Delegation, and United States Government agencies with respect to laws or policies which may affect the interests of the state in the area of international relations.¹⁸ The SPO is directed to direct all inquiries regarding international economic trade development or reverse investment opportunities to Enterprise Florida, Inc.¹⁹ The SPO serves as a liaison with other states regarding international programs of interest to Florida, and investigates and makes suggestions regarding possible areas of joint action or regional cooperation.²⁰ The SPO is granted

¹⁵ Section 288.816(2), F.S.

¹⁶ Such activities may include a State of Florida sister cities conference. Section 288.816(3)(a), F.S.

¹⁷ Sister city affiliations shall not be discouraged between the state and any country specified in s. 620(f)(1) of the federal Foreign Assistance Act of 1961 (22 U.S.C.A. Section 2370(f)(1)), as amended, with whom the United States is currently conducting diplomatic relations unless a mandate from the United States Government expressly prohibits such affiliations.

¹⁸ Section 288.816(4), F.S.

¹⁹ *Id.*

²⁰ *Id.*

the power and has the duty to encourage the relocation of consular offices and multilateral and international agencies and organizations to Florida.²¹

Under s. 288.816(6), F.S., the DEO and EFI must help to contribute an international perspective to the state's development efforts.

Citizen Support Organizations

Citizen support organizations (CSOs) and direct-support organizations (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.²²

Legislature created s. 20.058, F.S., to establish a comprehensive set of transparency and reporting requirements for CSOs created or authorized pursuant to law or executive order and created, approved, or administered by a state agency.²³ Specifically, the law requires each CSO to annually submit, by August 1, the following information related to its organization, mission, and finances to the agency it supports:²⁴

- 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;
- 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).²⁵

Each agency receiving the above information must make the information available to the public through the agency's website. If the CSO maintains a website, the agency's website must provide a link to that website.²⁶ Additionally, any contract between an agency and a CSO must be contingent upon the CSO submitting and posting the information.²⁷ If a CSO fails to submit the required information for two consecutive years, the agency must terminate the contract with the CSO.²⁸ 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.²⁹

²¹ Section 288.816(5), F.S.

²² Because the bill speaks to the establishment of a CSO, the analysis focuses on CSOs. DSOs are subject to the same transparency and reporting requirements as CSOs.

²³ Chapter 2014-96, Laws of Fla.

²⁴ Section 20.058(1), F.S.

²⁵ 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.

²⁶ Section 20.058(2), F.S.

²⁷ Section 20.058(4), F.S.

²⁸ *Id.*

²⁹ *Id.*

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. 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.³⁰

A law creating or authorizing the creation of a CSO must state that the creation or authorization for the CSO is repealed on October 1 of the fifth year after enactment, unless reviewed and saved from repeal by the Legislature. CSOs in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019.³¹

III. Effect of Proposed Changes:

Section 1 amends s. 15.01, F.S., to provide that the Secretary shall serve as the state protocol officer and that the Secretary, in consultation with the Governor and other governmental officials, shall develop, maintain, publish, and distribute the state protocol manual.

Section 2 amends s. 15.182, F.S., to designate the Department of State as the agency to whom state-funded musical, cultural, or artistic organizations must provide notice of intent to travel internationally. The effect is to create a duplicative notice provision such that paragraph (1) and paragraph (3) require notice to the Department of State.

Section 3 amends s. 288.816(2), F.S., to remove from the SPO's responsibilities the requirement of (i) issuing certificates to such foreign governmental officials after verification pursuant to proper investigations through U.S. Department of State sources and the appropriate foreign governments; and (ii) verifying entitlement to sales and use tax exemptions pursuant to U.S. Department of State guidelines and identification methods.

The bill also amends s. 288.816(3), F.S., and makes permissive the SPO's role regarding sister city and sister state programs. The bill eliminates the requirement of a system of registration for sister city and sister state affiliations as well as the duty to maintain an accurate listing of all such affiliations.

Section 4 creates 288.8165, F.S., allowing the Office of International Affairs (OIA) within the Department of State to support the establishment of CSOs to provide assistance, funding and promotional support for intergovernmental programs. A CSO must be:

- A Florida corporation not for profit incorporated under chapter 617 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 or personal; and make expenditures to or for the direct or indirect benefit of the OIA;
- Determined by the OIA to be consistent with the goals of the office and in the best interests of the State; and

³⁰ Section 20.058(3), F.S.

³¹ Section 20.058(5), F.S.

- Approved in writing (by a letter of agreement) by the OIA to operate for the direct or indirect benefit of the office.

The bill specifies operational requirements and annual audit requirement for the CSOs.

The bill grants rulemaking authority to the OIA for the adoptions of rules requiring CSOs to meet certain requirements in order to use the office's administrative services, property, or facilities.

The bill provides for the future repeal of this section on October 1, 2025, unless it is reviewed and saved from repeal by the Legislature.

Section 5 amends s. 288.012, F.S., to make conforming changes.

Section 6 provides that the act will take effect on July 1, 2020.

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:

This bill does not impact state or local taxes or fees.

B. Private Sector Impact:

The bill will have an indeterminate fiscal impact on the private sector in the establishment of CSOs and in meeting the audit, transparency and reporting requirements.

C. Government Sector Impact:

The bill may have a minimal impact on government expenditures in the establishment of CSOs. However, the Department of State will experience an indeterminate positive fiscal impact as private resources from CSOs will augment the purpose and programs of the OIA.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Office of International Affairs (OIA) is not created by statute or other provision of law. Section 20.04(3), F.S., mandates (with some exceptions not relevant here) the internal structure of all departments and provides that the principal unit of the department is the “division,” the principal unit of the division is the “bureau,” and the principal unit of the bureau is the “section.” If further subdivision is required, s. 20.04(3)(d), F.S., instructs that sections may be divided into “subsections.” Thus, the term “office” is not within the proper nomenclature.

Because the bill provides rulemaking authority to the OIA, it is suggested consideration be given to (i) granting rulemaking authority to the Department of State rather than OIA, or (ii) amending s. 20.10, F.S., to define the OIA as an entity within the Department of State.

The stated purpose of the CSOs is to provide assistance, funding and promotional support for *intergovernmental programs*. (emphasis added). The term “intergovernmental programs” is not defined. However, because the CSOs are supported by the OIA, it would suggest that such programs are to be international rather than national in nature. The bill specifies that OIA must make a determination that the CSO is “*consistent with the goals of the office* and in the best interests of the state.” (emphasis added). As stated above, OIA is not created in law and the office cannot be located on the Department of State’s website. Thus, there is little to no guidance as to the “goals of the office.” It is suggested that consideration be given to either defining the term “intergovernmental programs” or providing more specificity as to the stated purpose of the CSOs. Alternatively, if, as suggested above, s. 20.10, F.S., is amended to define the OIA, the goals or purpose of the office could be stated therein.

Current law, s. 15.182(1), F.S., requires an artistic organization receiving state funding to provide notice of intent to travel (including the date, time and location of each appearance) to the Department of Economic Opportunity. Subsection (3) of s. 15.182, F.S., requires an organization also give notification to the Department of State at least 30 days before the date of international travel is to commence, or as soon as feasible after forming such travel intention.

The bill amends s. 15.182, F.S., to make the Department of State instead of the Department of Economic Opportunity the entity to whom notice is to be provided under subsection (1). Thus, the effect of this change is to create two notice provisions – in subsections (1) and (3) – that are substantially similar. It is suggested that these provisions be combined.

VIII. Statutes Affected:

This bill substantially amends sections 15.01, 15.182, 288.816, and 288.012 of the Florida Statutes.

This bill creates s. 288.8165, F.S., 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:

Barcode 130920 by Rules on March 2, 2020:

The amendment:

- Removes reference to the Office of International Affairs throughout and replaces it with the Department of State.
- Consolidates duplicative notice provisions regarding intent to travel internationally into one provision.³²
- Conforms the provisions authorizing the Department to establish Citizen Support Organizations to the requirement for such organizations under s. 20.2551, F.S.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³² Current law requires notice of intent to travel internationally be provided to the Department of Economic Opportunity in subsection (1) and to the Department of State in subsection (3) of s. 15.182, F.S. The bill replaces the Department of Economic Opportunity with the Department of State and results in duplicative notice provisions. The amendment consolidates these provisions.



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LEGISLATIVE ACTION

Senate	.	House
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03/03/2020	.	
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The Committee on Rules (Benacquisto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 54 - 172

and insert:

Section 2. Section 15.182, Florida Statutes, is amended to read:

15.182 International travel by state-funded musical, cultural, or artistic organizations; notification to the Department of State ~~Economic Opportunity~~.—

(1) If a musical, cultural, or artistic organization that receives state funding is traveling internationally for a



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presentation, performance, or other significant public viewing, including an organization associated with a college or university, such organization shall notify the Department of State Economic Opportunity in writing of its intentions to travel, together with the date, time, and location of each appearance. The notice shall be provided to the department at least 30 days prior to the date the international travel is to commence or, when an intention to travel internationally is not formed at least 30 days in advance of the date the travel is to commence, as soon as feasible after forming such travel intention. The department shall take an active role in informing such artistic organizations of the responsibility to provide notice of international travel intentions.

(2) The Department of State Economic Opportunity, in conjunction with the Department of Economic Opportunity and Enterprise Florida, Inc., shall act as an intermediary between performing musical, cultural, and artistic organizations and Florida businesses to encourage and coordinate joint undertakings. Such coordination may include, but is not limited to, encouraging business and industry to sponsor cultural events, assistance with travel of such organizations, and coordinating travel schedules of cultural performance groups and international trade missions.

~~(3) An organization shall provide the notification to the Department of State required by this section at least 30 days before the date the international travel is to commence or, when an intention to travel internationally is not formed at least 30 days in advance of the date the travel is to commence, as soon as feasible after forming such travel intention. The Department~~



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~~of State shall take an active role in informing such groups of the responsibility to notify the department of travel intentions.~~

Section 3. Paragraphs (c) and (d) of subsection (2) and subsection (3) of section 288.816, Florida Statutes, are amended to read:

288.816 Intergovernmental relations.—

(2) The state protocol officer shall be responsible for all consular relations between the state and all foreign governments doing business in Florida. The state protocol officer shall monitor United States laws and directives to ensure that all federal treaties regarding foreign privileges and immunities are properly observed. The state protocol officer shall:

~~(c) Issue certificates to such foreign governmental officials after verification pursuant to proper investigations through United States Department of State sources and the appropriate foreign government.~~

~~(d) Verify entitlement to sales and use tax exemptions pursuant to United States Department of State guidelines and identification methods.~~

(3) The state protocol officer may ~~shall operate the sister city and sister state program and establish such new programs as needed to further global understanding through the interchange of people, ideas, and culture between Florida and the world. To accomplish this purpose, the state protocol officer shall have the power and authority to:~~

(a) Coordinate and carry out activities designed to encourage the state and its subdivisions to participate in sister city and sister state affiliations with foreign countries



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and their subdivisions. Such activities may include a State of Florida sister cities conference.

(b) Encourage cooperation with and disseminate information pertaining to the Sister Cities International Program and any other program whose object is to promote linkages with foreign countries and their subdivisions.

(c) Maximize any aid available from all levels of government, public and private agencies, and other entities to facilitate such activities.

~~(d) Establish a viable system of registration for sister city and sister state affiliations between the state and foreign countries and their subdivisions. Such system shall include a method to determine that sufficient ties are properly established as well as a method to supervise how these ties are maintained.~~

~~(e) Maintain a current and accurate listing of all such affiliations. Sister city affiliations shall not be discouraged between the state and any country specified in s. 620(f)(1) of the federal Foreign Assistance Act of 1961, as amended, with whom the United States is currently conducting diplomatic relations unless a mandate from the United States Government expressly prohibits such affiliations.~~

Section 4. Section 288.8165, Florida Statutes, is created to read:

288.8165 Citizen support organizations.—

(1) CITIZEN SUPPORT ORGANIZATIONS.—The Department of State may authorize the establishment of citizen support organizations to provide assistance, funding, and promotional support for the intergovernmental programs of the department. For the purposes



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of this section, a "citizen support organization" means an organization which:

(a) Is a Florida corporation not for profit incorporated under chapter 617 and approved by the Department of State.

(b) Is 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, or real or personal property; and make expenditures for the benefit of the intergovernmental programs of the department; except that such organization may not receive funds from the department by grant or gift unless specifically authorized by the Legislature. If the citizen support organization by contract provides fiscal and administrative services to the department for a grant or program that benefits the intergovernmental programs of the department, the organization may be reimbursed or compensated for such services by the department if the services are a direct benefit to the intergovernmental programs of the department.

(c) The department has determined to be consistent with the goals of the intergovernmental programs of the department and in the best interests of the state.

(d) Is approved in writing by the department to operate for the benefit of the intergovernmental programs of the department. Such approval must be stated in a letter of agreement from the Secretary of State.

(2) USE OF ADMINISTRATIVE SERVICES AND PROPERTY.—

(a) The department may permit a citizen support organization to use department property, facilities, and personnel free of charge. A citizen support organization may use



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department property, facilities, and personnel if such use is
consistent with the approved purpose of that citizen support
organization and if such use does not unreasonably interfere
with the general public's use of department property,
facilities, and personnel for established purposes.

(b) The department may prescribe conditions upon the use by
a citizen support organization of department property,
facilities, or personnel.

(c) The department may not permit the use of any property,
facilities, or personnel of the state by a citizen support
organization that does not provide equal membership and
employment opportunities to all persons regardless of race,
color, national origin, religion, sex, or age.

(3) ANNUAL AUDIT.—Each citizen support organization shall
provide for an annual financial audit in accordance with s.
215.981.

(4) FUTURE REPEAL.—This section is repealed October 1,
2025, unless reviewed and saved from repeal by the Legislature.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 16 - 21

and insert:

creating s. 288.8165; authorizing the Department of
State to support the establishment of citizen support
organizations for certain purposes; defining the term
"citizen support organization"; prohibiting the
department from allowing a



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14 university, such organization shall notify the Department of
15 State Economic Opportunity in writing of its intentions to
16 travel, together with the date, time, and location of each
17 appearance. The notice shall be provided to the department at
18 least 30 days prior to the date the international travel is to
19 commence or, when an intention to travel internationally is not
20 formed at least 30 days in advance of the date the travel is to
21 commence, as soon as feasible after forming such travel
22 intention. The department shall take an active role in informing
23 such artistic organizations of the responsibility to provide
24 notice of international travel intentions.

25 (2) The Department of State Economic Opportunity, in
26 conjunction with the Department of Economic Opportunity and
27 Enterprise Florida, Inc., shall act as an intermediary between
28 performing musical, cultural, and artistic organizations and
29 Florida businesses to encourage and coordinate joint
30 undertakings. Such coordination may include, but is not limited
31 to, encouraging business and industry to sponsor cultural
32 events, assistance with travel of such organizations, and
33 coordinating travel schedules of cultural performance groups and
34 international trade missions.

35 ~~(3) An organization shall provide the notification to the~~
36 ~~Department of State required by this section at least 30 days~~
37 ~~before the date the international travel is to commence or, when~~
38 ~~an intention to travel internationally is not formed at least 30~~
39 ~~days in advance of the date the travel is to commence, as soon~~
40 ~~as feasible after forming such travel intention. The Department~~



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~~of State shall take an active role in informing such groups of the responsibility to notify the department of travel intentions.~~

Section 3. Paragraphs (c) and (d) of subsection (2) and subsection (3) of section 288.816, Florida Statutes, are amended to read:

288.816 Intergovernmental relations.—

(2) The state protocol officer shall be responsible for all consular relations between the state and all foreign governments doing business in Florida. The state protocol officer shall monitor United States laws and directives to ensure that all federal treaties regarding foreign privileges and immunities are properly observed. The state protocol officer shall:

~~(c) Issue certificates to such foreign governmental officials after verification pursuant to proper investigations through United States Department of State sources and the appropriate foreign government.~~

~~(d) Verify entitlement to sales and use tax exemptions pursuant to United States Department of State guidelines and identification methods.~~

(3) The state protocol officer may ~~shall operate the sister city and sister state program and establish such new programs as needed to further global understanding through the interchange of people, ideas, and culture between Florida and the world. To accomplish this purpose, the state protocol officer shall have the power and authority to:~~

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and their subdivisions. Such activities may include a State of Florida sister cities conference.

(b) Encourage cooperation with and disseminate information pertaining to the Sister Cities International Program and any other program whose object is to promote linkages with foreign countries and their subdivisions.

(c) Maximize any aid available from all levels of government, public and private agencies, and other entities to facilitate such activities.

~~(d) Establish a viable system of registration for sister city and sister state affiliations between the state and foreign countries and their subdivisions. Such system shall include a method to determine that sufficient ties are properly established as well as a method to supervise how these ties are maintained.~~

~~(e) Maintain a current and accurate listing of all such affiliations. Sister city affiliations shall not be discouraged between the state and any country specified in s. 620(f)(1) of the federal Foreign Assistance Act of 1961, as amended, with whom the United States is currently conducting diplomatic relations unless a mandate from the United States Government expressly prohibits such affiliations.~~

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of this section, a "citizen support organization" means an organization which:

(a) Is a Florida corporation not for profit incorporated under chapter 617 and approved by the Department of State.

(b) Is 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, or real or personal property; and make expenditures for the benefit of the intergovernmental programs of the department; except that such organization may not receive funds from the department by grant or gift unless specifically authorized by the Legislature. If the citizen support organization by contract provides fiscal and administrative services to the department for a grant or program that benefits the intergovernmental programs of the department, the organization may be reimbursed or compensated for such services by the department if the services are a direct benefit to the intergovernmental programs of the department.

(c) The department has determined to be consistent with the goals of the intergovernmental programs of the department and in the best interests of the state.

(d) Is approved in writing by the department to operate for the benefit of the intergovernmental programs of the department. Such approval must be stated in a letter of agreement from the Secretary of State.

(2) USE OF ADMINISTRATIVE SERVICES AND PROPERTY.—

(a) The department may permit a citizen support organization to use department property, facilities, and personnel free of charge. A citizen support organization may use



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department property, facilities, and personnel if such use is
consistent with the approved purpose of that citizen support
organization and if such use does not unreasonably interfere
with the general public's use of department property,
facilities, and personnel for established purposes.

(b) The department may prescribe conditions upon the use by
a citizen support organization of department property,
facilities, or personnel.

(c) The department may not permit the use of any property,
facilities, or personnel of the state by a citizen support
organization that does not provide equal membership and
employment opportunities to all persons regardless of race,
color, national origin, religion, sex, or age.

(3) ANNUAL AUDIT.—Each citizen support organization shall
provide for an annual financial audit in accordance with s.
215.981.

(4) FUTURE REPEAL.—This section is repealed October 1,
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organizations for certain purposes; defining the term
"citizen support organization"; prohibiting the
department from allowing a

HB 7049

2020

1 A bill to be entitled
 2 An act relating to international affairs; amending s.
 3 15.01, F.S.; requiring the Secretary of State to serve
 4 as the state protocol officer; requiring the Secretary
 5 of State to take certain actions relating to the state
 6 protocol manual; amending s. 15.182, F.S.; requiring
 7 that certain organizations provide notice of
 8 international travel to the Department of State,
 9 rather than the Department of Economic Opportunity;
 10 requiring the Department of State, the Department of
 11 Economic Opportunity, and Enterprise Florida, Inc., to
 12 work in conjunction for a certain purpose; amending s.
 13 288.816, F.S.; revising the duties of the state
 14 protocol officer; authorizing, rather than requiring,
 15 the state protocol officer to take certain actions;
 16 creating s. 288.8165, F.S.; authorizing the Office of
 17 International Affairs within the Department of State
 18 to support the establishment of citizen support
 19 organizations for certain purposes; defining the term
 20 "citizen support organization"; authorizing the office
 21 to adopt rules; prohibiting the office from allowing a
 22 citizen support organization to use certain services,
 23 property, or facilities if the organization does not
 24 provide equal membership and employment opportunities;
 25 requiring citizen support organizations to provide for

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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HB 7049

2020

26 a certain financial audit; providing a scheduled
 27 repeal; amending s. 288.012, F.S.; conforming
 28 provisions to changes made by the act; providing an
 29 effective date.
 30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Section 15.01, Florida Statutes, is amended to
 34 read:
 35 15.01 Duties.—
 36 (1) The Secretary of State shall serve as the state
 37 protocol officer. In consultation with the Governor and other
 38 governmental officials, the Secretary of State shall develop,
 39 maintain, publish, and distribute the state protocol manual.
 40 (2) The Department of State shall have the custody of the
 41 constitution and Great Seal of this state, and of the original
 42 statutes thereof, and of the resolutions of the Legislature, and
 43 of all the official correspondence of the Governor. The
 44 department shall keep in its office a register and an index of
 45 all official letters, orders, communications, messages,
 46 documents, and other official acts issued or received by the
 47 Governor or the Secretary of State, and record these in a book
 48 numbered in chronological order. The Governor, before issuing
 49 any order or transmission of any official letter, communication,
 50 or document from the executive office or promulgation of any

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51 official act or proceeding, except military orders, shall
 52 deliver the same or a copy thereof to the Department of State to
 53 be recorded.

54 Section 2. Section 15.182, Florida Statutes, is amended to
 55 read:

56 15.182 International travel by state-funded musical,
 57 cultural, or artistic organizations; notification to the
 58 Department of State Economic Opportunity.—

59 (1) If a musical, cultural, or artistic organization that
 60 receives state funding is traveling internationally for a
 61 presentation, performance, or other significant public viewing,
 62 including an organization associated with a college or
 63 university, such organization shall notify the Department of
 64 State Economic Opportunity of its intentions to travel, together
 65 with the date, time, and location of each appearance.

66 (2) The Department of State Economic Opportunity, in
 67 conjunction with the Department of Economic Opportunity and
 68 Enterprise Florida, Inc., shall act as an intermediary between
 69 performing musical, cultural, and artistic organizations and
 70 Florida businesses to encourage and coordinate joint
 71 undertakings. Such coordination may include, but is not limited
 72 to, encouraging business and industry to sponsor cultural
 73 events, assistance with travel of such organizations, and
 74 coordinating travel schedules of cultural performance groups and
 75 international trade missions.

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76 (3) An organization shall provide the notification to the
 77 Department of State required by this section at least 30 days
 78 before the date the international travel is to commence or, when
 79 an intention to travel internationally is not formed at least 30
 80 days in advance of the date the travel is to commence, as soon
 81 as feasible after forming such travel intention. The Department
 82 of State shall take an active role in informing such groups of
 83 the responsibility to notify the department of travel
 84 intentions.

85 Section 3. Paragraphs (c) and (d) of subsection (2) and
 86 subsection (3) of section 288.816, Florida Statutes, are amended
 87 to read:

88 288.816 Intergovernmental relations.—

89 (2) The state protocol officer shall be responsible for
 90 all consular relations between the state and all foreign
 91 governments doing business in Florida. The state protocol
 92 officer shall monitor United States laws and directives to
 93 ensure that all federal treaties regarding foreign privileges
 94 and immunities are properly observed. The state protocol officer
 95 shall:

96 ~~(c) Issue certificates to such foreign governmental~~
 97 ~~officials after verification pursuant to proper investigations~~
 98 ~~through United States Department of State sources and the~~
 99 ~~appropriate foreign government.~~

100 ~~(d) Verify entitlement to sales and use tax exemptions~~

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101 ~~pursuant to United States Department of State guidelines and~~
 102 ~~identification methods.~~

103 (3) The state protocol officer may ~~shall~~ operate the
 104 sister city and sister state program and establish such new
 105 programs as needed to further global understanding through the
 106 interchange of people, ideas, and culture between Florida and
 107 the world. To accomplish this purpose, the state protocol
 108 officer shall have the power and authority to:

109 (a) Coordinate and carry out activities designed to
 110 encourage the state and its subdivisions to participate in
 111 sister city and sister state affiliations with foreign countries
 112 and their subdivisions. Such activities may include a State of
 113 Florida sister cities conference.

114 (b) Encourage cooperation with and disseminate information
 115 pertaining to the Sister Cities International Program and any
 116 other program whose object is to promote linkages with foreign
 117 countries and their subdivisions.

118 (c) Maximize any aid available from all levels of
 119 government, public and private agencies, and other entities to
 120 facilitate such activities.

121 ~~(d) Establish a viable system of registration for sister~~
 122 ~~city and sister state affiliations between the state and foreign~~
 123 ~~countries and their subdivisions. Such system shall include a~~
 124 ~~method to determine that sufficient ties are properly~~
 125 ~~established as well as a method to supervise how these ties are~~

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126 ~~maintained.~~

127 ~~(e) Maintain a current and accurate listing of all such~~
 128 ~~affiliations. Sister city affiliations shall not be discouraged~~
 129 ~~between the state and any country specified in s. 620(f)(1) of~~
 130 ~~the federal Foreign Assistance Act of 1961, as amended, with~~
 131 ~~whom the United States is currently conducting diplomatic~~
 132 ~~relations unless a mandate from the United States Government~~
 133 ~~expressly prohibits such affiliations.~~

134 Section 4. Section 288.8165, Florida Statutes, is created
 135 to read:

136 288.8165 Citizen support organizations.—

137 (1) CITIZEN SUPPORT ORGANIZATIONS.—The Office of
 138 International Affairs within the Department of State may support
 139 the establishment of citizen support organizations to provide
 140 assistance, funding, and promotional support for
 141 intergovernmental programs. For the purposes of this section, a
 142 "citizen support organization" means an organization that is:

143 (a) A Florida corporation not for profit incorporated
 144 under chapter 617 and approved by the Department of State;

145 (b) Organized and operated to conduct programs and
 146 activities; raise funds; request and receive grants, gifts, and
 147 bequests of money; acquire, receive, hold, invest, and
 148 administer, in its own name, securities, funds, objects of
 149 value, or other property, real or personal; and make
 150 expenditures to or for the direct or indirect benefit of the

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151 Office of International Affairs;
 152 (c) Determined by the Office of International Affairs to
 153 be consistent with the goals of the office and in the best
 154 interests of the state; and
 155 (d) Approved in writing by the Office of International
 156 Affairs to operate for the direct or indirect benefit of the
 157 office. Such approval must be given in a letter of agreement
 158 from the office.
 159 (2) USE OF ADMINISTRATIVE SERVICES AND PROPERTY.—
 160 (a) The Office of International Affairs may adopt rules
 161 requiring citizen support organizations to meet certain
 162 requirements in order to use the office's administrative
 163 services, property, or facilities.
 164 (b) The Office of International Affairs may not allow a
 165 citizen support organization to use any administrative services,
 166 property, or facilities of the state if the citizen support
 167 organization does not provide equal membership and employment
 168 opportunities to all persons regardless of race, color,
 169 religion, sex, age, or national origin.
 170 (3) ANNUAL AUDIT.—Each citizen support organization shall
 171 provide for an annual financial audit in accordance with s.
 172 215.981.
 173 (4) FUTURE REPEAL.—This section is repealed October 1,
 174 2025, unless reviewed and saved from repeal by the Legislature.
 175 Section 5. Section 288.012, Florida Statutes, is amended

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176 to read:
 177 288.012 State of Florida international offices, ~~state~~
 178 ~~protocol officer, protocol manual.~~—The Legislature finds that
 179 the expansion of international trade and tourism is vital to the
 180 overall health and growth of the economy of this state. This
 181 expansion is hampered by the lack of technical and business
 182 assistance, financial assistance, and information services for
 183 businesses in this state. The Legislature finds that these
 184 businesses could be assisted by providing these services at
 185 State of Florida international offices. The Legislature further
 186 finds that the accessibility and provision of services at these
 187 offices can be enhanced through cooperative agreements or
 188 strategic alliances between private businesses and state, local,
 189 and international governmental entities.
 190 (1) The department is authorized to:
 191 (a) Establish and operate offices in other countries for
 192 the purpose of promoting trade and economic development
 193 opportunities of the state, and promoting the gathering of trade
 194 data information and research on trade opportunities in specific
 195 countries.
 196 (b) Enter into agreements with governmental and private
 197 sector entities to establish and operate offices in other
 198 countries which contain provisions that may conflict with the
 199 general laws of the state pertaining to the purchase of office
 200 space, employment of personnel, and contracts for services. When

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201 agreements pursuant to this section are made which set
 202 compensation in another country's currency, such agreements
 203 shall be subject to the requirements of s. 215.425, but the
 204 purchase of another country's currency by the department to meet
 205 such obligations shall be subject only to s. 216.311.

206 (2) Each international office shall have in place an
 207 operational plan approved by the participating boards or other
 208 governing authority, a copy of which shall be provided to the
 209 department. These operating plans shall be reviewed and updated
 210 each fiscal year and shall include, at a minimum, the following:

211 (a) Specific policies and procedures encompassing the
 212 entire scope of the operation and management of each office.

213 (b) A comprehensive, commercial strategic plan identifying
 214 marketing opportunities and industry sector priorities for the
 215 country in which an international office is located.

216 (c) Provisions for access to information for Florida
 217 businesses related to trade leads and inquiries.

218 (d) Identification of new and emerging market
 219 opportunities for Florida businesses. This information shall be
 220 provided either free of charge or on a fee basis with fees set
 221 only to recover the costs of providing the information.

222 (e) Provision of access for Florida businesses to
 223 international trade assistance services provided by state and
 224 local entities, seaport and airport information, and other
 225 services identified by the department.

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226 (f) Qualitative and quantitative performance measures for
 227 each office, including, but not limited to, the number of
 228 businesses assisted, the number of trade leads and inquiries
 229 generated, the number of international buyers and importers
 230 contacted, and the amount and type of marketing conducted.

231 (3) Each international office shall annually submit to
 232 Enterprise Florida, Inc., a complete and detailed report on its
 233 activities and accomplishments during the previous fiscal year
 234 for inclusion in the annual report required under s. 288.906. In
 235 the format and by the annual date prescribed by Enterprise
 236 Florida, Inc., the report must set forth information on:

237 (a) The number of Florida companies assisted.

238 (b) The number of inquiries received about investment
 239 opportunities in this state.

240 (c) The number of trade leads generated.

241 (d) The number of investment projects announced.

242 (e) The estimated U.S. dollar value of sales
 243 confirmations.

244 (f) The number of representation agreements.

245 (g) The number of company consultations.

246 (h) Barriers or other issues affecting the effective
 247 operation of the office.

248 (i) Changes in office operations which are planned for the
 249 current fiscal year.

250 (j) Marketing activities conducted.

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251 (k) Strategic alliances formed with organizations in the
 252 country in which the office is located.

253 (l) Activities conducted with Florida's other
 254 international offices.

255 (m) Any other information that the office believes would
 256 contribute to an understanding of its activities.

257 (4) The Department of Economic Opportunity, in connection
 258 with the establishment, operation, and management of any of its
 259 offices located in another country, is exempt from the
 260 provisions of ss. 255.21, 255.25, and 255.254 relating to
 261 leasing of buildings; ss. 283.33 and 283.35 relating to bids for
 262 printing; ss. 287.001-287.20 relating to purchasing and motor
 263 vehicles; and ss. 282.003-282.00515 and 282.702-282.7101
 264 relating to communications, and from all statutory provisions
 265 relating to state employment.

266 (a) The department may exercise such exemptions only upon
 267 prior approval of the Governor.

268 (b) If approval for an exemption under this section is
 269 granted as an integral part of a plan of operation for a
 270 specified international office, such action shall constitute
 271 continuing authority for the department to exercise the
 272 exemption, but only in the context and upon the terms originally
 273 granted. Any modification of the approved plan of operation with
 274 respect to an exemption contained therein must be resubmitted to
 275 the Governor for his or her approval. An approval granted to

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276 exercise an exemption in any other context shall be restricted
 277 to the specific instance for which the exemption is to be
 278 exercised.

279 (c) As used in this subsection, the term "plan of
 280 operation" means the plan developed pursuant to subsection (2).

281 (d) Upon final action by the Governor with respect to a
 282 request to exercise the exemption authorized in this subsection,
 283 the department shall report such action, along with the original
 284 request and any modifications thereto, to the President of the
 285 Senate and the Speaker of the House of Representatives within 30
 286 days.

287 (5) Where feasible and appropriate, international offices
 288 established and operated under this section may provide one-stop
 289 access to the economic development, trade, and tourism
 290 information, services, and programs of the state. Where feasible
 291 and appropriate, such offices may also be collocated with other
 292 international offices of the state.

293 (6) The department is authorized to make and to enter into
 294 contracts with Enterprise Florida, Inc., to carry out the
 295 provisions of this section. The authority, duties, and
 296 exemptions provided in this section apply to Enterprise Florida,
 297 Inc., to the same degree and subject to the same conditions as
 298 applied to the department. To the greatest extent possible, such
 299 contracts shall include provisions for cooperative agreements or
 300 strategic alliances between private businesses and state,

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301 international, and local governmental entities to operate
302 international offices.
303 ~~(7) The Governor may designate a state protocol officer.~~
304 ~~The state protocol officer shall be housed within the Executive~~
305 ~~Office of the Governor. In consultation with the Governor and~~
306 ~~other governmental officials, the state protocol officer shall~~
307 ~~develop, maintain, publish, and distribute the state protocol~~
308 ~~manual.~~
309 Section 6. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/2/20

Meeting Date

HB 7049

Bill Number (if applicable)

130920

Amendment Barcode (if applicable)

Topic International Affairs

Name Brittany Dover

Job Title Legislative Affairs Director

Address 500 S. Bronough St.

Street

Tallahassee

City

FL

State

32399

Zip

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Department of State

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: t Senate Rules Committee

Judge:

Started: 3/2/2020 12:01:41 PM

Ends: 3/2/2020 6:00:23 PM **Length:** 05:58:43

12:01:40 PM Meeting called to order.
12:01:41 PM Instructions from the Chair
12:02:07 PM Roll call, quorum present
12:02:12 PM Chair Instructions
12:02:52 PM Tab 45 by Senator Hutson SB 680 Shark fins
12:03:05 PM Bill is explained
12:03:11 PM Questions on the bill
12:03:14 PM Senator Flores with question
12:03:38 PM Senator Montford with question
12:03:48 PM Senator Hutson responds
12:04:46 PM No further questions
12:04:52 PM Amendment #421662 is explained
12:05:15 PM No Amendment questions
12:05:17 PM Jerry Sansom, Organized Fisherman of Florida, in support of amendment
12:05:18 PM No Debate
12:05:20 PM Barcode 421662 is adopted.
12:05:25 PM Barcode 382092 is explained
12:06:03 PM Senator Hutson withdraws the amendment.
12:06:28 PM Record will show it withdrawn
12:06:31 PM No questions on the bill as amended.
12:06:44 PM Public Appearance
12:07:35 PM Jerry Sansom Cocoa FL for Organized Fishermen of FL against the bill
12:08:35 PM Cassandra Scott North Palm Beach in support
12:08:36 PM Joe Longobardi Yacht Broker Jacksonville in support.
12:08:38 PM Yaneisy Padrino Student Tallahassee for Shark Allies in support.
12:08:40 PM Frank Bernardino Tallahassee for Broward County in support.
12:08:44 PM Lindsay Cross Govt. Relations Director Florida Conservation in support.
12:08:49 PM Fred Dickinson Tallahassee for Guy Harvey in support
12:08:54 PM David Cullen Sierra Club Florida in support.
12:08:56 PM David Campo Shark Fisherman Seminole FL speaking for Florida Fishermen.
12:09:05 PM Travis Moore St. Petersburg Animal Legal Defense Fund & Oceana in support.
12:09:44 PM next up
12:09:46 PM Bob Harris Tallahassee Diving Equipment & Marketing Assn. DEMA in support
12:09:51 PM Brady Hale Founder Gulf Coast Lionfish Tournaments Pensacola FL in support
12:09:57 PM Stefanie Brendl Exec. Dir. California for Shark Allies in support
12:10:04 PM Shara Teter Marine Scientist Pompano Beach FL in support
12:10:08 PM Kate MacFall State Director Humane Society of The United States in support.
12:10:13 PM Chair calls for debate on the bill
12:10:18 PM Senator Hutson closes on the bill
12:10:21 PM Roll call
12:10:28 PM CS/CS/SB 680 is reported favorably
12:11:09 PM Chair takes moment for housekeeping.
12:11:11 PM Following tab bills are TP'd Tab 32-CS/CS/SJR 1216, Tab 56 SJR 7062; Tab 23 CS/SB 1128
12:11:32 PM No objection, show the motion adopted
12:11:39 PM Tab 36 CS/SB 1672 explained by Senator Broxson
12:12:05 PM No questions
12:12:14 PM Warren Husband Tallahassee Securities Industry & Financial Markets Association in support
12:12:20 PM Senator waives close
12:12:36 PM Roll call for CS/SB 1672
12:12:52 PM CS/SB 1672 is reported favorably
12:13:06 PM Tab 35 SB 1376 by Senator Broxson
12:13:13 PM Credit for Reinsurance

12:13:18 PM SB 1376 is explained
12:13:19 PM Senator Broxson explains the bill
12:13:34 PM No questions
12:13:37 PM Suzanne Murphy, Office of Insurance Regulation, waives in support
12:13:42 PM Turn to debate
12:13:44 PM No debate
12:13:45 PM Senator Broxson waives close
12:13:48 PM Roll call for SB1376
12:14:18 PM SB 1376 is reported favorably
12:14:26 PM Tab 21 CS/CS/CS/SB 826
12:14:32 PM Senator Mayfield explains the bill
12:15:00 PM Questions for Senator Mayfield
12:15:21 PM Robert Stuart, Port Canaveral, waives in support
12:15:24 PM No debate
12:15:30 PM Senator Mayfield waives close
12:15:34 PM Roll call
12:15:48 PM CS/CS/SB 826 is reported favorably
12:16:03 PM Tab 38 CS/CS/SB 1802. Senator Pizzo explains bill
12:16:27 PM No questions on bill
12:16:40 PM Dr. Danielle Thomas Florida PTA Orlando in support
12:16:48 PM Ida V. Eskamani Organize Florida & New Florida Majority in support
12:16:53 PM Larisa Svechin Vice Mayor Sunny Isles Beach in support
12:16:54 PM Lisa Henning Leg. Dir. Fraternal Order of Police in support
12:16:59 PM Nataly Chalco Lopez Student in support
12:17:01 PM Barbara DeVane Tallahassee FL NOW in support
12:17:06 PM Turn to debate
12:17:12 PM No debate
12:17:13 PM Senator waives close
12:17:17 PM Roll Call
12:17:19 PM CS/CS/SB 1802 is reported favorably
12:17:47 PM Tab 33 CS/SB 1366 by Senator Gruters
12:18:06 PM CS/SB 1366 is explained
12:18:15 PM No questions
12:18:52 PM Martha Edenfield in support for The Real Property, Probate and Trust Law Section of the Florida Bar
12:18:55 PM No debate
12:19:04 PM Senator waives close
12:19:34 PM Roll call. CS/SB 1366 is reported favorably
12:19:36 PM Tab 30 CS/SB 898 Insurance Guaranty Associations
12:19:43 PM Senator Gruters explains the bill
12:19:51 PM No questions
12:20:51 PM Mark Anderson Lobbyist CEOMC Chief Exec Officers of Management Companies in support
12:20:57 PM Travis Moore St. Petersburg Community Associations Institute in support
12:21:00 PM No debate
12:21:03 PM Senator waives close
12:21:05 PM Roll Call
12:21:08 PM CS/SB 898 is reported favorably
12:21:40 PM Tab 31 SB 1140 Public Accountancy by Senator Gruters
12:21:45 PM Senator explains the bill
12:21:50 PM Questions on the bill
12:21:56 PM No questions
12:22:02 PM Justin Thames Director of Govt. Affairs Florida Institute of CPAs in support
12:22:08 PM No debate
12:22:13 PM Senator waives close, roll call, SB 1140 is reported favorably
12:22:17 PM Tab 34 SB 1424 Special Neighborhood Improvement Districts
12:23:17 PM Senator Gruters explains the bill
12:23:26 PM No questions
12:23:31 PM No public appearances
12:23:34 PM No debate
12:23:39 PM Roll call
12:23:48 PM SB 1424 is reported favorably
12:24:14 PM Gavel is passed to Senator Simpson
12:24:21 PM Tab 62 HB 7049

12:24:58 PM Senator Gruters explains the bill
12:25:12 PM Barcode #130920 is taken up
12:25:21 PM Senator Benacquisto explains the amendment
12:25:26 PM Question - Senator Braynon
12:26:16 PM Chair recognizes Senator Gruters to answer
12:26:16 PM Senator Gruters explains
12:26:30 PM No further questions
12:26:36 PM Public appearance
12:26:40 PM Brittany Dover Leg. Affairs Dir. Dept of State in support of the amendment
12:26:48 PM No debate on amendment
12:26:53 PM Amendment is adopted
12:26:58 PM Back on bill- no questions
12:27:07 PM No debate
12:27:18 PM No appearance
12:27:21 PM Senator waives close
12:27:24 PM Roll call
12:27:31 PM HB 7049 is reported favorably
12:28:07 PM Gavel is passed back to Chair Benacquisto
12:28:19 PM Tab 17
12:28:23 PM CS/SB 822 Drones
12:28:33 PM Senator Albritton
12:28:35 PM Senator explains the bill
12:28:41 PM No questions
12:28:56 PM No public appearance
12:28:59 PM No debate. Waive close.
12:29:04 PM Roll call
12:29:06 PM CS/SB 822 is reported favorably
12:29:27 PM Tab 19 CS/SB 1082 Domestic Violence Injunctions explained by Senator Albritton
12:29:42 PM No questions
12:30:07 PM Corinne Mixon Lobbyist in support
12:30:18 PM No debate
12:30:20 PM Senator waives close
12:30:22 PM Roll call
12:30:24 PM CS/SB 1082 is reported favorably
12:30:51 PM Tab 20 SB 1244 State Workforce Development Boards
12:31:02 PM Senator Albritton explains the bill
12:31:05 PM Questions - Leader Gibson
12:31:34 PM Senator Albritton responds
12:32:07 PM Leader Gibson further on SB 1244
12:32:22 PM Senator Albritton responds
12:32:59 PM Public appearance
12:33:03 PM Nicholas Alvarez Leg. Affairs Dir. Department of Economic Opportunity in support
12:33:07 PM No debate
12:33:10 PM Senator waives close
12:33:12 PM Roll call
12:33:14 PM SB 1244 is reported favorably
12:33:48 PM Tab 16 CS/CS/SB 792 Physical Therapy Practice
12:34:09 PM Bill is explained by Senator Albritton
12:34:13 PM Amendment 415392 is explained
12:34:36 PM AA 148238 is explained
12:35:01 PM No questions on AA
12:35:07 PM AA is adopted
12:35:14 PM Back on main Amendment - public appearance - David Bibbey VP FL State Oriental Medical Assoc.
Crystal River in support
12:36:05 PM A 415392 adopted
12:36:14 PM Back on the bill as amended
12:36:16 PM Public appearance
12:36:25 PM Min Tiam Acupuncture Physician with FL Acupuncture Association against the bill
12:37:37 PM Burt Reed, Physical Therapist with FL Physical Therapy Association in support
12:38:11 PM No debate
12:38:14 PM Waive close
12:38:18 PM Roll call

12:38:25 PM CS/CS/SB 792 is reported favorably
12:38:50 PM Tab 18 - SB 1042 Aquatic Preserves
12:39:01 PM Bill is explained by Senator Albritton
12:39:12 PM No questions
12:39:15 PM No public testimony
12:39:19 PM No debate
12:39:20 PM Waive close
12:39:26 PM Roll call on SB 1042
12:39:36 PM SB 1042 is reported favorably
12:39:52 PM Tab 10 - CS/SB 302 by Senator Rader - Adoption Records
12:40:02 PM Bill is explained
12:40:32 PM No questions
12:40:39 PM Melina Rayna Svanhild Farley-Barrett Leg. Director Trenton for FL NOW - in support
12:40:51 PM Barbara DeVane FL NOW in support
12:40:56 PM That concludes public testimony
12:41:02 PM Senator Farmer in debate
12:41:53 PM Senator waives close
12:41:57 PM Roll call CS/SB 302
12:42:07 PM CS/SB 302 is reported favorably
12:42:32 PM Tab 12 - CS/CS/SB 688 by Senator Wright
12:42:44 PM Bill is explained
12:42:52 PM Leader Gibson in questions
12:43:39 PM Senator Wright responds
12:43:49 PM Kate MacFall State Director of Humane Society of The United States in support
12:43:54 PM Yaneisy Padrino Student TLH in support
12:44:00 PM Lindsay Cross Govt. Relations Director FL Conservation Voters in support
12:44:11 PM No debate
12:44:13 PM Waive close
12:44:15 PM Roll call
12:44:17 PM CS/CS/SB 688 is reported favorably
12:44:49 PM Tab 11 - SB 510 by Senator Wright - Bail Pending Appellate Review
12:44:55 PM Senator Wright explains the bill
12:45:17 PM No questions
12:46:18 PM Late amendment accepted barcode 493576
12:46:20 PM A 493576 is explained by Senator Brandes
12:46:42 PM Questions for Senator Brandes by Senator Bradley
12:47:14 PM Senator Brandes responds
12:47:34 PM Senator Brandes - withdraws the amendment
12:47:55 PM No question on bill
12:47:59 PM No public testimony
12:48:02 PM No debate
12:48:05 PM Roll call
12:48:07 PM SB 510 is reported favorably
12:48:34 PM Tab 29 - CS/SB 1466 by Senator Baxley - Government Accountability
12:48:42 PM Bill is explained
12:49:11 PM No questions
12:49:19 PM Michael Eckert, Attorney for Assoc. of FL Community Developers in support
12:49:26 PM Chris Lyon FL Association of Special Districts in support
12:49:33 PM Chris Anderson, Exec. Director, FLA Commission on Ethics with information
12:52:00 PM No debate
12:52:05 PM Waive close
12:52:09 PM Roll call
12:52:13 PM CS/SB 1466 is reported favorably
12:52:40 PM Tab 28 CS/SB 1170 by Senator Baxley - Public Records and Meetings/Division of State Technology
12:52:47 PM Bill is explained
12:52:52 PM No questions
12:53:27 PM Cody Farrill, Department of Management Services, waives in support
12:53:32 PM No debate
12:53:35 PM Waives close
12:53:37 PM Roll call on CS/SB 1170
12:53:43 PM CS/SB 1170 is reported favorably
12:54:09 PM Tab 27 SB 946 by Senator Baxley - Moments of Silence in Public Schools

12:54:18 PM Senator Baxley explains the bill
12:54:28 PM Questions: Leader Gibson
12:55:22 PM Senator Baxley responds
12:55:43 PM Senator Thurston with a question
12:56:20 PM Senator Baxley answers
12:57:18 PM Senator Farmer with a question
12:58:02 PM Senator Baxley responds
12:59:26 PM Senator Farmer with a follow up
12:59:37 PM Senator Baxley responds
1:00:03 PM John Berry of Tallahassee in support
1:00:07 PM Valerie Osborne, Educator from Ft. Walton Beach, in support
1:00:13 PM Barbara Berry, Parent from Tallahassee, in support
1:00:18 PM Steve Vernon, Board Member - FL Citizens Alliance, Lakewood Ranch FL, in support
1:00:24 PM Bev Kilmer, President- Freedom Speaks Coalition, in support
1:00:30 PM Beatrice Macia, Citizen of TLH, in support
1:00:37 PM Isabel Ruano of TLH is against the bill
1:00:41 PM Kara Gross, Legislative Director - American Civil Liberties Union of FL, is against
1:00:43 PM Devon Graham, Assistant State Director - American Atheists, is against
1:00:50 PM Barbara Devane, TLH Florida NOW, is against
1:00:56 PM Melina Rayna Svahild Farley-Barrett, Leg. Director - FL NOW, is against
1:01:49 PM In debate
1:04:36 PM Leader Gibson in debate
1:05:26 PM Senator Farmer in debate
1:06:49 PM Senator Bradley in debate
1:09:43 PM No further debate
1:09:46 PM Senator Baxley is recognized to close
1:09:47 PM Senator Baxley closes on the bill
1:10:11 PM Roll call on SB 946
1:10:48 PM SB 946 is reported favorably
1:11:13 PM Tab 13 by Senator Berman - Uniform Commercial Real Estate Receivership Act
1:11:27 PM CS/SB 660 is explained
1:11:44 PM No questions
1:12:13 PM Public testimony - Ameer Diaz Lyon, the Business Law Section of the Florida Bar, in support
1:12:14 PM No debate
1:12:19 PM Waive close
1:12:23 PM Roll call
1:12:25 PM CS/SB 660 is reported favorably
1:12:52 PM Tab 37 CS/SR 1572 by Senator Stewart - Climate Change
1:13:04 PM Senator Stewart explains the bill
1:13:34 PM No questions on the bill
1:14:09 PM Public testimony
1:14:17 PM Katrina Erwin, Program Coordinator - CIEO Institute, in support
1:14:27 PM Melina Rayna Svahild Farley-Barrett FL NOW in support
1:14:34 PM Ida V. Eskamani, Organize FL & New Florida Majority, in support
1:14:38 PM Jonathan Webber, Deputy Director - FL Conservation Voters, in support
1:15:35 PM David Cullen, Sierra Club Florida, in support
1:15:41 PM Barbara DeVane, FL NOW, in support
1:15:47 PM No debate
1:16:00 PM Senator Stewart closes
1:16:05 PM Roll call
1:16:09 PM CS/SR 1572 is reported favorably
1:16:42 PM Tab 9 SB 738 by Senator Harrell - Jury Service
1:16:51 PM Senator Harrell explains the bill
1:17:15 PM Amendment 679768 is explained
1:17:39 PM Questions on the amendment: Senator Braynon
1:18:22 PM Questions on the amendment: Senator Brandes
1:18:28 PM Senator Harrell responds
1:18:40 PM No public appearance on delete all
1:18:45 PM No debate
1:18:47 PM Amendment 679768 adopted
1:19:06 PM Kristina Wiggins, Exec. Director - TLH FL Public Defender Association, in support
1:19:14 PM Senator Rodriguez in debate

1:19:50 PM Senator Farmer in debate
1:21:04 PM Senator Farmer further in debate
1:21:06 PM Senator Harrell closes on the bill
1:21:16 PM Roll call on SB 738
1:22:12 PM SB 738 is reported favorably
1:22:47 PM Tab 6 CS/SB 218 by Senator Harrell - Licensure Requirements for Osteopathic Physicians
1:22:54 PM Senator Harrell explains the bill
1:23:17 PM No questions
1:24:07 PM Public Appearance
1:24:07 PM Steve Winn, Exec Director for FL Osteopathic Medical Association, in support
1:24:09 PM Jeff Scott, Florida Medical Association, in support
1:24:10 PM No debate
1:24:11 PM Waive close
1:24:13 PM Roll call CS/SB 218
1:24:27 PM CS/SB 218 is reported favorably
1:24:46 PM Tab 8 CS/SB 500 by Senator Harrell - Prohibited Acts by Health Care Practitioners
1:25:00 PM Senator Harrell explains the bill
1:25:06 PM Amendment delete all 668434 is explained
1:26:20 PM No questions. The amendment to the amendment # 536662 is explained.
1:27:26 PM No questions on the amendment to the amendment
1:27:30 PM Public appearance
1:27:37 PM Judith Howes, Gainesville FL - Academy of Anesthesiologist Assistants, in support
1:27:39 PM Dr. Brence Sell, Anesthesiologist for FL Society of Anesthesiologists, in support
1:27:46 PM Alexandra Abboud, Govt. Affairs Liaison - FL Dental Association, in support
1:27:53 PM No debate
1:27:56 PM Barcode 536662 is adopted, back on the delete all as amended
1:28:14 PM Public testimony - Natalie Kato - FL Assoc. of Nurse Anesthetists is against
1:30:11 PM Judith Howes, Gainesville - FL Academy of Anesthesiologist Assistants, in support
1:30:17 PM Dr. Brence Sell, Anesthesiologist - FL Society of Anesthesiologists, in support
1:30:22 PM No debate on delete all
1:30:29 PM No objections - amendment is adopted
1:30:37 PM No questions on bill
1:30:42 PM Natalie Kato, FL Association of Nurse Anesthetists, is against
1:30:47 PM Alexandra Abboud, Govt. Affairs Liaison - Florida Dental Association, in support
1:30:51 PM Dr. Brence Sell, Anesthesiologist - FL Society of Anesthesiologists, in support
1:30:54 PM Judith Howes, Gainesville - FL Academy Anesthetists Assistants, in support
1:30:58 PM Jeff Scott, Florida Medical Association, in support
1:31:07 PM No debate
1:31:10 PM Senator to close
1:31:11 PM Senator Harrell closes on the bill
1:31:30 PM Roll call
1:31:43 PM CS/SB 500 is reported favorably
1:32:28 PM Tab 7 CS/CS/SB 230 Department of Health
1:32:49 PM Underlying bill is explained
1:35:01 PM Department of Health bill explanation by Senator Harrell
1:36:45 PM No questions
1:36:51 PM Amendment 850798 by Senator Harrell also explains SA 309044
1:39:38 PM Senator Thurston with question on the delete all and SA
1:40:39 PM Senator Harrell responds
1:40:56 PM Senator Brandes with a question
1:41:06 PM Senator Harrell answers
1:41:41 PM Senator Brandes with follow up question
1:41:55 PM Senator Harrell responds
1:43:31 PM Senator Brandes with follow up
1:43:41 PM Senator Harrell answers
1:44:36 PM Senator Montford with a question
1:44:50 PM Senator Harrell responds
1:45:45 PM Senator Montford with follow up question
1:45:58 PM Senator Harrell with response
1:47:01 PM Senator Montford with follow up question
1:47:14 PM Senator Harrell answers
1:48:18 PM Leader Gibson with a question

1:48:26 PM Senator Harrell with response
1:49:06 PM Leader Gibson with follow up
1:49:42 PM Senator Harrell responds
1:50:02 PM Leader Gibson with follow up
1:50:14 PM Senator Harrell answers
1:50:50 PM Senator Book with a question
1:51:01 PM Senator Harrell responds
1:51:22 PM Senator Book with follow up
1:51:35 PM Senator Harrell answers
1:52:25 PM Senator Book with follow up
1:52:33 PM Senator Harrell responds
1:53:26 PM Senator Book with follow up
1:53:35 PM Senator Harrell answers
1:54:34 PM Senator Book with follow up
1:54:43 PM Senator Harrell answers
1:55:53 PM Senator Farmer with a question
1:56:00 PM Senator Harrell answers
1:56:13 PM Chair instructs to show SB 230 Temporarily postponed
1:56:48 PM Tab 14 SB 726 by Senator Rouson - Florida Commission on Human Relations
1:57:19 PM Senator Rouson explains the bill
1:57:28 PM No questions
1:57:51 PM Public Appearance - Christopher Turner, Deputy Director of Legislative Affairs - FL Commission on Human Relations, in support
1:58:00 PM No debate
1:58:02 PM Senator waives close
1:58:05 PM Roll call on SB 726
1:58:12 PM SB 726 is reported favorably
1:58:42 PM Tab 15 by Senator Rouson SB 798 - Procurement of Human Organs and Tissue
1:58:54 PM Senator Rouson explains the bill
1:59:02 PM Amendment 804792 is explained
1:59:45 PM No questions
1:59:49 PM No appearance, no debate
1:59:57 PM Amendment is adopted
2:00:03 PM A 202180 is explained by Senator Rouson
2:00:13 PM No questions
2:00:17 PM No appearances, no debate
2:00:27 PM Senator waives close on amendment
2:00:30 PM Amendment is adopted
2:00:35 PM Back on bill as amended
2:00:39 PM No questions
2:00:47 PM No public appearance
2:00:49 PM Leader Gibson in debate
2:01:45 PM Senator Rouson waives close
2:01:51 PM Roll call
2:01:54 PM CS/SB 798 is reported favorably
2:02:33 PM Tab 1 CS/SB 160 by Senator Perry - Peer-to-Peer Support for First Responders
2:03:16 PM Strike all - 682522 is explained
2:03:35 PM No questions on delete all
2:03:58 PM AA 834386 is explained
2:04:11 PM Senator Book with question on the AA
2:04:49 PM No public appearance, no debate
2:04:55 PM The AA is adopted.
2:05:02 PM Questions on the delete all as amended
2:05:13 PM Senator Brandes with question
2:05:19 PM Senator Perry answers
2:05:39 PM Senator Brandes with follow up
2:05:47 PM Senator Perry responds
2:06:16 PM Richard Pinsky, 9-1-1 Emergency Dispatchers, in support
2:06:23 PM Lisa Henning, Legislative Director - Fraternal Order of Police, in support
2:06:28 PM Debate on delete all as amended
2:06:37 PM Senator Brandes with debate
2:07:29 PM Senator Rodriguez in debate

2:09:36 PM Senator Simmons in debate
 2:09:39 PM Senator Farmer in debate
 2:09:41 PM
 2:12:15 PM Senator Farmer in debate
 2:14:19 PM Senator Perry closes on the delete all
 2:15:24 PM Delete all is adopted
 2:15:40 PM Senator Farmer Amendment A 526660 is now out of order
 2:15:49 PM George Wallace of Ocala in support
 2:18:18 PM Question to Mr. Wallace
 2:18:37 PM Mr. Wallace responds
 2:20:03 PM Senator Simmons with follow up
 2:20:17 PM Mr. Wallace responds
 2:22:12 PM Antonia Wright, Lieutenant - Orange County Sheriff's Office Orlando, in support
 2:22:17 PM Chief Ray Colburn, Exec. Dir. Melbourne Beach FL for FL Fire Chiefs Association, in support
 2:22:25 PM Gary Bradford, Govt. Relations - FL PBA, in support
 2:22:28 PM Richard Pinsky 9-1-1 Emergency Dispatchers speaking in support
 2:23:34 PM Wayne Bernoska, President - Florida Professional Firefighters, in support
 2:23:39 PM No debate
 2:23:50 PM Senator Perry closes on the bill
 2:24:02 PM Roll call on CS/SB 160
 2:24:15 PM CS/SB 160 is reported favorably
 2:24:46 PM Tab 4 CS/SB 888 by Senator Perry - Public Nuisances
 2:24:59 PM Senator Perry explains the bill
 2:25:04 PM No questions
 2:25:14 PM Amendment 702620 is explained
 2:25:28 PM No question on the amendment
 2:25:35 PM Lauren Jackson, Seminole County Sheriff's Office, in support
 2:25:43 PM No debate
 2:25:46 PM Amendment is adopted
 2:25:49 PM Back on bill - no questions
 2:25:56 PM Antonio Wright, Lieutenant Orlando -Orange County Sheriff's Office, in support
 2:26:03 PM No debate
 2:26:11 PM Roll call
 2:26:20 PM CS/SB 888 is reported favorably
 2:26:35 PM Tab 3 CS/SB 504 by Senator Perry - Local Government Public Construction Works
 2:26:47 PM Senator Perry explains the delete all
 2:26:57 PM Questions -Senator Bradley
 2:27:51 PM Senator Perry responds
 2:28:05 PM No public appearance
 2:28:08 PM Amendment to the delete all barcode 547446
 2:28:17 PM Amendment explained 547446 by Senator Perry
 2:28:41 PM Questions on amendment
 2:28:43 PM Senator Lee with question on AA
 2:28:59 PM Senator Perry response
 2:29:54 PM Senator Lee continues question
 2:30:07 PM Senator Perry answers
 2:30:56 PM Senator Thurston
 2:31:58 PM Senator Perry with answer
 2:32:18 PM Bruce Kershner Longwood SouthEast Glass Association
 2:32:22 PM Deborah Lawson, NACM Improved Construction Practices Committee, in support
 2:32:31 PM French Brown, Lobbyist - Real Property Probate and Trust Law Section of the Florida Bar, in support
 2:32:39 PM In debate - Senator Flores
 2:33:15 PM Chair responds
 2:33:19 PM Senator Perry responds to Senator Flores
 2:33:56 PM No further debate
 2:33:59 PM Amendment not adopted
 2:34:09 PM Back on delete all. Questions - Senator Bradley
 2:34:34 PM Laura Youmans, Legislative Cause Florida Association of Counties, speaking in support
 2:35:53 PM Scott Jenkins, Sr. Govt. Consultant - National Utility Contractors Assoc. of FL, in support
 2:36:02 PM Jeff Branch Florida League of County
 2:36:15 PM No debate
 2:36:22 PM Waive close

2:36:25 PM Show 627108 adopted - back on the bill
2:36:38 PM No debate
2:36:44 PM Waive close
2:36:47 PM Roll call
2:36:58 PM CS/SB 504 is reported favorably
2:37:12 PM Tab 2 CS/SB 410 by Senator Perry - Growth Management
2:37:19 PM Explained the delete all
2:37:28 PM Senator Perry explains A 939464
2:37:44 PM Questions on the Delete all-Senator Bradley
2:38:26 PM Senator Perry with answer
2:39:25 PM Senator Bradley with follow up
2:39:35 PM Senator Perry answers
2:39:49 PM Senator Montford with questions
2:39:58 PM Senator Perry answers
2:40:27 PM Leader Gibson with question
2:41:08 PM Senator Perry responds
2:41:17 PM Public Appearance
2:41:41 PM David Cruz, Legislative Counsel - FL League of Cities, is against
2:43:15 PM Senator Thurston with question for Mr. Cruz
2:43:29 PM Mr. Cruz answers
2:44:06 PM Senator Thurston with follow up
2:44:13 PM Mr. Cruz answers
2:45:11 PM Mr. Cruz answers
2:45:11 PM Senator Thurston with question
2:45:14 PM Mr. Cruz answers
2:45:21 PM Laura Youmans, Legislative Counsel - FL Association of Counties, is against
2:47:42 PM Show bill CS/SB 410 Temporarily Postponed
2:47:46 PM Motion by Senator Stargel
2:47:56 PM Tab 41 CS/CS/SB 664 by Senator Lee - Verification of Employment Eligibility
2:48:16 PM Verification of Employment Eligibility
2:48:41 PM Senator Lee explains the bill
2:49:53 PM Delete # 885440 all is explained
2:52:19 PM Questions on the delete all - Senator Rodriguez
2:53:19 PM Senator Lee with answer
2:54:27 PM Senator Rodriguez with follow up
2:55:28 PM Senator Lee responds
2:55:38 PM Senator Rodriguez with follow up
2:56:27 PM Senator Lee responds
2:56:34 PM Senator Rodriguez with follow up
2:57:25 PM Senator Lee responds
2:59:16 PM Senator Rodriguez follows up
3:00:58 PM Senator Rodriguez follows up
3:00:59 PM Senator Lee responds
3:01:11 PM Senator Rodriguez
3:01:18 PM Senator Lee answers
3:01:35 PM Senator Rodriguez with a question
3:02:28 PM Senator Lee responds
3:03:21 PM Senator Rodriguez with follow up
3:04:00 PM Senator Lee responds
3:05:27 PM Senator Rodriguez continues in questions
3:06:29 PM Senator Lee responds
3:06:55 PM Leader Gibson with a question
3:07:53 PM Senator Lee responds
3:08:47 PM Leader Gibson with follow up
3:09:01 PM Senator Lee answers
3:10:23 PM Leader Gibson continues in questions
3:10:38 PM Senator Lee responds
3:12:13 PM Leader Gibson with follow up
3:12:24 PM Senator Lee responds
3:13:24 PM Back on the amendment
3:13:27 PM David Barkey, Sr. & Southeastern Area Counsel Boca Raton - ADL Anti-Defamation League, is against
3:13:37 PM No debate

3:13:40 PM Waives close - amendment is adopted
 3:13:48 PM Back on the bill as amended
 3:13:54 PM Senator Brandes in debate
 3:14:15 PM Senator Lee answers question
 3:14:36 PM Public appearances
 3:14:40 PM Isabel Ruano in opposition
 3:14:43 PM Melina Rayna Svanhild Farley-Barrett is against
 3:14:50 PM Barbara DeVane, FL NOW, is against
 3:14:57 PM Ingrid Delgado, FL Conference Catholic Bishops, is against
 3:15:02 PM Scott McCoy, Policy Director - Southern Poverty Law Action Fund, is against
 3:15:09 PM Kyan Michael JAX - in favor
 3:19:56 PM Robert Michael Jr. JAX in support
 3:20:39 PM David Barkey, Sr. & Southeastern Area Counsel Boca Raton - ADL Anti-Defamation League, is against
 3:20:45 PM Alexis Davis, Policy Analyst Social Worker Altamonte Springs - Florida Policy Institute, is against
 3:20:52 PM Ida V. Eskamani, Florida Immigrant Coalition, is against
 3:20:56 PM Kathy B. Carvajal, Exec. Dir. - IMPAC Fund IABIC Coral Gables American Business Immigration Coalition, against
 3:22:12 PM Nataly Chalco Lopez, FSU student, is against
 3:23:27 PM Kara Gross, Leg. Dir. - Miami American Civil Liberties Union of FL, against
 3:23:32 PM Robert Windham, Retired Miramar Beach FL, in support
 3:25:09 PM Steve Vernon, FL Citizens Alliance Lakewood Ranch in support / Kyan Michael JAX in support
 3:25:16 PM Karen Woodall, Exec. Dir. - FL Center for Fiscal Economic Policy, is against
 3:26:58 PM Senator Rodriguez in debate
 3:30:34 PM Senator Flores in debate
 3:32:37 PM Senator Thurston in debate
 3:35:28 PM Senator Simmons in debate
 3:37:38 PM Senator Lee closes on the bill
 3:40:25 PM Roll call CS/CS/SB 664
 3:41:26 PM CS/CS/SB 664 is reported favorably
 3:42:03 PM Tab 42 CS/CS/SB 1270 by Senator Lee - Fiduciary Duty of Care of Appointed Pub Officials and Exec. Officers
 3:42:13 PM Senator Lee explains the bill
 3:43:13 PM Questions on the bill- Senator Rodriguez
 3:44:36 PM Senator Lee with response
 3:46:11 PM Senator Rodriguez with follow up
 3:47:13 PM Senator Lee responds
 3:48:21 PM Senator Brandes with a question
 3:49:21 PM Senator Lee responds
 3:49:25 PM Senator Brandes with follow up
 3:49:29 PM Senator Lee responds
 3:49:35 PM Leader Gibson with a question
 3:49:48 PM Senator Lee answers
 3:50:04 PM Sarah Brown, Deputy State Director - Delray Beach Americans for Prosperity, in support
 3:50:42 PM Lara Rahin Miller, Commissioner South Broward Hollywood, in support
 3:53:43 PM Rebecca O Hara, Deputy Gen Counsel - FL League of Cities, for information
 3:54:47 PM Senator Bradley in debate
 3:55:55 PM Senator Lee closes on the bill
 3:56:33 PM Roll call on CS/CS/SB 1270
 3:57:34 PM CS/CS/SB 1270 is reported favorably
 3:58:03 PM Return to Tab 7 230 Dept of Health
 3:58:32 PM A628052 is explained by Senator Harrell
 3:59:13 PM No questions
 3:59:57 PM Bob Harris, Southern Technical College, in support
 4:00:09 PM No debate
 4:00:11 PM 628052 is adopted
 4:00:26 PM WD the first amendment 850798
 4:00:39 PM 512696 SA by Senator Harrell - is explained
 4:01:28 PM No questions
 4:01:41 PM No public appearance, no debate
 4:01:45 PM Amendment is adopted
 4:01:49 PM 444270 A explained by Senator Rodriguez
 4:02:10 PM No questions

4:02:21 PM Senator Rodriguez presents the A 444270
4:08:19 PM Senator Rodriguez recognized to present his AA to the A 444270
4:08:20 PM Senator Rodriguez explains the AA 639090 to the A
4:08:30 PM No Question
4:08:34 PM No public appearance
4:08:51 PM Question- Leader Gibson
4:09:14 PM Senator Rodriguez answers
4:10:25 PM Senator Lee in debate to the amendment
4:11:44 PM Senator Harrell on the amendment
4:12:49 PM Senator Rodriguez close on his amendment
4:13:11 PM Amendment 444270 is not adopted
4:14:11 PM Back on the bill
4:14:14 PM Public appearance
4:14:18 PM Steve Winn, Exec Dir. - FL Osteopathic Medical Association, in support
4:14:23 PM Jodi James, Leg. Dir. Melbourne FL - Cannabis Action Network / Shawn Adair Castellana, Monticello Warehouse Worker At Salvation Army, is against
4:14:30 PM Chief Ray Colburn, Exec. Dir. Melbourne Beach - FL Fire Chief's Association, in support
4:14:36 PM Alexander Abboud, Govt Affairs Liaison - TLH FL Dental Association, in support
4:14:39 PM Moriah Barnhart, CEO Ruskin, is against
4:14:43 PM Denise Cleveland, Brandon, is against
4:14:48 PM Frank Kowlands, Paramedic Palm Harbor, is against
4:14:52 PM Ron Watson, Lobbyist - Alt Med FL MUV, against
4:14:58 PM Courtney Ceppola, Chief of Staff FDOH
4:14:58 PM Kelly Parrott, VP - WFWP Tampa Chapter, against
4:15:06 PM Stefani Watson, Operations Pit Chiropractic TLH - MMJ Patients, is against
4:15:14 PM Melody Arnold, Associate Dir. Govt. Affairs - FL Health Care Assoc., in support
4:15:20 PM Conclude public testimony
4:15:24 PM In debate
4:15:32 PM Leader Gibson
4:16:24 PM Senator Harrell explains confusion
4:16:46 PM No further debate
4:16:52 PM Senator Harrell closes on the bill
4:17:15 PM Roll call
4:17:33 PM CS/CS/SB 230 is reported favorably
4:18:37 PM Tab 2 SB 410 by Senator Perry - Growth Management
4:18:57 PM Bill is explained by Senator Perry
4:18:58 PM Handwritten amendment by Senator Hutson - no barcode
4:19:17 PM Questions on handwritten
4:19:37 PM No public testimony
4:19:39 PM No debate on amendment
4:19:43 PM Amendment is adopted 939964
4:20:21 PM Public Testimony on delete all
4:20:25 PM Jane West, Policy Planning Dir. St. Augustine - 1000 Friend of FL, is against
4:20:30 PM David Cullen, Sierra Club, is against
4:20:35 PM Dan Peterson, Minneola Coalition of Property Rights, in support
4:20:40 PM In debate
4:20:46 PM None
4:20:48 PM A 939454 is adopted
4:20:56 PM Gary Hunter, Attorney - TLH Association of FL Community Developers, in support
4:20:58 PM Dan Peterson, President - Minneola Coalition for Property Rights, in support
4:21:06 PM Starla Brown, Dept. State Dir. Delray Beach Americans for Prosperity, in support
4:21:08 PM Ellen Vause, Hawthorne City Manager, in support
4:21:12 PM Lindsey Cross, Govt. Relations Dir. - FL Conservation Voters, is against
4:21:15 PM Jane West, 1000 Friends of FL, is against
4:21:20 PM Laura Youmans, FL Assoc of Counties, is against
4:21:26 PM David Cullen, Sierra Club Florida, is against
4:21:29 PM Debate on bill as amended - Senator Bradley
4:22:00 PM Senator waives close
4:22:04 PM Roll call
4:22:07 PM CS/SB 410 is reported favorably
4:22:35 PM Tab 25 1618 by Senator Diaz - Construction Materials Mining Activities
4:22:49 PM Bill is explained

4:22:56 PM No questions on the bill
4:23:14 PM David Cullen, Sierra Club, in support
4:23:19 PM No debate
4:23:23 PM Waive close. Roll call.
4:23:36 PM SB 1516 is reported favorably
4:23:54 PM Tab 26 SB 7008 - Animal Medical Records / State College of Vet Medicine
4:24:06 PM Senator Diaz to explain the bill
4:24:08 PM Bill is explained
4:24:11 PM No questions
4:24:27 PM No public appearance
4:24:29 PM No debate
4:24:31 PM Waive close
4:24:34 PM Roll call
4:24:36 PM SB 7008 is reported favorably
4:25:01 PM Tab 24 CS/SB 1258 by Senator Diaz - Commercial Service Airports
4:25:11 PM Bill is explained
4:25:44 PM Questions: Senator Thurston
4:26:44 PM Senator Diaz responds
4:26:57 PM Amendment Senator 230136 by Brandes is explained
4:27:34 PM Question by Leader Gibson
4:28:02 PM Senator Brandes answers
4:28:20 PM Chad Rosenstein, FL Airports Council, in support
4:28:24 PM No debate
4:28:27 PM Amendment is adopted
4:28:31 PM Back on bill as amended
4:28:36 PM Starla Brown, Deputy State Director - Delray Beach Americans for Prosperity, in support
4:28:38 PM Chad Rosenstein, Govt. Affairs & Grants - Lee County Port Authority, is against
4:28:45 PM In debate
4:28:46 PM Senator Thurston in debate
4:29:40 PM Senator Diaz waives close
4:29:44 PM Roll call
4:29:46 PM CS/SB 1258 is reported favorably
4:30:15 PM Tab 22 CS/CS/SB 736 by Senator Diaz - Coverage for Air Ambulance Services
4:30:25 PM Bill is explained
4:30:40 PM Amendment 313996 is explained
4:30:58 PM No questions
4:31:06 PM No public appearance. No debate.
4:31:11 PM Amendment is adopted
4:31:19 PM Back on bill
4:31:20 PM Jeff See, Senior VD - Air Methods Oldsmar - is against
4:31:23 PM Chief Ray Colburn, Exec Director - FL Fire Chief's Association, is against
4:31:28 PM Audrey Brown, President/CEO - FL Association of Health Plans, in support
4:31:37 PM In debate
4:33:31 PM Senator Farmer in debate
4:33:49 PM Senator Thurston in debate
4:34:18 PM Senator Thurston in debate
4:34:19 PM Senator Simmons in debate
4:34:33 PM Senator Diaz addresses concerns in his close
4:35:44 PM Roll call
4:35:49 PM CS/CS/SB 736 is reported favorably
4:36:17 PM Tab 60 SB 7052 - Office of Public Counsel
4:36:24 PM Senator Simpson explains the bill
4:36:42 PM No questions on the bill
4:36:50 PM Public appearance
4:36:52 PM Karen Woodall Exec. Dir.
4:36:56 PM Brian Lee, Florida Legislative Director - Food & Water Watch, is against
4:37:02 PM David Cullen, Sierra Club FL, is against
4:37:06 PM Jordan Luebke, Attorney - Earth Justice, is against
4:37:10 PM Jonathan Webber, Deputy Director - FL Conservation Voters, is against
4:38:07 PM No debate
4:38:11 PM Waive close
4:38:15 PM Roll call

4:38:19 PM Bill SB 7052 is reported favorably
4:38:59 PM Senator Braynon asked to be shown voting no
4:39:06 PM Tab 40 CS/CS/SB 214
4:39:25 PM Senator Rodriguez explains the resolution
4:40:22 PM No questions
4:40:22 PM Public Appearance
4:40:23 PM Ida V. Eskamani, FL Immigrant Coalition, in support
4:40:24 PM David Cullen, Sierra Club Florida, in support/ Jonathon Webber, Dep. Dir. - FL Conservation Voters, in support
4:40:27 PM Nataly Chalco Lopez, Student Tallahassee in support/ Jeff Binkley, Atlanta GA in support
4:40:28 PM Melina Rayna Svanhild Farley-Barrett, LEG Dir. - FL NOW, in support
4:40:32 PM Barbara DeVane FL NOW in support / Kara Gross Leg Dir.- American Civil Liberties Union of Florida, in support
4:40:34 PM Dr. Danielle Thomas, Legislative Chair - FL PTA, in support
4:40:38 PM No debate
4:40:42 PM Waive close
4:40:48 PM Roll call
4:40:50 PM CS/CS/SR 214 is reported favorably
4:41:17 PM Tab 39 CS/SB 4 Senator Flores - Relief of Dontrell Stephens Palm Beach Sheriff's Office
4:41:33 PM Bill is explained
4:42:30 PM Question - Senator Lee
4:42:34 PM Senator Flores answers
4:43:03 PM Senator Stargel with a question
4:43:14 PM Senator Flores answers
4:43:38 PM Public appearance
4:43:40 PM Jason Unger, Palm Beach County Sheriff's Office, in support
4:44:07 PM No debate - waive close
4:44:16 PM Roll call
4:44:24 PM CS/SB 4 is reported favorably
4:44:46 PM Tab 50 CS/SB 1148 by Senator Brandes - Electric Bicycles
4:44:52 PM Bill is explained
4:44:59 PM Questions: none
4:45:17 PM Jeff Branch, Legislative Advocate - Florida League of Cities, in support
4:45:24 PM Becky Afonso, Executive Director - Florida Bicycle Association, in support
4:45:24 PM Larisa Svechin, Vice Mayor Sunny Isles Bch, in support
4:45:31 PM No debate
4:45:36 PM Waive close
4:45:38 PM Roll call
4:45:41 PM CS/SB 1148 is reported favorably
4:46:11 PM Tab 51 - CS/SB 1352 Senator Brandes - Transportation Companies
4:46:20 PM SB 1352 explained
4:46:27 PM No questions
4:46:47 PM Amendment 289278 explained
4:47:00 PM Questions- none
4:47:16 PM No public appearance
4:47:19 PM No debate
4:47:21 PM Amendment is adopted
4:47:24 PM Back on bill as amended
4:47:25 PM No questions
4:47:31 PM David Ramba, FL Limousine, in support
4:47:32 PM Megan Sirgane Samples, Southeast Public Policy Manager - LYFT, in support
4:47:35 PM Conclude testimony
4:47:37 PM Debate on bill
4:47:47 PM Leader Gibson in debate
4:48:07 PM Senator Farmer in debate
4:48:19 PM Senator Brandes waives close
4:48:26 PM Roll call
4:48:29 PM CS/SB 1352 is reported favorably
4:48:53 PM Tab 54 CS/SB 1738 Senator Brandes - Motor Vehicle Dealers
4:48:58 PM Bill is explained
4:49:08 PM No questions
4:49:22 PM Late filed Amendment by Senator Farmer 318568 is explained

4:50:00 PM Amendment is WD
4:50:11 PM Public Testimony
4:50:13 PM Ted Smith, President - FL Auto Dealers Association, in support
4:50:17 PM Mark Delegal, Counsel - FL Justice Reform Institute, in support
4:50:22 PM No debate
4:50:28 PM Senator Brandes waives close
4:50:32 PM Roll call
4:50:34 PM CS/SB 1738 is reported favorably
4:51:03 PM Tab 52 SB 1354 Senator Brandes - Statewide Voter Registration Application
4:51:13 PM Bill is explained
4:51:16 PM No questions
4:51:43 PM Amendment is WD
4:51:47 PM Public Testimony
4:51:48 PM Trish Neely, Consultant - League of Women Voters, in support
4:51:52 PM David Ash, Common Cause, in support
4:51:57 PM Back on bill
4:51:59 PM No debate
4:52:01 PM Senator waives close
4:52:06 PM SB1354 is reported favorably
4:52:32 PM Tab 61 HB 5301 by Senator Bradley - Judges
4:52:35 PM Bill is explained
4:52:51 PM Questions- none
4:53:09 PM Public Appearance
4:53:12 PM Lisa Kiel, State Courts System, in support
4:53:16 PM In debate
4:53:19 PM In debate
4:53:57 PM Senator Simmons in debate
4:54:02 PM Senator waives close
4:54:06 PM Roll call
4:54:07 PM HB 5301
4:54:12 PM Reported favorably
4:54:29 PM Tab 55 CS/SB 1582 by Senator Simmons -Asbestos Trust Claims
4:54:31 PM Bill is explained by Senator Simmons
4:54:53 PM No questions
4:55:19 PM Antonio Bailey, Veteran - Winter Haven Voices of Veterans, is against
4:55:27 PM Tanya Bailey, Winter Haven Voices of Veterans, is against
4:55:28 PM Dan Hendrickson, Vol. Pres. - Tallahassee Veterans Legal Collaborative, in support
4:55:34 PM Brewster Bevis, Sr. VP - Associated Industries of Florida, in support
4:55:37 PM Mark Delegal, Counsel - Florida Justice Reform Institute, in support
4:55:41 PM Robert Davie, Vice Commander - American Legion, in support
4:55:41 PM Tim Meenan, Florida Insurance Council, in support
4:55:43 PM Jim Ferraro, Miami Ferraro Law Firm, for information
4:55:48 PM Concludes public testimony
4:55:50 PM No debate
4:55:52 PM Senator waives close
4:55:57 PM Roll call
4:55:59 PM CS/SB 1582 is reported favorably
4:56:28 PM Tab 48 Fees
4:56:43 PM SB 7066 by AP
4:56:46 PM Senator Hutson explains bill
4:56:54 PM No questions
4:57:00 PM Take up amendment
4:57:05 PM A 738104 is explained
4:57:17 PM No questions
4:57:22 PM No appearance
4:57:24 PM No debate
4:57:26 PM Amendment is adopted
4:57:30 PM Back on bill
4:57:32 PM No questions, no appearances, no debate
4:57:45 PM Roll call
4:57:49 PM SB 7066 is reported favorably
4:58:10 PM Tab 58 CS/CS/SB 1876 by Senator Montford - State Hemp Program

4:58:18 PM Senator Montford explains the bill
4:58:24 PM Questions- none
4:59:09 PM Amendment 492230 by Senator Montford
4:59:10 PM Amendment is explained
4:59:16 PM No questions
4:59:32 PM Tanya Bailey, Voices for Veterans, for information
4:59:37 PM Jodi James, Leg. Dir. - Cannabis Action Network, information
4:59:45 PM Melissa Villar, Executive Director - NormL Tallahassee, information
5:01:14 PM No further appearance
5:01:14 PM Grace Lovett, Govt. Affairs VP - Florida Retail Federation, in support
5:01:16 PM No debate
5:01:18 PM Amendment is adopted
5:01:26 PM Back on bill as amended
5:01:29 PM No questions
5:01:31 PM Grace Lovett, Govt. Affairs VP - Florida Retail Federation, in support
5:01:35 PM Melissa Villar, Exec. Director - NormL Tallahassee, information
5:01:41 PM No debate
5:01:43 PM Senator waives close. Roll call.
5:01:48 PM CS/CS/SB 1876 is reported favorably
5:02:22 PM Tab 49 CS/SB 1060 by Senator Thurston - Public Records 911 Communication System
5:02:48 PM Senator Thurston explains the bill
5:03:15 PM No questions
5:03:25 PM Amendment 344162 explained
5:03:35 PM No questions on delete all
5:03:51 PM No appearance forms, no debate
5:03:59 PM Show amendment adopted
5:04:03 PM Tonnette Graham FL Association of Counties in support / Jasmyne Henderson Broward County in support
5:04:10 PM No debate
5:04:15 PM Roll call
5:04:35 PM CS/SB 1060 is reported favorably
5:04:51 PM Tab 5 - SB 7032 Body Camera Recordings Obtained by Law Enforcement Officers
5:05:02 PM Senator Perry explains bill
5:05:10 PM No questions
5:05:23 PM No testimony
5:05:26 PM No debate
5:05:32 PM Roll call
5:05:36 PM SB 7032 is reported favorably
5:06:03 PM Tab 44 - SB 7048 Public Records Public Shelter Space
5:06:12 PM Senator Lee explains bill
5:06:28 PM No questions on the bill
5:06:59 PM No testimony or debate
5:07:06 PM Senator waives close
5:07:09 PM Roll call on bill
5:07:14 PM SB 7048 is reported favorably
5:07:43 PM Tab 47-CS/CS/SB 1872 by Senator Hutson - Office Financial Regulation / Financial Tech Sandbox Applications
5:07:53 PM Senator Hutson explains bill
5:08:09 PM No question no testimony
5:08:22 PM No debate
5:08:25 PM Roll call on bill
5:08:30 PM Show CS/CS/SB 1872 reported favorably
5:09:01 PM Tab 46 -CS/CS/SB 812 by Senator Hutson - Endangered Threatened Species
5:09:09 PM Senator Hutson explains bill
5:09:17 PM No questions
5:09:52 PM Lindsey Cross, Govt. Relations Director - FL Conservation Voters, waives in support
5:09:59 PM Jessica Crawford, Legislative Affairs Dir. - FL Fish Wildlife Conservation Commission, waives in support
5:10:03 PM No debate
5:10:08 PM Roll call
5:10:15 PM CS/CS/SB 812 is reported favorably
5:10:41 PM Motion to return in consideration of Tab 32 CS/CS/SJR 1216 Limitation on Term Public Officers
5:11:06 PM Senator Gruters will explain the bill

5:11:22 PM	Any questions on bill
5:11:44 PM	Senator Braynon with question
5:11:55 PM	Senator Gruters answers
5:12:03 PM	Senator Braynon with question
5:12:13 PM	Senator Gruters answer
5:12:19 PM	Senator Braynon with a question
5:12:35 PM	Senator Gruters answers
5:12:40 PM	Any additional questions
5:12:47 PM	Senator Montford with a question
5:12:54 PM	Senator Gruters answers
5:13:20 PM	Senator Montford follow up
5:13:27 PM	Senator Gruters answers
5:13:33 PM	Senator Montford with a question
5:13:43 PM	Senator Gruters answers
5:13:50 PM	Any additional questions
5:14:08 PM	Leader Gibson with a question
5:14:15 PM	Senator Gruters answers
5:14:26 PM	Leader Gibson with follow up
5:14:36 PM	Senator Gruters answers
5:14:43 PM	Leader Gibson with follow up
5:14:53 PM	Senator Gruters answers
5:15:02 PM	Leader Gibson with a question
5:15:38 PM	Senator Gruters answers
5:15:43 PM	No further questions
5:15:47 PM	Public testimony
5:15:53 PM	Nina Stephens from Gainesville is against
5:16:06 PM	Trish Neely, League of Women Voters, against
5:16:09 PM	Barry Collins against
5:16:11 PM	Robert Redmond of St. Petersburg against
5:16:16 PM	Daniel Thomas of Pensacola against
5:16:20 PM	David Brier of Oviedo against
5:16:24 PM	Wayne Lukash of Orlando against
5:16:28 PM	Barbara Cochran of Oak Hill against
5:16:33 PM	Dr Rich Templin, Florida AFL-CIO, against
5:16:42 PM	Ida V. Eskamani, Organize Florida New Florida Majority, against
5:16:47 PM	Gary Ford of Oak Hill against
5:16:53 PM	Chris Dodin, Small School District Council Consortium, against
5:16:55 PM	Mr. Dodin speaking
5:17:07 PM	Question
5:17:58 PM	Nicholas Tomboulides, Executive Director - US Term Limits, speaking for
5:19:15 PM	Senator Montford with a question
5:20:15 PM	Mr. Tomboulides answers
5:20:22 PM	Senator Montford with a question
5:20:29 PM	Mr. Tomboulides answer
5:20:37 PM	Senator Montford with a question
5:20:42 PM	Mr. Tomboulides answers
5:20:47 PM	Senator Flores with a question
5:20:55 PM	Mr. Tomboulides answers
5:21:01 PM	Senator Flores with a question
5:21:11 PM	Mr. Tomboulides answers
5:21:15 PM	Senator Flores comments
5:21:24 PM	Senator Braynon with a question
5:21:33 PM	Mr. Tomboulides answers
5:22:00 PM	Senator Braynon with a question
5:22:10 PM	Mr. Tomboulides answers
5:22:24 PM	Senator Braynon with a question
5:23:01 PM	Mr. Tomboulides answers
5:23:12 PM	Senator Farmer with a question
5:23:50 PM	Mr. Tomboulides answers
5:24:00 PM	Senator Farmer with follow up
5:24:04 PM	Mr. Tomboulides answers
5:24:11 PM	Senator Farmer question

5:24:17 PM Mr. Tomboulides answers
 5:24:23 PM Senator Farmer follow up
 5:24:47 PM Mr. Tomboulides answers
 5:24:52 PM Senator Farmer with a question
 5:25:27 PM Mr. Tomboulides responds
 5:25:36 PM Senator Farmer last question
 5:26:05 PM Mr. Tomboulides answers
 5:26:10 PM Senator Farmer comments
 5:26:46 PM Barbara DeVane, FL NOW, against/ Zefnia Durham III Gainesville against/ Nataly Chalco Lopez against/ Guy T. Masters port St. Lucie against
 5:26:49 PM Jason Smith St. Petersburg against/ Rodney Ivery Oxford - oppose/ LeRoy cooper PSL against
 5:26:56 PM Any debate
 5:27:00 PM Senator Braynon in debate
 5:28:27 PM Senator Montford in debate
 5:31:29 PM Senator Bradley in debate
 5:32:43 PM Senator Flores in debate
 5:33:29 PM Senator Farmer with debate
 5:37:12 PM Leader Gibson in debate
 5:39:25 PM No additional debate
 5:40:24 PM Senator Gruters closes on bill
 5:41:19 PM Roll call on CS/CS/SJR 1216
 5:42:18 PM The bill is reported favorably
 5:42:26 PM Tab 59 SB 7002 State Child Abuse Death Review Committee
 5:42:40 PM Senator Book explains the bill
 5:42:55 PM No questions
 5:43:05 PM Greg Pound information
 5:43:45 PM No debate
 5:43:51 PM Senator Book waives close
 5:44:03 PM Roll call on bill
 5:44:19 PM Show SB 7002 reported favorably
 5:44:36 PM Tab 57 on CS/SB 1634 by Senator Stargel - Parental Rights
 5:44:49 PM Senator Stargel explains the bill
 5:44:57 PM Senator Thurston with a question
 5:45:16 PM Senator Stargel answers
 5:45:23 PM Senator Thurston with follow up
 5:45:53 PM Senator Stargel answers
 5:46:12 PM Senator Thurston with a question
 5:46:47 PM Senator Stargel answers
 5:47:06 PM Senator Rodriguez with a question
 5:48:07 PM Senator Stargel answers
 5:48:51 PM Chair going to appearance forms
 5:49:21 PM Senator Farmer with a question
 5:49:32 PM Senator Stargel answers
 5:50:12 PM Senator Farmer with follow up
 5:51:09 PM Senator Stargel with answer
 5:52:05 PM Senator Farmer with another question
 5:52:47 PM Senator Stargel with an answer
 5:53:04 PM Senator Farmer with a question
 5:53:25 PM Senator Stargel with answer
 5:54:32 PM Senator Stargel with answer
 5:54:33 PM Following in favor of bill
 5:54:55 PM Steve Vernon, FL Citizens Alliance, Joan Fowinkle Retired HS English Teacher,Barbra Berry, John Berry,Jonnie Blaylock Ft. Walton Beach, Vallie Osborne Ft. Walton Beach, Patti Sullivan Sebastian, Bill Snyder, Ken Kniepmann, FL Conf Catholic Bishops, Ron Watson FL Freedom Alliance, Bev Kilmer Freedom Speaks Coalition, Barry Webster.,
 5:54:56 PM Following are against bill: Isabel Ruano, Barbara DeVane FL Now, Beatrice Macia, Devon Graham American Atheists, Lakey Love, Kara Gross, Hataly Chalco Lopez, Trish Neely League Women Voters, Ida V. Eskamani Org FL and New FL Majority, Scott McCoy Southern Poverty Law Action Center, Jim Akin National Assn. Social Workers, Jonathan Webber - FL Conservation Voters, Charo Valero Latina Institue for Repro. Health, Annie Filkowski FL Alliance Planned Parenthood Affiliates, Jon Harris Maurer Equality FL, Melina Rayna Svanhild Farey-Barrett FL NOW, Karen Woodall FL Center for Fiscal Economic Policy, Devon Graham FL Counseling Assn., Brian Lee - Food Water Watch, Teacher

	Tallahassee Coalition for Transgender Liberation.
5:55:17 PM	Greg Pound
5:56:16 PM	Leader Gibson in debate
5:57:40 PM	Senator Lee debate
5:59:13 PM	Senator Farmer debate
6:00:00 PM	Meeting adjourned by function of clock