

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Lee, Chair
Senator Clemens, Vice Chair

MEETING DATE: Monday, April 17, 2017
TIME: 4:00—6:00 p.m.
PLACE: 301 Senate Office Building

MEMBERS: Senator Lee, Chair; Senator Clemens, Vice Chair; Senators Bean, Brandes, Campbell, Perry, Rodriguez, and Simmons

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 1672 Transportation / Latvala (Similar CS/H 1243)	Tampa Bay Area Regional Transit Authority; Creating the Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee to replace the Tampa Bay Area Regional Transportation Authority Metropolitan Planning Organization Chairs Coordinating Committee; revising the definition of the term "authority" to mean the Tampa Bay Area Regional Transit Authority and to include only Hillsborough, Manatee, Pasco, and Pinellas Counties and any other contiguous county that is party to an agreement of participation; creating the Tampa Bay Area Regional Transit Authority, instead of the Tampa Bay Area Regional Transportation Authority, etc. TR 03/22/2017 Fav/CS CA 04/17/2017 Fav/CS AP	Fav/CS Yeas 8 Nays 0
2	CS/SB 40 Judiciary / Galvano (Similar CS/H 6503)	Relief of Sean McNamee by the School Board of Hillsborough County; Providing for the relief of Sean McNamee and his parents, Todd McNamee and Jody McNamee, by the School Board of Hillsborough County; providing for an appropriation to the Sean R. McNamee Irrevocable Trust as compensation for injuries and damages sustained by Sean McNamee as a result of the negligence of employees of the School Board of Hillsborough County, etc. SM JU 04/04/2017 Fav/CS CA 04/17/2017 Favorable RC	Favorable Yeas 7 Nays 1
3	CS/SB 46 Judiciary / Montford (Similar CS/H 6521)	Relief of Mary Mifflin-Gee by the City of Miami ; Providing for the relief of Mary Mifflin-Gee by the City of Miami; providing for an appropriation to compensate her for injuries and damages sustained as a result of the negligence of employees of the City of Miami Department of Fire-Rescue, etc. SM JU 03/28/2017 Fav/CS CA 04/17/2017 Favorable RC	Favorable Yeas 7 Nays 1

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Community Affairs

Monday, April 17, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 850 Banking and Insurance / Rouson (Similar CS/CS/H 421)	Public Housing Authority Insurance; Authorizing certain business entities to join, solely for a specified purpose, self-insurance funds participated in by public housing authorities who hold ownership interests in or who participate in governing such entities; authorizing reinsurance companies to issue coverage directly to certain self-insuring entities organized by a public housing authority under certain circumstances; requiring that reinsurance contracts issued to such entities receive the same tax treatment as contracts issued to insurance companies, etc. BI 03/27/2017 Fav/CS CA 04/17/2017 Favorable RC	Favorable Yeas 8 Nays 0
5	CS/SB 1494 Ethics and Elections / Rader (Identical H 6031)	Write-in Candidate Qualifying ; Repealing a requirement that all write-in candidates must reside within the district represented by the office sought at the time of qualification, etc. EE 03/28/2017 Fav/CS CA 04/17/2017 Favorable RC	Favorable Yeas 6 Nays 0
6	CS/SB 304 Judiciary / Thurston (Identical CS/CS/H 6531)	Relief of Dustin Reinhardt by the Palm Beach County School Board ; Providing for the relief of Dustin Reinhardt by the Palm Beach County School Board; providing for an appropriation and annuity to compensate him for injuries sustained as a result of the negligence of employees of the Palm Beach County School District; providing that certain payments and the amount awarded under the act satisfy all present and future claims related to the negligent act; providing a limitation on the payment of compensation, fees, and costs, etc. SM JU 04/04/2017 Fav/CS CA 04/17/2017 Fav/CS RC	Fav/CS Yeas 8 Nays 0
7	CS/SB 14 Judiciary / Artilles (Identical CS/CS/H 6529)	Relief of Lillian Beauchamp by the St. Lucie County School Board; Providing for the relief of Lillian Beauchamp, as the personal representative of the Estate of Aaron Beauchamp, by the St. Lucie County School Board; providing for an appropriation to compensate the Estate of Aaron Beauchamp for his wrongful death as a result of the negligence of the St. Lucie County School District, etc. SM JU 03/07/2017 Temporarily Postponed JU 04/04/2017 Fav/CS CA 04/17/2017 Favorable RC	Favorable Yeas 7 Nays 1

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 314 Farmer (Similar CS/H 6545)	Relief of Jerry Cunningham by Broward County; Providing for the relief of Jerry Cunningham by Broward County; providing for an appropriation to compensate him for injuries sustained as a result of the negligence of Broward County, etc. SM JU 04/04/2017 Favorable CA 04/17/2017 Favorable RC	Favorable Yeas 7 Nays 1
9	CS/SB 278 Ethics and Elections / Steube (Similar CS/H 139, Compare H 7063)	Local Tax Referenda; Requiring local government discretionary sales surtax referenda to be held on the date of a primary election or on the date of a general election and specifying the required approval of voters for passage, etc. EE 03/22/2017 Fav/CS CA 04/17/2017 Fav/CS AP	Fav/CS Yeas 6 Nays 1
10	CS/SB 188 Regulated Industries / Steube (Compare H 425)	Vacation Rentals; Authorizing local laws, ordinances, or regulations to regulate activities relating to vacation rentals only if such laws, ordinances, or regulations apply uniformly to all properties, etc. RI 03/21/2017 Fav/CS CA 04/03/2017 Temporarily Postponed CA 04/17/2017 Fav/CS RC	Fav/CS Yeas 5 Nays 3
11	CS/SB 1372 Regulated Industries / Perry (Similar CS/H 227)	Electrical and Alarm System Contracting; Specifying that provisions regulating certified electrical contractors and certified alarm system contractors do not prevent such contractors from acting as a prime contractor or from subcontracting work to other licensed contractors under certain circumstances, etc. RI 04/04/2017 Fav/CS CA 04/17/2017 Fav/CS RC	Fav/CS Yeas 8 Nays 0

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12	SB 1312 Perry (Similar CS/CS/H 1021, Compare H 567)	Construction; Providing applicability of certain standards and criteria for solar energy systems manufactured or sold in the state; providing for solar energy systems manufactured or sold in the state to be certified pursuant to National Renewable Energy Laboratory standards; prohibiting a county, municipality, special taxing district, public utility, or private utility from requiring a separate water connection or charging a specified water or sewage rate under certain conditions, etc. CU 03/28/2017 Favorable CA 04/17/2017 Fav/CS RC	Fav/CS Yeas 7 Nays 1
13	SB 914 Baxley (Identical H 919)	Public Meetings; Specifying conditions under which members of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision may participate in fact-finding exercises or excursions, etc. EE 03/07/2017 Favorable CA 04/17/2017 Favorable RC	Favorable Yeas 7 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 Community Affairs

BILL: CS/CS/SB 1672

INTRODUCER: Community Affairs Committee; Transportation Committee; and Senator Latvala and others

SUBJECT: Tampa Bay Area Regional Transit Authority

DATE: April 18, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	TR	Fav/CS
2.	Present	Yeatman	CA	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1672 renames the Tampa Bay Area Regional Transportation Authority (Transportation Authority) as the Tampa Bay Area Regional *Transit* Authority (Transit Authority), and makes a conforming name change to create the Metropolitan Planning Organization (MPO) Chairs Coordinating Committee within the Transit Authority. The bill also revises the short title and definitions; revises membership, appointment, term, and quorum requirements; requires the governing board to conduct an evaluation of specified committees; deletes requirements relating to establishment of certain other committees; and revises the new Transit Authority's express purposes to reflect the bill's changes. Additionally, the bill requires the Transit Authority to develop and adopt a regional transit development plan; deletes obsolete provisions; and conforms provisions to changes made by the act.

The bill also:

- Requires an action by the Transit Authority regarding the funding of commuter rail, heavy rail transit, or light rail transit to be approved by a majority vote of each MPO serving the county or counties where such rail investment will be made and the approval of the Legislature;
- Prohibits the Transit Authority from engaging in any advocacy regarding a referendum, ordinance, legislation, or proposal under consideration by any governmental entity or the Legislature which relates to such funding; and

- Requires the Transit Authority to conduct a feasibility study before proceeding with the project and before any contract is issued, which must be submitted to the Speaker of the House, Senate President, and the board of county commissioners of the relevant Transit Authority counties.

II. Present Situation:

The Tampa Bay Area Regional Transportation Authority (Transportation Authority)

The Transportation Authority is an agency of the state¹ created in 2007, whose purpose is improving mobility and expanding multimodal transportation options for passengers and freight throughout Citrus, Hernando, Hillsborough, Pasco, Pinellas, Manatee, and Sarasota Counties.²

The Transportation Authority governing board currently has 15 voting members as follows:

- Each of the county commissions of the seven counties making up the authority's coverage area appoint one elected official to serve 2-year terms, with not more than 3 consecutive terms.
- The Transportation Authority Metropolitan Planning Organization Chairs Coordinating Committee appoints one member, who must be a chair of one of the Metropolitan Planning Organizations in the region and may not serve more than three consecutive terms.
- Two members must be the mayor, or the mayor's designee, of the largest municipality within the service area of the Pinellas Suncoast Transit Authority (PSTA)³ and the Hillsborough Area Regional Transit Authority (HART).⁴ If a mayor chooses not to serve, the designee must be an elected official selected by the mayor from that largest municipality's city council or commission. The mayor or the designee serves 2-year terms, with not more than 3 consecutive terms. Additional provisions address required processes if a mayor or a designee leaves office, or if a mayor has served 3 consecutive terms.
- One membership on the board rotates every 2 years between the mayor or designee of Manatee County and the mayor or designee of the largest municipality within Sarasota County, with the Manatee County mayor or designee serving the first 2-year term. If a mayor chooses not to serve, the designee must be an elected official selected by the mayor from that largest municipality's city council or commission.
- The Governor appoints four business representatives (3-year terms and not more than 2 consecutive terms), each of whom must reside in one of the seven counties governed by the authority and may not be an elected official. At least one but not more than two of the four

¹ Section 343.92, F.S.

² Section 343.922(1), F.S.

³ The Legislature by special act in 1970 created the Central Pinellas Transit Authority. In 1982, the Central Pinellas Transit Authority was renamed as the PSTA. The PSTA is the public transit provider in Pinellas County with 38 bus routes, as well as two express routes to Tampa. Beach trolleys and a number of other special programs are available. See the PSTA website for more information available at: <http://psta.net/index.php>. (Last visited April 10, 2017.)

⁴ In 1979, the Hillsborough Transit Authority, also known as the Hillsborough Area Regional Transit Authority (HART), was created under Chapter 163, part V, F.S., authorizing creation of regional transportation authorities. HART operates fixed-route local and express bus service, door-to-door paratransit service, flex-route neighborhood connector service, a "lightened" version of bus rapid transit, and manages the TECO Line Streetcar System. See the HART website for more information available at: <http://gohart.org/#>. (Last visited April 10, 2017.)

representatives must represent counties within the federally designated Tampa Bay Transportation Management Area.⁵

The Florida Department of Transportation (FDOT) secretary appoints two advisors to the board from the FDOT districts within the seven-county area (Districts 1 and 7).⁶

The respective appointing authority must fill a vacancy during a term within 90 days, in the same manner as the original appointment, for the remainder of the unexpired term.⁷

The Governor appointed the initial chair (to serve for a minimum of 2 years) from among the full board membership immediately upon their appointment.⁸ These appointments were required within 45 days following the authority's creation.⁹ At the end of each subsequent chair's term, the board elects a chair from among its members.¹⁰ Eight members constitute a quorum, and the vote of eight members is required for any action taken by the authority.¹¹ The board may establish Planning, Policy, and Finance Committees; as well as a Citizens Advisory Committee and technical advisory committees.¹²

Consistent with statutory direction,¹³ the Transportation Authority adopted a regional transportation master plan in May of 2009, and updated the plan in June of 2011, 2013, and 2015.¹⁴ According to the annual *Transportation Authority Monitoring and Oversight, Fiscal Year 2015 Report*,¹⁵ the most recent update "refined the established transit, freight, and roadway networks, added a regional trails network, added a future priority projects list, outlined a strategic vision for implementation, [and] identified eight regional priority projects." The update serves as the Regional Long Range Transportation Plan.

The Transportation Authority MPO Chairs Coordinating Committee

Created in 1993, the West Central Florida MPO Chairs Coordinating Committee was established to coordinate projects deemed regionally significant, review regionally significant land use decisions, review all proposed regionally significant projects affecting more than one MPO, and institute a conflict resolution process throughout the West Central Florida region. After creation of the Transportation Authority, the West Central Florida MPO Chairs Coordinating Committee

⁵ Section 343.92(2), F.S.

⁶ Section 343.92(2)(a), F.S.

⁷ Section 343.92(2)(c), F.S.

⁸ Section 343.92(5), F.S.

⁹ *Id.*

¹⁰ Section 343.92(6), F.S.

¹¹ Section 343.92(8), F.S.

¹² Section 343.92(9) and (11), F.S.

¹³ Section 343.922(3)(a), F.S.

¹⁴ Master plan updates are statutorily required every 5 years before July 1 per section 343.922(3)(d), F.S.

¹⁵ Transportation Authority Monitoring and Oversight, Fiscal Year 2015 Report, p. 237, available at: <http://www.ftc.state.fl.us/documents/reports/TAMO/FY2015Report.pdf>. (Last visited April 10, 2017.)

and the authority more closely integrated planning efforts for the region. In 2016, the Chairs Coordinating Committee was placed within the Transportation Authority.^{16,17}

The Need for Regional Planning

Numerous studies have concluded that regional planning is needed throughout the country to address transportation needs and services. One such study asserts that transportation planning in some places, including Tampa Bay, “remains hyper-localized” and recommends an umbrella or coordinating agency in the form of a regional transit authority.¹⁸

III. Effect of Proposed Changes:

Section 1 amends s. 339.175(6)(i), F.S., creating the Transit Authority MPO Chairs Coordinating Committee within the Transit Authority.

Section 2 amends s. 343.90, F.S., revising the short title from the “Tampa Bay Area Regional Transportation Authority Act” to the “Tampa Bay Area Regional Transit Authority Act”.

Section 3 amends s. 343.91, F.S., redefining the term “authority” to mean the Transit Authority, covering Hernando, Hillsborough, Manatee, Pasco, and Pinellas Counties and any other contiguous county that is party to an agreement of participation. This revision eliminates express identification of Citrus and Sarasota Counties from the authority’s revised coverage area. However, Sarasota County is contiguous to Manatee County, and Citrus County is contiguous to Hernando County.

Section 4 amends s. 343.92, F.S., to:

- Rename the Transportation Authority as the Transit Authority;
- Reduce the number of voting members from 15 to 13, appointed no later than 45 days after the creation of the authority, and revises the membership as follows:
 - Each of the county commissions of Hernando, Hillsborough, Manatee, Pasco, and Pinellas Counties appoint one county commissioner to serve 2-year terms, with not more than 3 consecutive terms. If a commissioner leaves elected office, the vacancy must be filled within 90 days.
 - The mayor of the largest municipality within PSTA’s service area and the mayor within HART’s service area would serve for as long as they hold office.
 - PSTA and HART (or their successor agencies) each appoint from the membership of their respective governing bodies one member to serve a 2-year term with no more than 3 consecutive terms. If a member no longer meets criteria for appointment, a vacancy exists and must be filled within 90 days.
 - The Governor appoints four members from the regional business community, each of whom must reside in one of the counties governed by the authority and may not be an

¹⁶ See HB 7061 (2016).

¹⁷ See the Transportation Authority MPO Chairs Coordinating Committee website for additional information on background, priority projects, and regional planning and coordination efforts, available at: <http://www.tbarta.com/en/chairs-coordinating-committee/about/chairs-coordinating-committee>. (Last visited April 10, 2017.)

¹⁸ See *The Need for Regional Transportation Governance in Tampa Bay*, January 2017, available at: <https://www.enotrans.org/wp-content/uploads/2017/01/Eno-TPB-White-Paper-Final.pdf>. (Last visited April 10, 2017.)

elected official. Of the initially appointed members, one serves a 1-year term, two serve a 2-year term, and one serves a term as the initial chair. Thereafter, these members serve a 2-year term with not more than 3 consecutive terms. A vacancy during a term must be filled within 90 days in the same manner as the original appointment for the remainder of the unexpired term.

The Governor is required to appoint one of his appointees as the initial chair immediately upon their appointment. The initial chair serves a minimum of 2 years. At the end of the initial chair's term, the board elects a chair from among its members.

Seven, rather than eight, members constitute a quorum, and the vote of seven members is required by any action taken by the authority.

Beginning July 1, 2017, the authority's governing board must evaluate (and submit evaluation recommendations before the beginning of the 2018 Regular Session for) the abolishment, continuance, modification, or establishment of the following:

- Planning committee;
- Policy committee;
- Finance committee;
- Citizens advisory committee;
- Transit Authority MPO Chairs Coordinating Committee; and
- Transit management committee.

Section 5 amends s. 343.922, F.S., revising the purposes, powers, and duties of the Transit Authority to include:

- Planning, implementing, and operating mobility improvements and expansions of multimodal transportation options for passengers and freight throughout Hillsborough, Manatee, Pasco, and Pinellas Counties.
- Producing a regional *transit* development plan (rather than a regional *transportation* plan), integrating the transit development plans of participant counties, to include a prioritization of regionally significant transit projects and facilities. The bill directs the authority to provide to the Senate President and House Speaker on or before the beginning of the 2018 Regular Session a plan to produce the regional transit development plan. The development plan must adhere to guidance and regulations set forth by the FDOT or any successor agency, including without limitation:
 - Public involvement;
 - Collection and analysis of socioeconomic data;
 - Performance evaluation of existing services;
 - Service design and ridership forecasting; and
 - Financial planning.
- Serving, with the consent of the Governor or his or her designee, as the recipient of federal funds supporting an intercountry project or a regionally significant transit project that exists in a single county within the designated region.

An action by the Transit Authority regarding the funding of commuter rail, heavy rail transit, or light rail transit, as defined in s. 343.91, F.S., or any combination of such rail transits, requires

approval by a majority vote of each MPO serving the county or counties where the rail transit investment will be made, and the approval of the Legislature by an act of general law.

The Transit Authority may not engage in any advocacy regarding a referendum, ordinance, legislation, or proposal under consideration by any governmental entity or the Legislature which seeks to approve the funding of commuter rail, heavy rail transit, or light rail transit, as defined in s. 343.91, F.S., or any combination thereof.

The Transit Authority must conduct a feasibility study through an independent third party, for any project of commuter rail, heavy rail transit, or light rail transit, as defined in s. 343.91, F.S., or any combination thereof, before proceeding with the development of the project and before any related contract is issued. The feasibility study shall be submitted, upon completion, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the board of county commissioners of Hernando, Hillsborough, Manatee, Pasco, and Pinellas Counties.

Sections 3 through 10 delete obsolete language and conform provisions to changes made by the act.

Section 11 provides the bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the bill's changes result in the provision of improved and more efficient regional transit services in the Tampa Bay area, public mobility options would be increased.

C. Government Sector Impact:

The Transit Authority, the Transit Authority MPO Chairs Coordinating Committee, the five counties in the authority's revised coverage area, and PSTA and HART are expected to experience indeterminate administrative expenses associated with the organization's name change, committee evaluation and recommendations, and various planning requirements related to producing a regional transit development plan.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 339.175, 343.90, 343.91, 343.92, 343.922, 343.94, 343.947, 343.95, 343.975, and 343.976.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Community Affairs on April 17, 2017:**

- Adds Hernando County to the list of expressly covered counties under the Transit Authority;
- Revises the composition of the Transit Authority governing board such that the county commission of Hernando County shall appoint one county commissioner to the board, and the Governor shall appoint one additional member, bringing the governor's appointee total to four. These two new members replace the members that were to be appointed by the Speaker of the House and the President of the Senate under the previous version of the bill;
- Restores current law that requires the secretary of the Florida DOT to appoint two advisors to the board;
- Provides that the chair of the board shall be selected from the board's members, rather than from the appointments of the Governor, Speaker of the House, or President of the Senate specifically;
- Requires an action by Transit Authority regarding the funding of commuter rail, heavy rail transit, or light rail transit to be approved by a majority vote of each MPO serving the county or counties where such rail investment will be made and the approval of the Legislature;
- Prohibits the Transit Authority from engaging in any advocacy regarding a referendum, ordinance, legislation, or proposal under consideration by any governmental entity or the Legislature which relates to such funding; and

- Requires the Transit Authority to conduct a feasibility study before proceeding with the project and before any contract is issued, which must be submitted to the Speaker of the House, Senate President, and the board of county commissioners of the relevant Transit Authority counties.

CS by Transportation on March 22, 2017:

- Makes changes relating to the Transit Authority's membership. Specifically:
 - Restores the two mayors from the largest municipality within PSTA's and HART's service areas to governing board membership; and
 - Removes the ability of the mayors from the largest municipality within PSTA's and HART's service areas to choose not to serve and to appoint a designee to serve on the governing board, as well as provisions relating to termination of a designee's term and requirements for filling a vacancy.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/18/2017	.	
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The Committee on Community Affairs (Brandes and Lee) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

339.175 Metropolitan planning organization.—

(6) POWERS, DUTIES, AND RESPONSIBILITIES.—The powers,
privileges, and authority of an M.P.O. are those specified in
this section or incorporated in an interlocal agreement



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authorized under s. 163.01. Each M.P.O. shall perform all acts required by federal or state laws or rules, now and subsequently applicable, which are necessary to qualify for federal aid. It is the intent of this section that each M.P.O. shall be involved in the planning and programming of transportation facilities, including, but not limited to, airports, intercity and high-speed rail lines, seaports, and intermodal facilities, to the extent permitted by state or federal law.

(i) The Tampa Bay Area Regional Transit ~~Transportation~~ Authority Metropolitan Planning Organization Chairs Coordinating Committee is created within the Tampa Bay Area Regional Transit ~~Transportation~~ Authority, composed of the M.P.O.'s serving Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota Counties. The authority shall provide administrative support and direction to the committee. The committee must, at a minimum:

1. Coordinate transportation projects deemed to be regionally significant by the committee.

2. Review the impact of regionally significant land use decisions on the region.

3. Review all proposed regionally significant transportation projects in the respective transportation improvement programs which affect more than one of the M.P.O.'s represented on the committee.

4. Institute a conflict resolution process to address any conflict that may arise in the planning and programming of such regionally significant projects.

Section 2. Section 343.90, Florida Statutes, is amended to read:



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343.90 Short title.—This part may be cited as the “Tampa Bay Area Regional Transit ~~Transportation~~ Authority Act.”

Section 3. Paragraphs (a) and (e) of subsection (1) of section 343.91, Florida Statutes, are amended to read:

343.91 Definitions.—

(1) As used in this part, the term:

(a) “Authority” means the Tampa Bay Area Regional Transit ~~Transportation~~ Authority, the body politic and corporate and agency of the state created by this part, covering ~~the seven-county area comprised of Citrus, Hernando, Hillsborough, Manatee, Pasco, and Pinellas, Manatee, and Sarasota~~ Manatee, Pasco, and Pinellas, Manatee, and Sarasota Counties and any other contiguous county that is party to an agreement of participation.

(e)1. “Commuter rail” means a complete system of tracks, guideways, stations, and rolling stock necessary to effectuate medium-distance to long-distance passenger rail service to, from, or within the municipalities within the authority’s designated ~~seven-county~~ region.

2. “Heavy rail transit” means a complete rail system operating on an electric railway with the capacity for a heavy volume of traffic, characterized by high-speed and rapid-acceleration passenger rail cars operating singly or in multicar trains on fixed rails in separate rights-of-way from which all other vehicular and pedestrian traffic are excluded. “Heavy rail transit” includes metro, subway, elevated, rapid transit, and rapid rail systems.

3. “Light rail transit” means a complete system of tracks, overhead catenaries, stations, and platforms with lightweight passenger rail cars operating singly or in short, multicar



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trains on fixed rails in rights-of-way that are not separated from other traffic for much of the way.

Section 4. Section 343.92, Florida Statutes, is amended to read:

343.92 Tampa Bay Area Regional Transit ~~Transportation~~ Authority.—

(1) There is created and established a body politic and corporate, an agency of the state, to be known as the Tampa Bay Area Regional Transit ~~Transportation~~ Authority.

(2) The governing board of the authority shall consist of 13 ~~15~~ voting members appointed no later than 45 days after the creation of the authority.

(a) The secretary of the department shall appoint two advisors to the board who must be the district secretary for each of the department districts within the designated ~~seven-~~ ~~county~~ area of the authority.

(b) The 13 ~~15~~ voting members of the board shall be as follows:

1. The county commissions of ~~Citrus~~, Hernando, Hillsborough, Manatee, Pasco, and Pinellas, ~~Manatee~~, ~~and~~ ~~Sarasota~~ Counties shall each appoint one county commissioner ~~elected official~~ to the board. Members appointed under this subparagraph shall serve 2-year terms with not more than three consecutive terms being served by any person. If a member under this subparagraph leaves elected office, a vacancy exists on the board to be filled as provided in this subparagraph within 90 days ~~subparagraph~~.

~~2. The Tampa Bay Area Regional Transportation Authority (TBARTA) Metropolitan Planning Organization Chairs Coordinating~~



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~~Committee shall appoint one member to the board who must be a chair of one of the six metropolitan planning organizations in the region. The member appointed under this subparagraph shall serve a 2-year term with not more than three consecutive terms being served by any person.~~

2.3.a. Two members of the board shall be the mayor, ~~or the mayor's designee,~~ of the largest municipality within the service area of each of the following independent transit agencies or their legislatively created successor agencies: Pinellas Suncoast Transit Authority and Hillsborough Area Regional Transit Authority. The largest municipality is that municipality with the largest population as determined by the most recent United States Decennial Census.

~~b. Should a mayor choose not to serve, his or her designee must be an elected official selected by the mayor from that largest municipality's city council or city commission. A mayor or his or her designee shall serve a 2-year term with not more than three consecutive terms being served by any person.~~

~~e. A designee's term ends if the mayor leaves office for any reason. If a designee leaves elected office on the city council or commission, a vacancy exists on the board to be filled by the mayor of that municipality as provided in subparagraph a.~~

3. The following independent transit agencies or their legislatively created successor agencies shall each appoint from the membership of their governing bodies one member to the board: Pinellas Suncoast Transit Authority and Hillsborough Area Regional Transit Authority. Each member appointed under this subparagraph shall serve a 2-year term with not more than three



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consecutive terms being served by any person. If a member no longer meets the transit authority's criteria for appointment, a vacancy exists on the board, which must be filled as provided in this subparagraph within 90 days.

~~d. A mayor who has served three consecutive terms on the board must designate an elected official from that largest municipality's city council or city commission to serve on the board for at least one term.~~

~~4.a. One membership on the board shall rotate every 2 years between the mayor, or his or her designee, of the largest municipality within Manatee County and the mayor, or his or her designee, of the largest municipality within Sarasota County. The mayor, or his or her designee, from the largest municipality within Manatee County shall serve the first 2-year term. The largest municipality is that municipality with the largest population as determined by the most recent United States Decennial Census.~~

~~b. Should a mayor choose not to serve, his or her designee must be an elected official selected by the mayor from that municipality's city council or city commission.~~

~~4.5. The Governor shall appoint to the board four members from the regional four business community representatives, each of whom must reside in one of the ~~seven~~ counties governed by the authority and, none of whom may not be an elected official officials, and at least one but not more than two of whom shall represent counties within the federally designated Tampa Bay Transportation Management Area. Of the members initially appointed under this subparagraph, one shall serve a 1-year term, two shall serve 2-year terms, and one shall serve a term~~



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as the initial chair as provided in subsection (5). Thereafter,
a member ~~Members~~ appointed under this subparagraph ~~by the~~
~~Governor~~ shall serve a 2-year term ~~3-year terms~~ with not more
than three ~~two~~ consecutive terms being served by any person.

~~(e)~~ Appointments may be staggered to avoid mass turnover at
the end of any 2-year or 4-year period. A vacancy during a term
shall be filled ~~by the respective appointing authority~~ within 90
days in the same manner as the original appointment ~~and only~~ for
the remainder of the unexpired term.

(3) The members of the board shall serve without
compensation but shall be entitled to receive from the authority
reimbursement for travel expenses and per diem actually incurred
in connection with the business of the authority as provided in
s. 112.061.

(4) Members of the board shall comply with the applicable
financial disclosure requirements of ss. 112.3145, 112.3148, and
112.3149.

(5) The Governor shall appoint one of the four members
appointed under subparagraph (2)(b)4. as the initial chair ~~from~~
~~among the full membership~~ of the board immediately upon their
appointment. ~~In no case may those appointments be made any later~~
~~than 45 days following the creation of the authority.~~ The
initial chair shall serve ~~will hold this position for~~ a minimum
term of 2 years. The board shall elect a vice chair and
secretary-treasurer from among its members who shall serve a
minimum term of 1 year and shall establish the duties and powers
of those positions during its inaugural meeting. During its
inaugural meeting, the board shall ~~will~~ also establish its rules
of conduct and meeting procedures.



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(6) At the end of the initial chair's term, the board shall elect a chair from among the ~~its~~ members. The chair shall hold office at the will of the board. In that election, the board shall also elect a vice chair and secretary-treasurer.

(7) The first meeting of the authority shall be held no later than 60 days after the creation of the authority.

(8) Seven ~~Eight~~ members of the board shall constitute a quorum, and the vote of seven ~~eight~~ members is necessary for any action to be taken by the authority. The authority may meet upon the constitution of a quorum. A vacancy does not impair the right of a quorum of the board to exercise all rights and the ability to perform all duties of the authority.

(9) Beginning July 1, 2017, the board must evaluate the abolishment, continuance, modification, or establishment of ~~may establish committees for~~ the following committees ~~areas~~:

(a) Planning committee.

(b) Policy committee.

(c) Finance committee.

(d) Citizens advisory committee.

(e) Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee.

(f) Transit management committee.

(g) Technical advisory committee.

The board must submit its recommendations for abolishment, continuance, modification, or establishment of the committees to the President of the Senate and the Speaker of the House of Representatives before the beginning of the 2018 Regular Session.



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(10) The authority may employ an executive director, an executive secretary, its own legal counsel and legal staff, technical experts, engineers, and such employees, permanent or temporary, as it may require. The authority shall determine the qualifications and fix the compensation of such persons, firms, or corporations and may employ a fiscal agent or agents; however, the authority shall solicit sealed proposals from at least three persons, firms, or corporations for the performance of any services as fiscal agents. The authority may, except for duties specified in chapter 120, delegate its power to one or more of its agents or employees to carry out the purposes of this part, subject always to the supervision and control of the authority.

~~(11)(a) The authority shall establish a Transit Management Committee comprised of the executive directors or general managers, or their designees, of each of the existing transit providers and bay area commuter services.~~

~~(b) The authority shall establish a Citizens Advisory Committee comprised of appointed citizen committee members from each county and transit provider in the region, not to exceed 16 members.~~

~~(c) The authority may establish technical advisory committees to provide guidance and advice on regional transportation issues. The authority shall establish the size, composition, and focus of any technical advisory committee created.~~

(11)(d) Persons appointed to a committee shall serve without compensation but may be entitled to per diem or travel expenses as provided in s. 112.061.



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Section 5. Subsection (1), paragraph (a) of subsection (2), subsection (3), subsection (4), and paragraph (g) of subsection (5) of section 343.922, Florida Statutes, are amended, and subsections (9) and (10) are added to that section, to read:

343.922 Powers and duties.—

(1) The express purposes of the authority are to:

(a) Plan, implement, and operate ~~improve~~ mobility improvements and expansions of ~~expand~~ multimodal transportation options for passengers and freight throughout the designated ~~seven-county Tampa Bay~~ region.

(b) Produce a regional transit development plan, integrating the transit development plans of participant counties, to include a prioritization of regionally significant transit projects and facilities.

1. The authority shall provide to the President of the Senate and the Speaker of the House of Representatives, on or before the beginning of the 2018 Regular Session, a plan to produce the regional transit development plan.

2. The regional transit development plan prepared by the authority must adhere to guidance and regulations set forth by the department or any successor agency, including, but not limited to:

a. Public involvement;

b. Collection and analysis of socioeconomic data;

c. Performance evaluation of existing services;

d. Service design and ridership forecasting; and

e. Financial planning.

(c) Serve, with the consent of the Governor or his or her designee, as the recipient of federal funds supporting an



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intercounty project or a regionally significant transit project that exists in a single county within the designated region.

(2) (a) The authority has the right to plan, develop, finance, construct, own, purchase, operate, maintain, relocate, equip, repair, and manage those public transportation projects, such as express bus services; bus rapid transit services; light rail, commuter rail, heavy rail, or other transit services; ferry services; transit stations; park-and-ride lots; transit-oriented development nodes; or feeder roads, reliever roads, connector roads, bypasses, or appurtenant facilities, that are intended to address critical transportation needs or concerns in the ~~Tampa Bay~~ region as identified by the authority ~~by July 1, 2009~~. These projects may also include all necessary approaches, roads, bridges, and avenues of access that are desirable and proper with the concurrence of the department, as applicable, if the project is to be part of the State Highway System.

(3) (a) ~~No later than July 1, 2009,~~ The authority shall develop and adopt a regional transit development ~~transportation~~ ~~master~~ plan that provides a vision for a regionally integrated ~~multimodal~~ transportation system. The goals and objectives of the ~~master~~ plan are to identify areas of the ~~Tampa Bay~~ region where ~~multimodal~~ mobility, traffic safety, freight mobility, and efficient emergency evacuation alternatives need to be improved; identify areas of the region where multimodal transportation systems would be most beneficial to enhance mobility and economic development; develop methods of building partnerships with local governments, existing transit providers, expressway authorities, seaports, airports, and other local, state, and federal entities; develop methods of building partnerships with



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CSX Corporation and CSX Transportation, Inc., to craft mutually beneficial solutions to achieve the authority's objectives, and with other private sector business community entities that may further the authority's mission, and engage the public in support of regional multimodal transportation improvements. The ~~master~~ plan shall identify and may prioritize projects that will accomplish these goals and objectives, including, without limitation, the creation of express bus and bus rapid transit services, light rail, commuter rail, and heavy rail transit services, ferry services, freight services, and any other multimodal transportation system projects that address critical transportation needs or concerns, pursuant to subsection (2); and identify the costs of the proposed projects and revenue sources that could be used to pay those costs. In developing the ~~master~~ plan, the authority shall review and coordinate with the future land use, capital improvements, and traffic circulation elements of its member local governments' comprehensive plans and the plans, programs, and schedules of other units of government having transit or transportation authority within whose jurisdictions the projects or improvements will be located to define and resolve potential inconsistencies between such plans and the authority's developing ~~master~~ plan. ~~By July 1, 2008, the authority, working with its member local governments, shall adopt a mandatory conflict resolution process that addresses consistency conflicts between the authority's regional transportation master plan and local government comprehensive plans.~~

(b) The authority shall consult with the department to further the goals and objectives of the Strategic Regional



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Transit Needs Assessment completed by the department.

(c) Before the adoption of the regional transit development ~~master~~ plan, the authority shall hold at least one public meeting in each of the ~~seven~~ counties within the designated region. At least one public hearing must be held before the authority's board.

(d) After its adoption, the regional transit development ~~master~~ plan shall be updated every 5 years before July 1.

(e) The authority shall present the original regional transit development ~~master~~ plan and updates to the governing bodies of the counties within the designated ~~seven-county~~ region, to the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee, and to the legislative delegation members representing those counties within 90 days after adoption.

(f) The authority shall coordinate plans and projects with the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee, to the extent practicable, and participate in the regional M.P.O. planning process to ensure regional comprehension of the authority's mission, goals, and objectives.

(g) The authority shall provide administrative support and direction to the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee as provided in s. 339.175(6)(i).

(4) The authority may undertake projects or other improvements in the regional transit development ~~master~~ plan in phases as particular projects or segments become feasible, as determined by the authority. The authority shall coordinate project planning, development, and implementation with the



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applicable local governments. The authority's projects that are transportation oriented must be consistent to the maximum extent feasible with the adopted local government comprehensive plans at the time such projects are funded for construction. Authority projects that are not transportation oriented and meet the definition of development pursuant to s. 380.04 must be consistent with the local comprehensive plans. In carrying out its purposes and powers, the authority may request funding and technical assistance from the department and appropriate federal and local agencies, including, but not limited to, state infrastructure bank loans.

(5) The authority is granted and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the aforesaid purposes, including, but not limited to, the following rights and powers:

(g) To borrow money and to make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations, either in temporary or definitive form, hereinafter in this chapter sometimes called "revenue bonds" of the authority, for the purpose of financing all or part of the mobility improvements within the ~~Tampa Bay~~ region, as well as the appurtenant facilities, including all approaches, streets, roads, bridges, and avenues of access authorized by this part, the bonds to mature not exceeding 40 years after the date of the issuance thereof, and to secure the payment of such bonds or any part thereof by a pledge of any or all of its revenues, rates, fees, rentals, or other charges.

(9) (a) An action by the authority regarding the funding of commuter rail, heavy rail transit, or light rail transit, as



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defined in s. 343.91, or any combination thereof, requires approval by a majority vote of each M.P.O. serving the county or counties where such rail transit investment will be made, and the approval of the Legislature by an act of general law.

(b) The authority may not engage in any advocacy regarding a referendum, ordinance, legislation, or proposal under consideration by any governmental entity or the Legislature which seeks to approve the funding of commuter rail, heavy rail transit, or light rail transit, as defined in s. 343.91, or any combination thereof.

(10) The authority must conduct a feasibility study, through an independent third party, for any project of commuter rail, heavy rail transit, or light rail transit, as defined in s. 343.91, or any combination thereof, before proceeding with the development of the project and before any related contract is issued. The feasibility study shall be submitted, upon completion, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the board of county commissioners of Hernando, Hillsborough, Manatee, Pasco, and Pinellas Counties.

Section 6. Subsection (1) of section 343.94, Florida Statutes, is amended to read:

343.94 Bond financing authority.—

(1) Pursuant to s. 11(f), Art. VII of the State Constitution, the Legislature approves bond financing by the Tampa Bay Area Regional Transit ~~Transportation~~ Authority for construction of or improvements to commuter rail systems, transit systems, ferry systems, highways, bridges, toll collection facilities, interchanges to the system, and any other



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transportation facility appurtenant, necessary, or incidental to the system. Subject to terms and conditions of applicable revenue bond resolutions and covenants, such costs may be financed in whole or in part by revenue bonds issued pursuant to paragraph (2)(a) or paragraph (2)(b), whether currently issued or issued in the future or by a combination of such bonds.

Section 7. Section 343.947, Florida Statutes, is amended to read:

343.947 Department may be appointed agent of authority for construction.—The department may be appointed by the authority as its agent for the purpose of constructing and completing transportation projects, and improvements and extensions thereto, in the authority's regional transit development ~~master~~ plan. In such event, the authority shall provide the department with complete copies of all documents, agreements, resolutions, contracts, and instruments relating thereto; shall request the department to do such construction work, including the planning, surveying, and actual construction of the completion, extensions, and improvements to the system; and shall transfer to the credit of an account of the department in the treasury of the state the necessary funds therefor. The department shall proceed with such construction and use the funds for such purpose in the same manner that it is now authorized to use the funds otherwise provided by law for its use in construction of commuter rail systems, transit systems, ferry systems, roads, bridges, and related transportation facilities.

Section 8. Subsections (1) and (3) of section 343.95, Florida Statutes, are amended to read:

343.95 Acquisition of lands and property.—



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(1) For the purposes of this part, the authority may acquire private or public property and property rights, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation by eminent domain proceedings, as the authority may deem necessary for any purpose of this part, including, but not limited to, any lands reasonably necessary for securing applicable permits, areas necessary for management of access, borrow pits, drainage ditches, water retention areas, rest areas, replacement access for landowners whose access is impaired due to the construction of a facility, and replacement rights-of-way for relocated rail and utility facilities; for existing, proposed, or anticipated transportation facilities within the ~~seven-county Tampa Bay~~ region designated ~~identified~~ by the authority; or for the purposes of screening, relocation, removal, or disposal of junkyards and scrap metal processing facilities. The authority may condemn any material and property necessary for such purposes.

(3) When the authority acquires property for a transportation facility within the designated ~~seven-county Tampa Bay~~ region, the authority is not subject to any liability imposed by chapter 376 or chapter 403 for preexisting soil or groundwater contamination due solely to its ownership. This subsection does not affect the rights or liabilities of any past or future owners of the acquired property, nor does it affect the liability of any governmental entity for the results of its actions which create or exacerbate a pollution source. The authority and the Department of Environmental Protection may enter into interagency agreements for the performance, funding,



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and reimbursement of the investigative and remedial acts necessary for property acquired by the authority.

Section 9. Subsections (1) and (3) of section 343.975, Florida Statutes, are amended to read:

343.975 Complete and additional statutory authority.—

(1) The powers conferred by this part are supplemental to the existing powers of the board and the department. This part does not repeal any of the provisions of any other law, general, special, or local, but supplements such other laws in the exercise of the powers provided in this part and provides a complete method for the exercise of the powers granted in this part. The projects planned and constructed by the Tampa Bay Area Regional Transit Transportation Authority shall comply with all applicable federal, state, and local laws. The extension and improvement of the system, and the issuance of bonds hereunder to finance all or part of the cost thereof, may be accomplished upon compliance with the provisions of this part without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special, or local law, including, but not limited to, s. 215.821. An approval of any bonds issued under this part by the qualified electors or qualified electors who are freeholders in the state or in any other political subdivision of the state is not required for the issuance of such bonds pursuant to this part.

(3) This part does not preclude the department from acquiring, holding, constructing, improving, maintaining, operating, or owning tolled or nontolled facilities funded and constructed from nonauthority sources that are part of the State Highway System within the geographical boundaries of the Tampa



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Bay Area Regional Transit ~~Transportation~~ Authority.

Section 10. Section 343.976, Florida Statutes, is amended to read:

343.976 Effect on local government action.—This act does not prohibit any local government that is a member of the Tampa Bay Area Regional Transit ~~Transportation~~ Authority from participating in or creating any other transit authority, regional transportation authority, or expressway authority.

Section 11. This act shall take effect July 1, 2017.

===== 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 Tampa Bay Area Regional Transit Authority; amending s. 339.175, F.S.; creating the Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee to replace the Tampa Bay Area Regional Transportation Authority Metropolitan Planning Organization Chairs Coordinating Committee; providing that the Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee is created within the Tampa Bay Area Regional Transit Authority; amending s. 343.90, F.S.; revising the short title to "Tampa Bay Area Regional Transit Authority Act"; amending s. 343.91, F.S.; revising the definition of the term "authority" to mean the Tampa Bay Area



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Regional Transit Authority and to include only
Hernando, Hillsborough, Manatee, Pasco, and Pinellas
Counties and any other contiguous county that is party
to an agreement of participation; revising the
definition of the term "commuter rail"; amending s.
343.92, F.S.; creating the Tampa Bay Area Regional
Transit Authority to replace the Tampa Bay Area
Regional Transportation Authority; decreasing voting
membership on the governing board of the authority;
requiring the members to be appointed within a
specified period; revising appointment and term
requirements of such membership; revising requirements
for filling vacancies on the board; requiring the
Governor to appoint an initial chair of the board from
one of the four members appointed by the Governor;
providing that seven members of the board constitute a
quorum; providing that the vote of seven members is
necessary for any action to be taken by the authority;
requiring the board to evaluate the abolishment,
continuance, modification, or establishment of
specified committees, beginning on a specified date;
requiring the board to submit its recommendations for
abolishment, continuance, modification, or
establishment of the committees to the Legislature
before a specified time; deleting requirements related
to the establishment of a Transit Management
Committee, a Citizens Advisory Committee, and
technical advisory committees; conforming provisions
to changes made by the act; amending s. 343.922, F.S.;



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revising the express purposes of the authority to include planning, implementing, and operating mobility improvements and expansions of certain multimodal transportation options, producing a certain regional transit development plan, and serving as the recipient of certain federal funds under certain circumstances; directing the authority to provide to the Legislature a plan to produce the regional transit development plan by a specified date; providing requirements for the regional transit development plan; requiring the authority to develop and adopt a regional transit development plan, rather than a transportation master plan; deleting obsolete provisions; conforming provisions to changes made by the act; providing that an action by the authority regarding the funding of commuter rail, heavy rail transit, or light rail transit, or any combination thereof, requires approval by a majority vote of each M.P.O. serving the county or counties where such rail transit investment will be made, and the approval of the Legislature by an act of general law; prohibiting the authority from engaging in certain advocacy that seeks to approve the funding of commuter rail, heavy rail transit, or light rail transit, or any combination thereof; requiring the authority to conduct a feasibility study, through an independent third party, for any project of commuter rail, heavy rail transit, or light rail transit, or any combination thereof, before proceeding with the development of the project and before any related



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591 contracts are issued; requiring the feasibility study
592 to be submitted to the Governor, the Legislature, and
593 the board of county commissioners of specified
594 counties; amending ss. 343.94, 343.947, 343.95,
595 343.975, and 343.976, F.S.; conforming provisions to
596 changes made by the act; providing an effective date.

By the Committee on Transportation; and Senators Latvala, Galvano, and Rouson

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A bill to be entitled

An act relating to the Tampa Bay Area Regional Transit Authority; amending s. 339.175, F.S.; creating the Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee to replace the Tampa Bay Area Regional Transportation Authority Metropolitan Planning Organization Chairs Coordinating Committee; providing that the Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee is created within the Tampa Bay Area Regional Transit Authority; amending s. 343.90, F.S.; revising the short title to "Tampa Bay Area Regional Transit Authority Act"; amending s. 343.91, F.S.; revising the definition of the term "authority" to mean the Tampa Bay Area Regional Transit Authority and to include only Hillsborough, Manatee, Pasco, and Pinellas Counties and any other contiguous county that is party to an agreement of participation; revising the definition of the term "commuter rail"; amending s. 343.92, F.S.; creating the Tampa Bay Area Regional Transit Authority, instead of the Tampa Bay Area Regional Transportation Authority; decreasing voting membership on the governing board of the authority; requiring the members to be appointed within a specified period; revising appointment and term requirements of such membership; revising requirements for filling vacancies on the board; requiring the Governor to appoint an initial chair of the board from one of the

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three members appointed by the Governor; requiring the board to elect a chair from among certain members at the end of the initial chair's term; providing that seven members of the board constitute a quorum; providing that the vote of seven members is necessary for any action to be taken by the authority; requiring the board to evaluate the abolishment, continuance, modification, or establishment of specified committees beginning on a specified date; requiring the board to submit its recommendations for abolishment, continuance, modification, or establishment of the committees to the Legislature before a specified time; deleting requirements related to the establishment of a Transit Management Committee, a Citizens Advisory Committee, and technical advisory committees; conforming provisions to changes made by the act; amending s. 343.922, F.S.; revising the express purposes of the authority to include planning, implementing, and operating mobility improvements and expansions of certain multimodal transportation options, producing a certain regional transit development plan, and serving as the recipient of certain federal funds under certain circumstances; directing the authority to provide to the Legislature a plan to produce the regional transit development plan by a specified date; providing requirements for the regional transit development plan; requiring the authority to develop and adopt a regional transit development plan instead of a transportation master

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plan; deleting obsolete provisions; conforming provisions to changes made by the act; amending ss. 343.94, 343.947, 343.95, 343.975, and 343.976, 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. Paragraph (i) of subsection (6) of section 339.175, Florida Statutes, is amended to read:

339.175 Metropolitan planning organization.—

(6) POWERS, DUTIES, AND RESPONSIBILITIES.—The powers, privileges, and authority of an M.P.O. are those specified in this section or incorporated in an interlocal agreement authorized under s. 163.01. Each M.P.O. shall perform all acts required by federal or state laws or rules, now and subsequently applicable, which are necessary to qualify for federal aid. It is the intent of this section that each M.P.O. shall be involved in the planning and programming of transportation facilities, including, but not limited to, airports, intercity and high-speed rail lines, seaports, and intermodal facilities, to the extent permitted by state or federal law.

(i) The Tampa Bay Area Regional Transit ~~Transportation~~ Authority Metropolitan Planning Organization Chairs Coordinating Committee is created within the Tampa Bay Area Regional Transit ~~Transportation~~ Authority, composed of the M.P.O.'s serving Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota Counties. The authority shall provide administrative support and direction to the committee. The

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committee must, at a minimum:

1. Coordinate transportation projects deemed to be regionally significant by the committee.

2. Review the impact of regionally significant land use decisions on the region.

3. Review all proposed regionally significant transportation projects in the respective transportation improvement programs which affect more than one of the M.P.O.'s represented on the committee.

4. Institute a conflict resolution process to address any conflict that may arise in the planning and programming of such regionally significant projects.

Section 2. Section 343.90, Florida Statutes, is amended to read:

343.90 Short title.—This part may be cited as the "Tampa Bay Area Regional Transit ~~Transportation~~ Authority Act."

Section 3. Paragraphs (a) and (e) of subsection (1) of section 343.91, Florida Statutes, are amended to read:

343.91 Definitions.—

(1) As used in this part, the term:

(a) "Authority" means the Tampa Bay Area Regional Transit ~~Transportation~~ Authority, the body politic and corporate and agency of the state created by this part, covering ~~the seven-county area comprised of Citrus, Hernando,~~ Hillsborough, Manatee, Pasco, and Pinellas, Manatee, and Sarasota Counties and any other contiguous county that is party to an agreement of participation.

(e)1. "Commuter rail" means a complete system of tracks, guideways, stations, and rolling stock necessary to effectuate

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117 medium-distance to long-distance passenger rail service to,
118 from, or within the municipalities within the authority's
119 designated ~~seven-county~~ region.

120 2. "Heavy rail transit" means a complete rail system
121 operating on an electric railway with the capacity for a heavy
122 volume of traffic, characterized by high-speed and rapid-
123 acceleration passenger rail cars operating singly or in multicar
124 trains on fixed rails in separate rights-of-way from which all
125 other vehicular and pedestrian traffic are excluded. "Heavy rail
126 transit" includes metro, subway, elevated, rapid transit, and
127 rapid rail systems.

128 3. "Light rail transit" means a complete system of tracks,
129 overhead catenaries, stations, and platforms with lightweight
130 passenger rail cars operating singly or in short, multicar
131 trains on fixed rails in rights-of-way that are not separated
132 from other traffic for much of the way.

133 Section 4. Section 343.92, Florida Statutes, is amended to
134 read:

135 343.92 Tampa Bay Area Regional Transit ~~Transportation~~
136 Authority.—

137 (1) There is created and established a body politic and
138 corporate, an agency of the state, to be known as the Tampa Bay
139 Area Regional Transit ~~Transportation~~ Authority.

140 (2) The governing board of the authority shall consist of
141 13 ~~15~~ voting members appointed no later than 45 days after the
142 creation of the authority—

143 ~~(a) The secretary of the department shall appoint two~~
144 ~~advisors to the board who must be the district secretary for~~
145 ~~each of the department districts within the seven-county area of~~

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146 ~~the authority.~~

147 ~~(b) The 15 voting members of the board shall be as follows:~~

148 ~~(a)1.~~ The county commissions of Citrus, Hernando,
149 Hillsborough, Manatee, Pasco, and Pinellas, Manatee, and
150 Sarasota Counties shall each appoint one county commissioner
151 ~~elected official~~ to the board. Members appointed under this
152 paragraph ~~subparagraph~~ shall serve 2-year terms with not more
153 than three consecutive terms being served by any person. If a
154 member under this paragraph ~~subparagraph~~ leaves elected office,
155 a vacancy exists on the board to be filled as provided in this
156 paragraph within 90 days ~~subparagraph~~.

157 ~~2. The Tampa Bay Area Regional Transportation Authority~~
158 ~~(TBARTA) Metropolitan Planning Organization Chairs Coordinating~~
159 ~~Committee shall appoint one member to the board who must be a~~
160 ~~chair of one of the six metropolitan planning organizations in~~
161 ~~the region. The member appointed under this subparagraph shall~~
162 ~~serve a 2-year term with not more than three consecutive terms~~
163 ~~being served by any person.~~

164 ~~(b)3.a.~~ Two members of the board shall be the mayor, ~~or the~~
165 ~~mayor's designee,~~ of the largest municipality within the service
166 area of each of the following independent transit agencies or
167 their legislatively created successor agencies: Pinellas
168 Suncoast Transit Authority and Hillsborough Area Regional
169 Transit Authority. The largest municipality is that municipality
170 with the largest population as determined by the most recent
171 United States Decennial Census.

172 ~~b. Should a mayor choose not to serve, his or her designee~~
173 ~~must be an elected official selected by the mayor from that~~
174 ~~largest municipality's city council or city commission. A mayor~~

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~~or his or her designee shall serve a 2-year term with not more than three consecutive terms being served by any person.~~

~~e. A designee's term ends if the mayor leaves office for any reason. If a designee leaves elected office on the city council or commission, a vacancy exists on the board to be filled by the mayor of that municipality as provided in subparagraph a.~~

(c) The following independent transit agencies or their legislatively created successor agencies shall each appoint from the membership of their governing bodies one member to the board: Pinellas Suncoast Transit Authority and Hillsborough Area Regional Transit Authority. Each member appointed under this paragraph shall serve a 2-year term with not more than three consecutive terms being served by any person. If a member no longer meets the transit authority's criteria for appointment, a vacancy exists on the board which must be filled as provided in this paragraph within 90 days.

(d) The President of the Senate and the Speaker of the House of Representatives shall each appoint to the board one member from the regional business community, each of whom must reside in one of the counties governed by the authority and may not be an elected official. A member initially appointed under this paragraph shall serve a 1-year term. Thereafter, a member appointed under this paragraph shall serve a 2-year term with not more than three consecutive terms being served by any person. A vacancy during a term shall be filled within 90 days in the same manner as the original appointment for the remainder of the unexpired term.

~~d. A mayor who has served three consecutive terms on the~~

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~~board must designate an elected official from that largest municipality's city council or city commission to serve on the board for at least one term.~~

~~4.a. One membership on the board shall rotate every 2 years between the mayor, or his or her designee, of the largest municipality within Manatee County and the mayor, or his or her designee, of the largest municipality within Sarasota County. The mayor, or his or her designee, from the largest municipality within Manatee County shall serve the first 2-year term. The largest municipality is that municipality with the largest population as determined by the most recent United States Decennial Census.~~

~~b. Should a mayor choose not to serve, his or her designee must be an elected official selected by the mayor from that municipality's city council or city commission.~~

~~(e)5.~~ The Governor shall appoint to the board three members from the regional four business community ~~representatives~~, each of whom must reside in one of the ~~seven~~ counties governed by the authority and, ~~none of whom~~ may not be an elected official officials, and at least one but not more than two of whom shall represent counties within the federally designated Tampa Bay Transportation Management Area. Of the members initially appointed under this paragraph, one shall serve a 1-year term, one shall serve a 2-year term, and one shall serve a term as the initial chair as provided in subsection (5). Thereafter, a member ~~Members~~ appointed under this paragraph ~~by the Governor~~ shall serve a 2-year term ~~3-year terms~~ with not more than three ~~two~~ consecutive terms being served by any person.

~~(e)~~ Appointments may be staggered to avoid mass turnover at

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the end of any 2-year or 4-year period. A vacancy during a term shall be filled ~~by the respective appointing authority~~ within 90 days in the same manner as the original appointment ~~and only~~ for the remainder of the unexpired term.

(3) The members of the board shall serve without compensation but shall be entitled to receive from the authority reimbursement for travel expenses and per diem actually incurred in connection with the business of the authority as provided in s. 112.061.

(4) Members of the board shall comply with the applicable financial disclosure requirements of ss. 112.3145, 112.3148, and 112.3149.

(5) The Governor shall appoint one of the three members appointed under paragraph (2)(e) as the initial chair ~~from among the full membership~~ of the board immediately upon their appointment. ~~In no case may those appointments be made any later than 45 days following the creation of the authority.~~ The initial chair shall serve ~~will hold this position for~~ a minimum term of 2 years. The board shall elect a vice chair and secretary-treasurer from among its members who shall serve a minimum term of 1 year and shall establish the duties and powers of those positions during its inaugural meeting. During its inaugural meeting, the board shall ~~will~~ also establish its rules of conduct and meeting procedures.

(6) At the end of the initial chair's term, the board shall elect a chair from among the its members appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives. The chair shall hold office at the will of the board. In that election, the board shall also elect

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a vice chair and secretary-treasurer.

(7) The first meeting of the authority shall be held no later than 60 days after the creation of the authority.

(8) Seven ~~Eight~~ members of the board shall constitute a quorum, and the vote of seven ~~eight~~ members is necessary for any action to be taken by the authority. The authority may meet upon the constitution of a quorum. A vacancy does not impair the right of a quorum of the board to exercise all rights and the ability to perform all duties of the authority.

(9) Beginning July 1, 2017, the board must evaluate the abolishment, continuance, modification, or establishment of ~~may~~ establish committees for the following committees areas:

(a) Planning committee.

(b) Policy committee.

(c) Finance committee.

(d) Citizens advisory committee.

(e) Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee.

(f) Transit management committee.

(g) Technical advisory committee.

The board must submit its recommendations for abolishment, continuance, modification, or establishment of the committees to the President of the Senate and the Speaker of the House of Representatives before the beginning of the 2018 Regular Session.

(10) The authority may employ an executive director, an executive secretary, its own legal counsel and legal staff, technical experts, engineers, and such employees, permanent or

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temporary, as it may require. The authority shall determine the qualifications and fix the compensation of such persons, firms, or corporations and may employ a fiscal agent or agents; however, the authority shall solicit sealed proposals from at least three persons, firms, or corporations for the performance of any services as fiscal agents. The authority may, except for duties specified in chapter 120, delegate its power to one or more of its agents or employees to carry out the purposes of this part, subject always to the supervision and control of the authority.

~~(11) (a) The authority shall establish a Transit Management Committee comprised of the executive directors or general managers, or their designees, of each of the existing transit providers and bay area commuter services.~~

~~(b) The authority shall establish a Citizens Advisory Committee comprised of appointed citizen committee members from each county and transit provider in the region, not to exceed 16 members.~~

~~(c) The authority may establish technical advisory committees to provide guidance and advice on regional transportation issues. The authority shall establish the size, composition, and focus of any technical advisory committee created.~~

~~(11) (d)~~ Persons appointed to a committee shall serve without compensation but may be entitled to per diem or travel expenses as provided in s. 112.061.

Section 5. Subsection (1), paragraph (a) of subsection (2), subsection (3), subsection (4), and paragraph (g) of subsection (5) of section 343.922, Florida Statutes, are amended to read:

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320 343.922 Powers and duties.—

321 (1) The express purposes of the authority are to:

322 (a) Plan, implement, and operate ~~improve~~ mobility
323 improvements and expansions of ~~expand~~ multimodal transportation
324 options for passengers and freight throughout the designated
325 ~~seven-county Tampa Bay~~ region.

326 (b) Produce a regional transit development plan,
327 integrating the transit development plans of participant
328 counties, to include a prioritization of regionally significant
329 transit projects and facilities.

330 1. The authority shall provide to the President of the
331 Senate and the Speaker of the House of Representatives, on or
332 before the beginning of the 2018 Regular Session, a plan to
333 produce the regional transit development plan.

334 2. The regional transit development plan prepared by the
335 authority shall adhere to guidance and regulations set forth by
336 the department or any successor agency, including, but not
337 limited to:

338 a. Public involvement;

339 b. Collection and analysis of socioeconomic data;

340 c. Performance evaluation of existing services;

341 d. Service design and ridership forecasting; and

342 e. Financial planning.

343 (c) Serve, with the consent of the Governor or his or her
344 designee, as the recipient of federal funds supporting an
345 intercounty project or a regionally significant transit project
346 that exists in a single county within the designated region.

347 (2) (a) The authority has the right to plan, develop,
348 finance, construct, own, purchase, operate, maintain, relocate,

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349 equip, repair, and manage those public transportation projects,
350 such as express bus services; bus rapid transit services; light
351 rail, commuter rail, heavy rail, or other transit services;
352 ferry services; transit stations; park-and-ride lots; transit-
353 oriented development nodes; or feeder roads, reliever roads,
354 connector roads, bypasses, or appurtenant facilities, that are
355 intended to address critical transportation needs or concerns in
356 the ~~Tampa Bay~~ region as identified by the authority ~~by July 1,~~
357 ~~2009~~. These projects may also include all necessary approaches,
358 roads, bridges, and avenues of access that are desirable and
359 proper with the concurrence of the department, as applicable, if
360 the project is to be part of the State Highway System.

361 (3) (a) ~~No later than July 1, 2009,~~ The authority shall
362 develop and adopt a regional transit development ~~transportation~~
363 ~~master~~ plan that provides a vision for a regionally integrated
364 multimodal transportation system. The goals and objectives of
365 the ~~master~~ plan are to identify areas of the ~~Tampa Bay~~ region
366 where multimodal mobility, traffic safety, freight mobility, and
367 efficient emergency evacuation alternatives need to be improved;
368 identify areas of the region where multimodal transportation
369 systems would be most beneficial to enhance mobility and
370 economic development; develop methods of building partnerships
371 with local governments, existing transit providers, expressway
372 authorities, seaports, airports, and other local, state, and
373 federal entities; develop methods of building partnerships with
374 CSX Corporation and CSX Transportation, Inc., to craft mutually
375 beneficial solutions to achieve the authority's objectives, and
376 with other private sector business community entities that may
377 further the authority's mission, and engage the public in

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support of regional multimodal transportation improvements. The
~~master~~ plan shall identify and may prioritize projects that will
accomplish these goals and objectives, including, without
limitation, the creation of express bus and bus rapid transit
services, light rail, commuter rail, and heavy rail transit
services, ferry services, freight services, and any other
multimodal transportation system projects that address critical
transportation needs or concerns, pursuant to subsection (2);
and identify the costs of the proposed projects and revenue
sources that could be used to pay those costs. In developing the
~~master~~ plan, the authority shall review and coordinate with the
future land use, capital improvements, and traffic circulation
elements of its member local governments' comprehensive plans
and the plans, programs, and schedules of other units of
government having transit or transportation authority within
whose jurisdictions the projects or improvements will be located
to define and resolve potential inconsistencies between such
plans and the authority's developing ~~master~~ plan. ~~By July 1,~~
~~2008, the authority, working with its member local governments,~~
~~shall adopt a mandatory conflict resolution process that~~
~~addresses consistency conflicts between the authority's regional~~
~~transportation master plan and local government comprehensive~~
~~plans.~~

(b) The authority shall consult with the department to
further the goals and objectives of the Strategic Regional
Transit Needs Assessment completed by the department.

(c) Before the adoption of the regional transit development
~~master~~ plan, the authority shall hold at least one public
meeting in each of the ~~seven~~ counties within the designated

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407 region. At least one public hearing must be held before the
408 authority's board.

409 (d) After its adoption, the regional transit development
410 ~~master~~ plan shall be updated every 5 years before July 1.

411 (e) The authority shall present the original regional
412 transit development ~~master~~ plan and updates to the governing
413 bodies of the counties within the designated ~~seven-county~~
414 region, to the TBARTA Metropolitan Planning Organization Chairs
415 Coordinating Committee, and to the legislative delegation
416 members representing those counties within 90 days after
417 adoption.

418 (f) The authority shall coordinate plans and projects with
419 the TBARTA Metropolitan Planning Organization Chairs
420 Coordinating Committee, to the extent practicable, and
421 participate in the regional M.P.O. planning process to ensure
422 regional comprehension of the authority's mission, goals, and
423 objectives.

424 (g) The authority shall provide administrative support and
425 direction to the TBARTA Metropolitan Planning Organization
426 Chairs Coordinating Committee as provided in s. 339.175(6)(i).

427 (4) The authority may undertake projects or other
428 improvements in the regional transit development ~~master~~ plan in
429 phases as particular projects or segments become feasible, as
430 determined by the authority. The authority shall coordinate
431 project planning, development, and implementation with the
432 applicable local governments. The authority's projects that are
433 transportation oriented must be consistent to the maximum extent
434 feasible with the adopted local government comprehensive plans
435 at the time such projects are funded for construction. Authority

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436 projects that are not transportation oriented and meet the
437 definition of development pursuant to s. 380.04 must be
438 consistent with the local comprehensive plans. In carrying out
439 its purposes and powers, the authority may request funding and
440 technical assistance from the department and appropriate federal
441 and local agencies, including, but not limited to, state
442 infrastructure bank loans.

443 (5) The authority is granted and may exercise all powers
444 necessary, appurtenant, convenient, or incidental to the
445 carrying out of the aforesaid purposes, including, but not
446 limited to, the following rights and powers:

447 (g) To borrow money and to make and issue negotiable notes,
448 bonds, refunding bonds, and other evidences of indebtedness or
449 obligations, either in temporary or definitive form, hereinafter
450 in this chapter sometimes called "revenue bonds" of the
451 authority, for the purpose of financing all or part of the
452 mobility improvements within the ~~Tampa Bay~~ region, as well as
453 the appurtenant facilities, including all approaches, streets,
454 roads, bridges, and avenues of access authorized by this part,
455 the bonds to mature not exceeding 40 years after the date of the
456 issuance thereof, and to secure the payment of such bonds or any
457 part thereof by a pledge of any or all of its revenues, rates,
458 fees, rentals, or other charges.

459 Section 6. Subsection (1) of section 343.94, Florida
460 Statutes, is amended to read:

461 343.94 Bond financing authority.—

462 (1) Pursuant to s. 11(f), Art. VII of the State
463 Constitution, the Legislature approves bond financing by the
464 Tampa Bay Area Regional Transit ~~Transportation~~ Authority for

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465 construction of or improvements to commuter rail systems,
466 transit systems, ferry systems, highways, bridges, toll
467 collection facilities, interchanges to the system, and any other
468 transportation facility appurtenant, necessary, or incidental to
469 the system. Subject to terms and conditions of applicable
470 revenue bond resolutions and covenants, such costs may be
471 financed in whole or in part by revenue bonds issued pursuant to
472 paragraph (2)(a) or paragraph (2)(b), whether currently issued
473 or issued in the future or by a combination of such bonds.

474 Section 7. Section 343.947, Florida Statutes, is amended to
475 read:

476 343.947 Department may be appointed agent of authority for
477 construction.—The department may be appointed by the authority
478 as its agent for the purpose of constructing and completing
479 transportation projects, and improvements and extensions
480 thereto, in the authority's regional transit development ~~master~~
481 plan. In such event, the authority shall provide the department
482 with complete copies of all documents, agreements, resolutions,
483 contracts, and instruments relating thereto; shall request the
484 department to do such construction work, including the planning,
485 surveying, and actual construction of the completion,
486 extensions, and improvements to the system; and shall transfer
487 to the credit of an account of the department in the treasury of
488 the state the necessary funds therefor. The department shall
489 proceed with such construction and use the funds for such
490 purpose in the same manner that it is now authorized to use the
491 funds otherwise provided by law for its use in construction of
492 commuter rail systems, transit systems, ferry systems, roads,
493 bridges, and related transportation facilities.

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Section 8. Subsections (1) and (3) of section 343.95, Florida Statutes, are amended to read:

343.95 Acquisition of lands and property.—

(1) For the purposes of this part, the authority may acquire private or public property and property rights, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation by eminent domain proceedings, as the authority may deem necessary for any purpose of this part, including, but not limited to, any lands reasonably necessary for securing applicable permits, areas necessary for management of access, borrow pits, drainage ditches, water retention areas, rest areas, replacement access for landowners whose access is impaired due to the construction of a facility, and replacement rights-of-way for relocated rail and utility facilities; for existing, proposed, or anticipated transportation facilities within the ~~seven-county Tampa Bay~~ region designated ~~identified~~ by the authority; or for the purposes of screening, relocation, removal, or disposal of junkyards and scrap metal processing facilities. The authority may condemn any material and property necessary for such purposes.

(3) When the authority acquires property for a transportation facility within the designated ~~seven-county Tampa Bay~~ region, the authority is not subject to any liability imposed by chapter 376 or chapter 403 for preexisting soil or groundwater contamination due solely to its ownership. This subsection does not affect the rights or liabilities of any past or future owners of the acquired property, nor does it affect the liability of any governmental entity for the results of its

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actions which create or exacerbate a pollution source. The authority and the Department of Environmental Protection may enter into interagency agreements for the performance, funding, and reimbursement of the investigative and remedial acts necessary for property acquired by the authority.

Section 9. Subsections (1) and (3) of section 343.975, Florida Statutes, are amended to read:

343.975 Complete and additional statutory authority.—

(1) The powers conferred by this part are supplemental to the existing powers of the board and the department. This part does not repeal any of the provisions of any other law, general, special, or local, but supplements such other laws in the exercise of the powers provided in this part and provides a complete method for the exercise of the powers granted in this part. The projects planned and constructed by the Tampa Bay Area Regional Transit ~~Transportation~~ Authority shall comply with all applicable federal, state, and local laws. The extension and improvement of the system, and the issuance of bonds hereunder to finance all or part of the cost thereof, may be accomplished upon compliance with the provisions of this part without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special, or local law, including, but not limited to, s. 215.821. An approval of any bonds issued under this part by the qualified electors or qualified electors who are freeholders in the state or in any other political subdivision of the state is not required for the issuance of such bonds pursuant to this part.

(3) This part does not preclude the department from acquiring, holding, constructing, improving, maintaining,

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operating, or owning tolled or nontolled facilities funded and constructed from nonauthority sources that are part of the State Highway System within the geographical boundaries of the Tampa Bay Area Regional Transit ~~Transportation~~ Authority.

Section 10. Section 343.976, Florida Statutes, is amended to read:

343.976 Effect on local government action.—This act does not prohibit any local government that is a member of the Tampa Bay Area Regional Transit ~~Transportation~~ Authority from participating in or creating any other transit authority, regional transportation authority, or expressway authority.

Section 11. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

SR 1672
Bill Number (if applicable)

Topic TBARTA

Amendment Barcode (if applicable)

Name BARRY SHEVLIN

Job Title CEO/VOLOGY

Address 281 BAYSIDE DRIVE
Street

Phone _____

CLEARWATER BEACH FL 33767
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing TAMPA BAY PARTNERSHIP

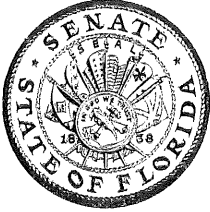
Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Commerce and Tourism
Environmental Preservation and Conservation
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission,
Alternating Chair

SENATOR JACK LATVALA

16th District

March 22, 2017

The Honorable Tom Lee
418 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Lee,

I respectfully request you place Committee Substitute for Senate Bill 1672, relating to Tampa Bay Area Regional Transit Authority, on your Community Affairs agenda at your earliest convenience.

Should you have any questions or concerns regarding this legislation, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in black ink that reads "Jack Latvala". The signature is fluid and cursive.

Jack Latvala
Senator, 16th District

cc: Tom Yeatman, Staff Director

REPLY TO:

- ☐ 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- ☐ 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
2/28/17	SM	Fav/1 amendment
3/30/17	JU	Fav/CS
4/18/17	CA	Favorable
	RC	

February 28, 2017

The Honorable Joe Negrón
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 40** – Judiciary Committee and Senator Bill Galvano
HB 6503 – Representative Sean Shaw
Relief of Sean McNamee by the School Board of Hillsborough County

SPECIAL MASTER'S FINAL REPORT

This is an uncontested excess judgment claim for local funds in the amount of 1.7 million against the school board of Hillsborough County for damages caused to Sean McNamee after he struck his head on a field striper that was negligently left on a football field during football practice.

FINDINGS OF FACT:

On October 9, 2013, on or around 3:20 p.m., Sean McNamee began participating in football practice with the Wharton High School football team in Hillsborough County, Florida. The players were running passing drills with their lower uniforms on but without shoulder pads or helmets. At approximately 3:45 p.m., while participating in a passing drill, Sean lost his balance after colliding with another player and struck his head on a field striper left on the field by the Wharton High school Head Football Coach David Mitchell. Sean's friend, Daniel, saw the collision and noticed that Sean was acting strangely. Daniel alerted Coach Mitchell who directed Daniel to take Sean to the locker room to be seen by the athletic trainer, Timothy Koecher. Daniel took Sean to the school, but did not escort Sean inside or speak to the trainer.

Trainer Koecher stayed with Sean intermittently in the locker room and in the training room. The extent of any examination

that Trainer Koecher conducted on Sean is not clear. The student injury report submitted to the school by Trainer Koecher states that Sean suffered from a bruise and that ice was applied. Trainer Koecher's written statement, taken a year after the incident and submitted as an addendum after the special master hearing, indicates that there was no laceration or visible bleeding in the injured area and that normal protocol was followed when assessing Sean's injury. However, the joint submission presented by both parties states that Trainer Koecher failed to adhere to proper protocol to evaluate Sean's condition and obtain appropriate medical intervention.

On several occasions, Trainer Koecher left Sean alone. Most of these occasions were for approximately 10 minutes, but on one occasion Sean was left alone for approximately 30 minutes. At approximately 4:22 p.m., during the 30-minute period alone, Sean left campus and drove himself home despite being told by the trainer on several occasions not to drive. Sean has little to no memory of driving himself home. On at least one of the occasions, trainer Koecher left Sean to get cell reception to contact Sean's mother, Jody McNamee. When Trainer Koecher contacted her, Jody McNamee was in Brandon, Florida, and she immediately headed to the school to pick up Sean.

After Sean arrived home, he was met by his younger sister who was an elementary student at the time. Upset by Sean's incoherent condition, his sister called their parents and their father, Todd McNamee, returned home and took Sean to the emergency room. Sean was initially seen at Florida Hospital, Tampa, at 6:01 p.m., approximately two and a half hours after first sustaining his injury. Sean's parents stated in the hearing that the hospital could not see him in the emergency room immediately because he was transported to the hospital by his father and not by ambulance.

A CT scan revealed that Sean suffered from a large left acute temporal convexity epidural hemorrhage measuring 5.3 x 3.2 centimeters. After consulting with a radiologist, Dr. Yoav Ritter, the treating surgeon, rushed Sean to surgery where he removed a portion of Sean's skull to relieve the cranial pressure caused by internal bleeding and swelling. Sean was placed in an induced coma while he recovered and he

emerged from his coma on October 18, 2013. He was discharged from the hospital on October 31, 2013.

Sean had a second surgery in December, 2013, to replace the portion of his skull with a titanium plate. In January, 2015, Sean began to suffer from seizures that would occur approximately every one to two months. In April, 2016, Sean suffered from a significant seizure that required an extended period of hospitalization. Testimony at the hearing placed his last known seizure on or around June or July, 2016. Sean's drivers license has been revoked due to his seizures. At the time of the settlement, total health care costs for Sean's injuries totaled approximately \$500,000.

In April, 2015, Sean and his parents filed suit against the School Board of Hillsborough County. On January 7, 2016, as a result of court-ordered mediation, the parties entered into a stipulated judgement against the School Board in the amount of \$2 million. Of the \$2 million, \$300,000 has been paid,¹ with Sean receiving \$200,000 and Todd and Jody McNamee receiving \$50,000 each. Less attorney's fees, costs, and medical liens, Sean has received approximately \$109,000 and each parent has received approximately \$36,000. Currently, there are outstanding medical liens in the amounts of \$150,874 owed to Aetna and \$13,831 owed to Florida Blue. The school board is self-insured for the total amount of the judgment.

In addition to the seizures, Sean suffers from ongoing mental impairment. A psychological evaluation of Sean, based on examinations performed on January 10 and 28, 2014, revealed significant changes in cognitive functions from his severe traumatic brain injury (TBI) that would have an adverse impact on school functioning. The evaluation also found that Sean will need extra help with organizational skills at home and at school and that continued parental involvement in managing his affairs and decisions clearly will be needed. However, the evaluation did not reveal deficits that would interfere with employability with accommodations made under the Americans with Disabilities Act.

Currently, Sean lives with his brother in an apartment they rent together. He is unemployed and is not enrolled in school. An

¹ Pursuant to s. 768.28, F.S.

irrevocable trust was established for Sean's medical and living expenses on April 11, 2016.

CONCLUSIONS OF LAW:

Florida schools have a special relationship with their students which creates a duty to reasonably supervise the students during all activities that are subject to the control of the school.² Specific to student athletes, and as pertinent to the facts of this case, Wharton High School had the duty to ensure that Sean McNamee was adequately supervised when participating in football practice and to ensure that appropriate measures were taken after he was injured to prevent aggravation of the injury.³

Duty to Supervise:

The school breached its duty to adequately supervise its student athletes when Coach Mitchell negligently left the field striper on the field within the practice area. By leaving the striper on the field and by having the players conduct warm up activities in the area where the striper was left, Coach Mitchell created a hazard that was the cause of Sean McNamee's injury. Additionally, although TBI is an injury that may be expected while playing football, being injured on a piece of equipment that was negligently left on the practice field is not an injury inherent to playing football.

Duty to Prevent Aggravation of the Injury:

The school breached its duty to ensure that appropriate measures were taken after Sean's injury to prevent aggravation of the injury. The joint submission of both parties indicates that Trainer Koecher failed to adhere to proper protocol to evaluate Sean's condition and obtain appropriate medical intervention.⁴ As a result, there was a significant delay in Sean receiving the necessary medical treatment for his TBI. It is probable that the delay in treatment aggravated Sean's injury and may have caused some of the long-term changes in his cognitive functions that are present today.

² *Limones v. Sch. Dist.*, 161 So. 3d 384, 390 (Fla. 2015).

³ *Id.*

⁴ Although Trainer Kocher in his written statement indicated that he followed protocol when examining Sean McNamee, there are several reasons to disregard this statement. First, the statement was made a full year after the events. Second, the submission stating that Trainer Koecher was negligent was a joint submission with agreed upon facts by both parties. Third, the statement itself was not presented at or before the hearing and, as such, the plaintiffs did not have the opportunity to respond to the statement in the hearing.

Damages:

As can be seen through the established facts, Sean suffers from both acute and chronic effects caused by the TBI he suffered on October 9, 2013. These effects include several hospitalizations and surgeries that accrued nearly \$500,000 in medical expenses, ongoing seizures, loss of his ability to maintain a driver's license, and cognitive changes that will likely affect his ability to succeed in school and to live on his own. The TBI Sean suffered due to Coach Mitchell's negligence and the likely aggravation of his injury he suffered due to Trainer Koecher's negligence in obtaining proper medical care in a timely manner were the direct causes of both the acute and ongoing damages.

ATTORNEYS FEES:

Senate Bill 40 restricts the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to this claim to 25 percent of the amount awarded. As such, total attorney and lobbyist fees will be \$425,000 of the \$1.7 million awarded under the bill. However, the limits on lobbying fees, costs, and other expenses should be removed to conform to a recent opinion of the Florida Supreme Court. See *Searcy, Denney, Scarola, Barnhart & Shipley v. State*, 42 Fla. L. Weekly S92 (Fla. 2016).

SPECIAL NEEDS TRUST:

The undersigned recommends that Senate Bill 40 be amended to direct all payment of funds into the Sean R. McNamee Irrevocable Trust, after the deduction of costs and liens. This change will protect Sean's eligibility for means tested government benefits.

RECOMMENDATIONS:

The undersigned recommends that Senate Bill 40 (2017) be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Daniel Looke
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute provides for the proceeds of the claim bill to be paid into a trust for the benefit of the disabled claimant. The amendment also eliminates references to caps on lobbying fees, costs, and other expenses, consistent with a recent Supreme Court Opinion.

By the Committee on Judiciary; and Senator Galvano

590-03421-17

201740c1

A bill to be entitled

An act for the relief of Sean McNamee and his parents, Todd McNamee and Jody McNamee, by the School Board of Hillsborough County; providing for an appropriation to the Sean R. McNamee Irrevocable Trust as compensation for injuries and damages sustained by Sean McNamee as a result of the negligence of employees of the School Board of Hillsborough County; providing a limitation on the payment of attorney fees; providing an effective date.

WHEREAS, on October 9, 2013, Sean McNamee, a minor student and member of the football team at Wharton High School, participated in a warm-up session as part of organized team activities at the start of football practice, and

WHEREAS, during a passing drill, Sean McNamee lost his balance when he came into contact with another player, and while falling to the ground, struck his head on a paint machine used to line the practice field which had been improperly left in the practice area, and

WHEREAS, Sean McNamee appeared confused, disoriented, and not "symptom free" while in the training and locker rooms for evaluation and treatment by the school's athletic trainer, and

WHEREAS, the coaching and training staff did not properly evaluate or assess Sean McNamee for a concussion or head injury, left him unattended, did not call 911 or summon a physician or ambulance, and did not immediately notify Sean's parents of the possibility that their son had sustained a brain injury, and

WHEREAS, the coaching and training staff responsible for

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the supervision and welfare of participating student athletes should have known of the severity of the injury experienced by Sean McNamee and were responsible for ensuring he received appropriate and timely evaluation and attention, and

WHEREAS, after being left alone for an extended time, Sean McNamee drove himself home, endangering himself and others, and there his sister found him incoherent and acting strangely, and she notified their father, Todd McNamee, who rushed him to the emergency department at Florida Hospital Tampa, and

WHEREAS, physicians at Florida Hospital Tampa diagnosed Sean McNamee with a traumatic brain injury from a depressed temporal bone fracture with epidural and subdural hemorrhage which required multiple brain surgeries, including emergency decompression craniotomy, a 9-day induced coma, and reconstruction with a titanium plate permanently inserted into his fractured skull, and

WHEREAS, as a result of the traumatic brain injury and delayed treatment, Sean McNamee suffers from permanent and significant changes in his cognitive functions and from an epileptic seizure disorder with breakthrough episodes, and

WHEREAS, Sean McNamee and his parents Todd McNamee and Jody McNamee brought suit against the School Board of Hillsborough County in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Case No 14-CA-009239, and the parties entered into a court-ordered mediation on September 14, 2015, and

WHEREAS, the School Board of Hillsborough County approved a settlement in the amount of \$2 million, paid the statutory limit of \$300,000 under s. 768.28, Florida Statutes, and further

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59 agreed to support the passage of this claim bill in the amount
60 of \$1.7 million for the unpaid portion of the settlement, NOW,
61 THEREFORE,
62

63 Be It Enacted by the Legislature of the State of Florida:
64

65 Section 1. The facts stated in the preamble to this act are
66 found and declared to be true.

67 Section 2. The School Board of Hillsborough County is
68 authorized and directed to appropriate from funds not otherwise
69 encumbered and to draw a warrant in the sum of \$1.7 million
70 payable to the Sean R. McNamee Irrevocable Trust as compensation
71 for injuries and damages sustained as a result of the negligence
72 of employees of the School Board of Hillsborough County.

73 Section 3. The amount paid by the School Board of
74 Hillsborough County under s. 768.28, Florida Statutes, and the
75 amount awarded under this act are intended to provide the sole
76 compensation for all present and future claims arising out of
77 the factual situation described in this act which resulted in
78 injuries to Sean McNamee and damages to Todd McNamee and Jody
79 McNamee. The total amount paid for attorney fees relating to
80 this claim may not exceed 25 percent of the amount awarded under
81 this act.

82 Section 4. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Higher
Education, *Chair*
Appropriations
Education
Governmental Oversight and Accountability
Rules

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR BILL GALVANO

21st District

April 5, 2017

Senator Tom Lee
Committee on Community Affairs
315 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear President Lee:

I respectfully request that SB 40 Relief of Sean McNamee by the School Board of Hillsborough County be scheduled for a hearing in the Committee on Community Affairs, at your earliest convenience.

If I can provide additional documentation to you on this, please do not hesitate to contact me.
Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in blue ink that reads "Bill".

Bill Galvano

cc: Tom Yeatman
Ann Whittaker

REPLY TO:

- ☐ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205 (941) 741-3401
- ☐ 420 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
3/23/17	SM	Favorable
3/28/17	JU	Fav/CS
4/18/17	CA	Favorable
	RC	

March 23, 2017

The Honorable Joe Negrón
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 46** – Judiciary Committee and Senator Bill Montford
HB 6521 – Representative Evan Jenne
Relief of MARY MIFFLIN-GEE, an Incapacitated person, by and through
MARILYN JELKS, as Guardian of the Person and Property of MARY
MIFFLIN-GEE.

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM BASED ON A SETTLEMENT AGREEMENT WITH THE CITY OF MIAMI FOR \$2,500,000 FOR PERMANENT INJURIES SUSTAINED BY MARY MIFFLIN-GEE DUE TO THE NEGLIGENT TRANSPORTATION OF MS. MIFFLIN-GEE BY CITY OF MIAMI, DEPARTMENT OF FIRE-RESCUE EMPLOYEES. THIS IS A LOCAL BILL WHICH REQUESTS \$2,300,000 TO BE PAID TO MARILYN JELKS, AS LEGAL GUARDIAN OF MARY MIFFLIN-GEE.

FINDINGS OF FACT:

On October 25, 2012, at approximately 11:00 a.m., Ms. Mifflin-Gee was found in a vehicle, in a parking lot in Miami, Florida, unconscious, slumped over the steering wheel, and foaming from the mouth. A witness called 911 and the City of Miami, Department of Fire-Rescue, responded to assist Ms. Mifflin-Gee.

The City of Miami, Department of Fire-Rescue, records¹ reveal that paramedics/EMTs Eric Hough, Marc Alexandre, and Lt. Steve Mason responded to the call. Hough was driving, Mason was the officer in charge, and Alexandre was crew. They arrived at the scene at 11:15 a.m., and to Ms. Mifflin-Gee at 11:16 a.m.

Mason reached Ms. Mifflin-Gee first. He found her sitting in a vehicle, phone in her lap, eyes open, foaming at the mouth, and unconscious. He assessed her level of consciousness as a Glasgow Coma Scale of three.² She was not responsive to painful stimuli, her pupils were non-reactive, but her airway was open with shallow breath sounds.

At 11:20 a.m. Mason instructed Alexandre to check Ms. Mifflin-Gee's blood sugar, which was 196. At 11:22 a.m. Alexandre took her vital signs which were: Systolic Blood Pressure 240, Respirations 10, Pulse 126, and a SpO2 92%. Mason then made the decision to extricate Ms. Mifflin-Gee from the vehicle, and Hough brought the gurney from the Fire-Rescue truck.

Mason and Hough lowered the gurney to the low position, about 12 inches off the ground. Alexandre and Hough extricated Ms. Mifflin-Gee from the vehicle. Hough took Ms. Mifflin-Gee's torso by putting his arms under her armpits, and Alexandre took Ms. Mifflin-Gee's knees and feet. Hough and Alexandre then lifted Ms. Mifflin-Gee onto the gurney, put the head of the gurney up to a 45° angle, and put the side rails up.

None of the paramedics/EMTs remembered buckling the gurney lap belt prior to transporting Ms. Mifflin-Gee to the Fire-Rescue truck. All testified that it was standard practice for paramedics/EMTs to secure a patient with a lap belt before beginning to transport a patient on a gurney.

¹The City of Miami, Department of Fire and Rescue, reports for the events of October 25, 2012, include the Ambulance Report and the Incident Report. However, they are almost identical in content and are read in *pari materia*.

² The *Glasgow Coma Scale* is the most widely used neurological scale designed to give a reliable and objective way of recording the state of consciousness of a person. A score of 3 indicates the person does not open their eyes even in response to painful stimuli, does not verbally respond to commands or stimuli, and does not move in response to pressure stimuli. **Teasdale, Sir Graham**, *Forty years on: updating the Glasgow Coma Scale*, Nursing Times, October 15, 2014, Available at: <https://www.nursingtimes.net/Journals/2014/10/10/n/p/1/141015Forty-years-on-updating-the-Glasgow-coma-scale.pdf>, (last visited Feb. 22, 2017).

Alexandre and Hough rolled Ms. Mifflin-Gee toward the Fire-Rescue truck. They put the gurney in the high position, approximately 3 to 3-1/2 feet off the ground. Mason was at the back of Ms. Mifflin-Gee's vehicle taking witnesses' statements.

While at the foot of the gurney at the Fire-Rescue truck, Alexandre prepared to unlock the gurney to put the loading wheels onto the truck. Hough prepared to put Ms. Mifflin-Gee's head down in the low position. At this point Alexandre felt the angle of the gurney change, and Ms. Mifflin-Gee, while still with her head elevated to a 45 degree angle, came over the top of the side rail, rolled off the gurney, and hit her head on the ground. The gurney lap belt was not buckled. All three paramedics/EMTs confirm that Ms. Mifflin-Gee's head hit the ground, and that there was now an abrasion on her forehead, which was not present at the initial evaluation.

Hough and Alexandre then lifted Ms. Mifflin-Gee back on to the gurney in the flat position, and Mason buckled the lap belt. Ms. Mifflin-Gee was then lifted into the Fire-Rescue truck. According to the paramedic/EMT records, the transport to the Fire-Rescue truck and Ms. Mifflin-Gee's fall took place in the span of five minutes.

At 11:27 a.m., Ms. Mifflin-Gee was in the Fire-Rescue truck and Alexandre and Mason began to re-assess her condition. Her systolic blood presser had increased to 246 and pulse was up to 146, and SpO2 was down to 82%. At 11:28 a.m., an EKG was performed by Hough which showed a sinus tachycardia of 146.³ Alexandre started an IV at 11:31 a.m. in an attempt to stabilize Ms. Mifflin-Gee's condition, but the fluids failed to produce any change to her condition.

At 11:31 a.m., the City of Miami Fire-Rescue truck left the scene, headed for Jackson Memorial Hospital in Miami, Florida. While in route at 11:32 a.m., Ms. Mifflin-Gee remained unconscious and respirations were insufficient. Alexandre administered Versed⁴, and at 11:33 a.m., Mason attempted to intubate Ms. Mifflin-Gee. The records indicate that the

³ Sinus tachycardia is a heart rate of greater than 100 beats per minute in an average adult. The normal resting heart rate is of the average adult is 60 to 100 beats per minute.

⁴ Versed is the trade name for midazolam hydrochloride which is a sedative used for minor medical procedures. Versed (2010). In *Physicians' Desk Reference* (65th ed.), Montvale, NJ: PDR Network.

endotracheal tube was confirmed by Mason to have been successfully placed in the trachea.

Ms. Mifflin-Gee was admitted to the Jackson Memorial emergency room at 12:05 p.m. On admission, her blood pressure was 240/126 and blood sugar was 196. She was unresponsive and comatose. A small contusion and right frontal swelling were noted by emergency room personnel. Her pupils were fixed and dilated.

It was also noted by the emergency room physician that Ms. Mifflin-Gee had a distended abdomen and that her endotracheal tube had been improperly placed in her esophagus. The paramedics efforts to ventilate Ms. Mifflin-Gee during transport between 11:33 a.m. and 12:05 p.m. had actually been putting air in her stomach, not her lungs. The ER physician removed the endotracheal tube and properly placed a new one in the trachea. The abdomen was then decompressed with the placement of an NG tube.

An EKG, CT scan of the brain, lab work, and a neurosurgical consult were immediately ordered. All tests contained abnormal findings. The CT showed a brain midline shift to the right and a large left sided holohemispheric subdural hematoma and extension subarachnoid hemorrhage.

At 12:20 p.m., Ms. Mifflin-Gee was transitioned to the neurosurgery medical service and the care of Dr. M. Ross Bullock, M.D. At 12:40 p.m., Ms. Mifflin-Gee was taken for emergency neurosurgery. She underwent a left frontal-parietal craniotomy to remove a large subdural hematoma and the placement of a ventriculostomy.

Ms. Mifflin-Gee was taken from surgery to the neuroscience intensive care in a deep coma and with the endotracheal tube still in place. Ms. Mifflin-Gee remained at Jackson Memorial Hospital in a near vegetative state until February 12, 2013. During that time, her endotracheal tube was replaced with a permanent tracheostomy tube (T-piece). A feeding tube (PEG tube) was inserted. She developed post-operative hydrocephalus and underwent the placement of a right occipital ventricular-peritoneal shunt which required a revision for blockage and she underwent a cranioplasty to cover her brain where the bone had been removed.

February 12, 2013, Ms. Mifflin-Gee was transferred to Jackson Memorial Long Term Care Facility in a persistent vegetative state, with a tracheostomy, a feeding tube, and was totally unresponsive to her external environment.

On March 19, 2013, Ms. Mifflin-Gee's sister, Marilyn Jelks, was appointed guardian of Ms. Mifflin-Gee's person and property. Ms. Mifflin-Gee was not married and had no children.

On April 29, 2013, Ms. Mifflin-Gee returned to Jackson Memorial Hospital with a urinary tract infection, acute renal failure, bedsores and subsequent respiratory distress. She was treated aggressively with antibiotics and fluids, but developed respiratory failure and was placed on a ventilator. She also developed significant rectal and gastric bleeding, and a deep venous thrombosis (DVT) for which they inserted an inferior vena cava filter.

On May 28, 2013, Ms. Mifflin-Gee returned to the Jackson Memorial Long Term Care Facility, and remains there in a persistent vegetative state with a feeding tube, tracheostomy, chronic respiratory failure, and with periodic skin breakdowns. Her family resides in Georgia and wishes to transport her to a facility near them but Claimant's dependency on the tracheostomy has complicated any such plans.

The record evidence shows that at no time has Ms. Mifflin-Gee ever regained conscious from the time she was found in the vehicle to the present.

No expert testimony was presented on the issue of whether it was a breach of duty, or the standard of care, for the paramedics/EMTs not to have buckled, the gurney's lap belt, prior to beginning to transport Ms. Mifflin-Gee to the Fire-Rescue truck. However, Hough, Mason and Alexandre, all trained paramedics/EMTs, testified that it was their understanding that buckling the gurney belt was part of proper procedure in transporting an unconscious patient and that it should have been done.

The record evidence also shows that Mason did not correctly insert Ms. Mifflin-Gee's endotracheal tube in the Fire-Rescue truck on the way to the hospital. This evidence does not require expert testimony to establish it as yet another breach

of the standard of care by City of Miami, Department of Fire-Rescue employees. It is within the realm of common knowledge and experience for one to know that if you are trained to perform a professional task, and you do it incorrectly without recognizing the error, you have breached the standard of care. This breach of the standard of care resulted in inadequate ventilation of Ms. Mifflin-Gee for at least 32 minutes during transport to the hospital. This inadequate ventilation more likely than not aggravated Ms. Mifflin-Gee's already compromised physical condition.

The affidavit of M. Ross Bullock, M.D., neurosurgeon, indicates that it is his opinion that Ms. Mifflin-Gee's large subdural hematoma was the result of trauma from her three-foot fall off the gurney, as there was no other history of prior trauma. He further concluded that her persistent vegetative state was caused by her traumatic subdural hematoma.

The report of Craig H. Lichtblau, M.D., a board certified physical medicine and rehabilitation specialist, was submitted as an expert opinion on the issues of Ms. Mifflin-Gee's life expectancy and future medical needs.⁵ Dr. Lichtblau's report is based on his evaluation of Ms. Mifflin-Gee on November 16, 2014, and a review of her social and medical history reported by her sister, a review her medical records, and research on costs of long-term institutional care in Florida.

It is Dr. Lichtblau's opinion, within a reasonable degree of medical certainty, that Ms. Mifflin-Gee is in a persistent vegetative state⁶ and that she will survive in that state for seven to 12 years. At the time of Ms. Mifflin-Gee's injury, she was a 64 years old, Afro-American, single, retired, with no prior history of debilitating health issues, and had a life expectancy of 21.0 years.⁷ Dr. Lichtblau further included with

⁵ There are no issues of pain and suffering or lost wages. Ms. Mifflin-Gee was unemployed at the time of her injury, and persons in a persistent vegetative state do not feel pain. *See footnote 6.*

⁶ Dr. Lichtblau describes a persistent vegetative state as a clinical condition of complete unawareness of self in the environment, accompanied by sleep/awake cycles, along with either complete or partial preservation of the hypothalamic and brain stem autonomic functions. Patients in a persistent vegetative state do not feel pain and have a substantially reduced life expectancy. For most patients in this condition, life expectancy ranges from 2 to 5 years. Survival beyond 10 years is unusual. He cites as authority, *The New England Journal of Medicine, Medical Aspects of the Persistent Vegetative State*, Vol. 330, No. 22, pp. 1572 - 1579, published June 2, 1994, available at <http://www.nejm.org/toc/nejm/330/22>, (last visited March 1, 2017).

⁷ U.S. Department of Health and Human Services, Center for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics System, *National Vital Statistics Report, United States Live Tables, 2012*, Vol. 65, No.8,

his report two cost estimates for Ms. Mifflin-Gee's future care in a long term institutional setting. Based on his comprehensive medical evaluation of Ms. Mifflin-Gee, both institutions concluded that to provide Ms. Mifflin-Gee with room, board, appropriate therapies, and case management would cost \$1,500 per day. Based on Dr. Lichtblau's life expectancy range for Ms. Mifflin-Gee, it is reasonable to calculate her future medical expenses as between \$3,960,250.00 and \$6,789,000.00.

August 13, 2013, a civil complaint for negligence was filed against the City of Miami, Department of Fire-Rescue by Marilyn Jelks, as Custodian of the person and property of Mary Mifflin-Gee, an incapacitated person.

A settlement was reached for \$2,500,000, and the Settlement Agreement was signed December 21, 2016. The City of Miami requests the approval of a claim bill for \$2,300,000, and Lloyds of London, the City of Miami's excess insurance company, will reimburse the City of Miami \$2,000,000.

Ms. Mifflin-Gee's past medical expenses paid by Medicaid were \$374,388.50, which were reduced to \$128,164.37, and the Medicaid lien has been satisfied.

LEGISLATIVE HISTORY:

SB 46 by Senator Montford is the first time this claim has been introduced to the Legislature.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine whether the City of Miami is liable for the negligence of its employees, acting within the course and scope of their employment, as paramedics/EMTs with the City of Miami's Department of Fire-Rescue; and if so, whether the amount of the claim is reasonable. This report is based on the record evidence presented to the Special Master prior to, during, and after the hearing at the request of the Special Master.

To prevail in a negligence case, a plaintiff must establish by a preponderance of the evidence that there was a standard of care or duty owed by a defendant to the plaintiff, that the defendant breached that duty or standard of care, and that the

breach was the cause of both the plaintiff's injuries and damages. The plaintiff must introduce evidence which affords a reasonable basis for the conclusion that, more likely than not, the conduct of the defendant was a substantial factor in bringing about the injury and damages.⁸

The terms of the settlement agreement between the City of Miami and Ms. Mifflin-Gee's guardian, establish that paramedics/EMTs Eric Hough, Marc Alexandre, and Lt. Steve Mason were employees of the City of Miami and were acting within the course and scope of their employment as Department of Fire-Rescue paramedics/EMTs, at the time they responded to the 911 call for Ms. Mifflin-Gee.

Ms. Mifflin-Gee's representatives presented no expert testimony on what duty or standard of care was required by the paramedics/EMTs when transporting an unconscious patient. However, all three paramedics/EMTs testified that, although they put the gurney's side rails up, it was part of the routine transport procedure to buckle the lap belt before transporting a patient in Ms. Mifflin-Gee's condition.

Section 70.702, F.S., qualifies a witness as an expert by knowledge, skill, experience, training, or education. Their testimony thus established their duty and standard of care required. The gurney's lap belt should have been buckled before attempting to transport Ms. Mifflin-Gee to their Fire-Rescue truck. That duty was clearly breached in this case,

As a result of the paramedics/EMTs breach of their duty to apply the gurney lap belt when transporting Ms., Mifflin-Gee, when the "angle of the gurney changed," the side rails alone were insufficient to hold Ms. Mifflin-Gee to the gurney. Without the lap belt properly buckled, securing Ms. Mifflin-Gee to the gurney, she rolled off, fell to the ground and struck her head.

The affidavit of Dr. Bullock provides an expert opinion on the cause of Ms. Mifflin-Gee's large subdural hematoma. He clearly states that it was the result of trauma from her three-foot fall off the gurney. He further concludes that her persistent vegetative state was caused by her traumatic subdural hematoma from the fall.

⁸ *Gooding v. University Hospital Bldg., Inc.*, 445 So. 2d 1015, 1984 Fla. LEXIS 2545 (Fla. 1984).

The report of Dr. Lichtblau's provides, within a reasonable degree of medical certainty, evidence of Ms. Mifflin-Gee's life expectancy and estimated cost of her future medical care. It is Dr. Lichtblau's expert opinion that Ms. Mifflin-Gee, with reasonable medical certainty, has a life expectancy of seven to 12 years and that medical costs that will result are between \$3,960,250 and \$6,789,000. This clearly makes the settlement amount of \$2,500,000 a reasonable compromise given the risks and cost of a jury trial.

After considering all of the facts in this case, I conclude that the defendant's employees had a duty to Ms. Mifflin-Gee to buckle the gurney lap belt before attempting to transport her, that they breached that duty, and that the breach caused her injuries and damages. The amount of the claim bill is reasonable and appropriate.

ATTORNEYS FEES:

Senate Bill 46 restricts the total amount of attorney fees, related to the claim to a maximum of 25 percent of the total amount awarded. The total attorney fees will be \$625,000 of the \$2.5 million dollar settlement.⁹ The claimant's attorney has not retained a lobbyist, and outstanding costs total \$17,110.39.

RECOMMENDATIONS:

The undersign recommends that Senate Bill 46 be amended to direct the Guardian for Mary Mifflin-Gee, Marilyn Jelks, establish a Special Needs Trust for the benefit of Mary Mifflin-Gee and that all payments of funds, after the deduction of attorney's fees, and costs, be made to the Mary Mifflin-Gee Special Needs Trust. Otherwise, the undersigned recommends that Senate Bill 46 (2017) be reported FAVORABLY.

⁹ See affidavit of Attorney Jason D. Weissner, dated November 17, 2016; and Searcy, Denney, Scarola, Barnhart, & Shipley, v State of Florida, 194 So. 3d 349 (Fla. 2017).

Respectfully submitted,

Tari Rossitto-Van Winkle, R.N., J.D.
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The CS provides for the proceeds of the claim bill to be placed in a special needs trust, which will protect Ms. Miffin-Gee's eligibility for means-tested government benefits. The CS also no longer includes references to the City's insurer, corrects an error in the whereas clauses, and revises the limit on fees to conform to a recent Supreme Court opinion.

By the Committee on Judiciary; and Senator Montford

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A bill to be entitled

An act for the relief of Mary Mifflin-Gee by the City of Miami; providing for an appropriation to compensate her for injuries and damages sustained as a result of the negligence of employees of the City of Miami Department of Fire-Rescue; providing a limitation on the payment of attorney fees; providing an effective date.

WHEREAS, on October 25, 2012, Mary Mifflin-Gee was in her vehicle located in a parking lot at 1498 NW 54th Street in Miami when, according to eyewitness statements, she exhibited seizure-like symptoms and foamed from the mouth, and

WHEREAS, a call was placed to 911, and paramedics Eric Hough, Marc Alexandre, and Steven Mason of the City of Miami Department of Fire-Rescue responded to treat Mary Mifflin-Gee, and

WHEREAS, the fire rescue personnel removed Mary Mifflin-Gee from her vehicle, and, even though it is a basic Emergency Medical Technician (EMT) requirement to secure an unconscious patient to the gurney with the seatbelt, the fire rescue personnel placed Mary Mifflin-Gee on a gurney without securing her with the seatbelt and attempted to transfer her into the ambulance, and

WHEREAS, because of the fire personnel's failure to follow the basic EMT requirement, Mary Mifflin-Gee fell off the gurney and struck her head and, as a result, suffered a severe traumatic brain injury, and

WHEREAS, Mary Mifflin-Gee was transported to Jackson

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Memorial Hospital, where she underwent a left craniectomy and cranioplasty as well as a posttraumatic hydrocephalus ventriculoperitoneal shunt placement for her head injury, and

WHEREAS, Mary Mifflin-Gee became tracheostomy dependent and suffered numerous complications, such as dysphagia, hypertension, anemia of chronic disease, acute renal failure, respiratory distress, urinary tract infections, rectal bleeding, and deep vein thrombosis, and

WHEREAS, Mary Mifflin-Gee was transferred to Jackson Memorial Long-Term Care Center, where she now depends on nursing staff for all daily activities and all levels of care and remains in a persistent vegetative state, and

WHEREAS, Mary Mifflin-Gee was treated by Dr. Craig Lichtblau, a specialist certified by the American Board of Physical Medicine and Rehabilitation, who determined that she is 93 percent impaired as a result of the accident in question and that her future medical care will cost several million dollars, and

WHEREAS, additionally, Mary Mifflin-Gee's past medical expenses amount to \$1,168,857.93, and

WHEREAS, before the accident, Mary Mifflin-Gee lived alone, had no significant health issues, and was completely independent, and

WHEREAS, Marilyn Jelks, as legal guardian of the person and property of Mary Mifflin-Gee, filed a claim and lawsuit against the City of Miami in the Circuit Court of the 11th Judicial Circuit of Florida, Case No. 13-026644 CA 01, for compensation for the injuries, alleging negligence in the care and treatment by the EMT workers who attended to Mary Mifflin-Gee, and

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WHEREAS, mediation was conducted on February 6, 2015, and the case was settled for \$2.5 million, and

WHEREAS, the insurance company of the City of Miami, Lloyd's of London, which has a policy that provides for a \$500,000 self-insured retention before the company is responsible for any excess amount, has agreed to pay \$2 million, and

WHEREAS, the City of Miami has agreed to pay \$200,000 in satisfaction of the sovereign immunity limits under s. 768.28, Florida Statutes, 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 City of Miami is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of \$2,300,000 payable to Marilyn Jelks, as legal guardian of Mary Mifflin-Gee. This sum shall be placed in the Special Needs Trust created for the exclusive use and benefit of Mary Mifflin-Gee, to compensate her for injuries and damages sustained as a result of the negligence of employees of the City of Miami.

Section 3. The amount paid by the City of Miami pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Mary Mifflin-Gee. The total amount paid for attorney fees

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88 relating to this claim may not exceed 25 percent of the amount
89 awarded under this act.

90 Section 4. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Chair*
Communications, Energy, and Public Utilities,
Vice Chair
Appropriations
Appropriations Subcommittee on Pre-K - 12
Education
Health Policy
Rules

SENATOR BILL MONTFORD

3rd District

April 3, 2017

Senator Tom Lee, Chair
Senate Committee on Community Affairs
315 Knott Building
Tallahassee, Florida 32399-1100

Dear Mr. Chairman:

I respectfully request that the following bills be placed on the agenda for the next Community Affairs Committee Meeting:

SB 46 –Relief for Mary Mifflin-Gee

Your consideration is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William "Bill" Montford
Senate District 3

MD/WM

Cc: Tom Yeatman Staff Director
Ann Whitaker, Administrative Assistant

REPLY TO:

- ☐ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- ☐ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
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 Community Affairs

BILL: CS/SB 850

INTRODUCER: Banking and Insurance Committee and Senator Rouson

SUBJECT: Public Housing Authority Insurance

DATE: April 18, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Billmeier	Knudson	BI	Fav/CS
2. Present	Yeatman	CA	Favorable
3. _____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 850 allows a for-profit or not-for-profit corporation, limited liability company, or other similar business entity in which a public housing authority holds an ownership interest or participates in its governance under s. 421.08(8), F.S., to join a self-insurance fund formed under s. 624.46226, F.S., in which the public housing authority participates. The entity may join the self-insurance fund solely to insure risks related to public housing.

Section 626.46226, F.S., governs public housing authority self-insurance funds. It provides that any two or more public housing authorities may form a self-insurance fund, if the fund:

- Has annual premiums over \$5 million;
- Uses a qualified actuary who develops actuarially sound rates, and certifies to the Office of Insurance Regulation (OIR) annually that the rates are not excessive, inadequate, or unfairly discriminatory;
- Establishes a reserve for losses and loss adjustment expenses that the qualified actuary determines are adequate;
- Maintains an excess insurance and reserve evaluation program, which obtains excess insurance from an admitted insurer or a surplus lines insurer and has no more than \$350,000, per loss, in retained risk;
- Annually submits audited financial statements to OIR, which are audited by an independent certified public accountant within 6 months after the end of the fiscal year;
- Is governed by a body of public housing authority commissioners or persons appointed by the commissioners that are members of the public housing authority self-insurance fund;

- Is administered by licensed, knowledgeable people or business entities with required experience;
- Provides OIR with copies of its member contracts; and
- Annually files a board certification to OIR that the requirements of s. 624.46226, F.S., are being met.

II. Present Situation:

Florida's role in housing and urban development is outlined in part I of ch. 421, F.S., (Housing Authorities Law), ch. 422, F.S., (Housing Cooperation Law), and ch. 423, F.S., (Tax Exemption of Housing Authorities). Section 421.02, F.S., finds that there is a shortage of safe or sanitary dwelling accommodations available at rents that persons of low income can afford. To provide such accommodations, housing authorities may acquire property to be used for, or in connection with, housing projects.¹ Public money may only be spent to acquire private property for exclusively public uses and purposes, and the purposes must be determined to be governmental functions of public concern.²

Current law provides for the creation of special district, city, county, and regional housing authorities. The determination of the need for a city or county housing authority may be made by the governing body of the city or county or upon the filing of a petition signed by 25 residents.³ A regional housing authority may be created by two or more contiguous counties if a regional entity would be a more economically or administratively efficient unit.⁴ The powers of each authority are vested in the commissioners and action may be taken upon a majority vote of the commissioners.⁵ Among other things, housing authorities have the power to:

- Acquire, lease, and operate housing projects;
- Provide for the construction, reconstruction, improvement, alteration, or repair of any housing project;
- Lease or rent dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project;
- Invest funds held in reserves or sinking funds;
- Organize and create for-profit corporations, not-for-profit corporations, limited liability companies, and other similar business entities in order to acquire, lease, construct, rehabilitate, manage, or operate multifamily or single-family residential projects.⁶

Section 421.21, F.S., empowers a housing authority to borrow money or accept grants or other financial assistance from the federal government for housing projects. This section also allows a housing authority to take over or lease or manage any housing project or undertaking constructed or owned by the federal government. In addition, an authority is authorized to do any and all things necessary or desirable to secure the aid or cooperation of the federal government for any housing project by the housing authority. Because the federal government has exhibited an interest in shifting more resources from ownership of public housing projects to offering tenants

¹ Section 421.02(3), F.S.

² *Id.*

³ Sections 421.04, 421.05, and 421.27, F.S.

⁴ Section 421.28(3)(b), F.S.

⁵ Section 421.05(2), F.S.

⁶ Section 421.08, F.S.

assistance with their rental costs through the Rental Assistance Demonstration Program, it is anticipated that public housing authorities will organize business entities to facilitate local ownership of public housing projects.⁷

Public Housing Authority Self-Insurance Funds

As an alternative to obtaining insurance from a licensed insurance company, state law allows certain persons to form and obtain insurance coverage from a self-insurance fund. In general, the members of a self-insurance fund assume the risk of loss among themselves, rather than transferring the risk to an insurance company. Various types of self-insurance funds may be established, with varying degrees of state regulation. For certain self-insurance funds, the law requires approval and licensure by the OIR, subject to regulatory requirements that are less restrictive than for insurance companies, but which are intended to provide adequate protections against insolvency and unfair trade practices. For other funds, however, there is little or no regulatory oversight by OIR if certain criteria are met.

Types of self-insurance funds include:

- Commercial self-insurance funds;⁸
- Group self-insurance funds;⁹
- Local government self-insurance funds;¹⁰
- Self-insured public utilities;¹¹
- Public housing authorities self-insurance funds;¹²
- Independent educational institution self-insurance funds;¹³
- Corporation not for profit self-insurance funds;¹⁴
- Electric cooperative self-insurance fund;¹⁵ and
- Hospital alliances.¹⁶

Section 624.46226, F.S., governs public housing authority trust funds. It provides that any two or more public housing authorities may form a self-insurance fund, if the fund:

- Has annual premiums over \$5 million;
- Uses a qualified actuary who develops actuarially sound rates, and certifies to OIR annually that the rates are not excessive, inadequate, or unfairly discriminatory;
- Establishes a reserve for losses and loss adjustment expenses that the qualified actuary determines are adequate;

⁷ Information on the federal Rental Assistance Demonstration program can be found at <https://portal.hud.gov/hudportal/HUD?src=/RAD> (last accessed April 10, 2017).

⁸ Section 624.462, F.S.

⁹ Section 624.4621, F.S.

¹⁰ Section 624.4622, F.S.

¹¹ Section 624.46225, F.S.

¹² Section 624.46226, F.S.

¹³ Section 624.4623, F.S.

¹⁴ Section 624.4625, F.S.

¹⁵ Section 624.4626, F.S.

¹⁶ Section 395.106, F.S.

- Maintains an excess insurance and reserve evaluation program, which obtains excess insurance from an admitted insurer or a surplus lines insurer and has no more than \$350,000 per loss, in retained risk;
- Annually submits audited financial statements to OIR, which are audited by an independent certified public accountant within 6 months after the end of the fiscal year;
- Is governed by a body of public housing authority commissioners or persons appointed by the commissioners that are members of the public housing authority self-insurance fund;
- Is administered by licensed, knowledgeable people or business entities with required experience;
- Provides OIR with copies of its member contracts; and
- Annually files a board certification to OIR that the requirements of s. 624.46226, F.S., are being met.

If the self-insurance fund meets these requirements, then they are not considered insurers for purposes of the insurance guaranty associations or subject to the provisions of the group self-insurance fund law. Such self-insurance funds are also relieved of any workers' compensation reporting requirement that is unique to group self-insurance funds. Public housing authority self-insurance funds that fail to meet the stated requirements must operate under the more extensive regulations of the Commercial Self-Insurance Fund Act.¹⁷

Other benefits of operating as a public housing authority self-insurance fund include:

- Reduced premium taxes;
- Exemption from the Florida Insurance Guaranty Association Assessment, the Florida Hurricane Catastrophe Fund assessment, and various insurance risk apportionment plans; and
- Authority to purchase reinsurance.

The Florida Public Housing Authority Self Insurance Fund is the only self-insurance fund operating under s. 624.46226, F.S.¹⁸

Under current law, entities organized by a public housing authority pursuant to s. 421.08(8), F.S., cannot purchase insurance through a public housing authority self-insurance fund because participation in such funds is limited to public housing authorities.

III. Effect of Proposed Changes:

The bill allows a for-profit or not-for-profit corporation, limited liability company, or other similar business entity in which a public housing authority holds an ownership interest or participates in its governance under s. 421.08(8), F.S., to join a self-insurance fund formed under s. 624.46226, F.S., in which the public housing authority participates. The entity may join the self-insurance fund solely to insure risks related to public housing.

The bill takes effect July 1, 2017.

¹⁷ The Commercial Self-Insurance Fund Act is governed by ss. 624.460-624.488, F.S.

¹⁸ Information from The Florida Public Housing Authority Self-Insurance Fund Website, <https://www.fphasif.com/> (last accessed April 10, 2017).

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

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 624.46226 of the Florida Statutes.

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

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

CS by Banking and Insurance on March 27, 2017:

Clarifies that the entity formed pursuant to s. 421.08(8), F.S., may only participate in the self-insurance fund to insure risks related to public housing.

B. Amendments:

None.

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

By the Committee on Banking and Insurance; and Senator Rouson

597-02937-17

2017850c1

A bill to be entitled

An act relating to public housing authority insurance; amending s. 624.46226, F.S.; authorizing certain business entities to join, solely for a specified purpose, self-insurance funds participated in by public housing authorities who hold ownership interests in or who participate in governing such entities; authorizing reinsurance companies to issue coverage directly to certain self-insuring entities organized by a public housing authority under certain circumstances; specifying that such entities are considered insurers under certain circumstances; requiring that reinsurance contracts issued to such entities receive the same tax treatment as contracts issued to insurance companies; revising construction; providing an effective date.

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

Section 1. Subsections (1) and (7) of section 624.46226, Florida Statutes, are amended to read:

624.46226 Public housing authorities self-insurance funds; exemption for taxation and assessments.—

(1) Notwithstanding any other provision of law, any two or more public housing authorities in the state as defined in chapter 421 may form a self-insurance fund for the purpose of pooling and spreading liabilities of its members as to any one or combination of casualty risk or real or personal property risk of every kind and every interest in such property against

597-02937-17

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loss or damage from any hazard or cause and against any loss consequential to such loss or damage, provided the self-insurance fund that is created:

(a) Has annual normal premiums in excess of \$5 million.

(b) Uses a qualified actuary to determine rates using accepted actuarial principles and annually submits to the office a certification by the actuary that the rates are actuarially sound and are not inadequate, as defined in s. 627.062.

(c) Uses a qualified actuary to establish reserves for loss and loss adjustment expenses and annually submits to the office a certification by the actuary that the loss and loss adjustment expense reserves are adequate. If the actuary determines that reserves are not adequate, the fund shall file with the office a remedial plan for increasing the reserves or otherwise addressing the financial condition of the fund, subject to a determination by the office that the fund will operate on an actuarially sound basis and the fund does not pose a significant risk of insolvency.

(d) Maintains a continuing program of excess insurance coverage and reserve evaluation to protect the financial stability of the fund in an amount and manner determined by a qualified and independent actuary. At a minimum, this program must:

1. Purchase excess insurance from authorized insurance carriers or eligible surplus lines insurers.

2. Retain a per-loss occurrence that does not exceed \$350,000.

(e) Submits to the office annually an audited fiscal year-end financial statement by an independent certified public

597-02937-17

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59 accountant within 6 months after the end of the fiscal year.

60 (f) Has a governing body which is comprised entirely of
61 commissioners of public housing authorities that are members of
62 the public housing authority self-insurance fund or persons
63 appointed by the commissioners of public housing authorities
64 that are members of the public housing authority self-insurance
65 fund.

66 (g) Uses knowledgeable persons or business entities to
67 administer or service the fund in the areas of claims
68 administration, claims adjusting, underwriting, risk management,
69 loss control, policy administration, financial audit, and legal
70 areas. Such persons must meet all applicable requirements of law
71 for state licensure and must have at least 5 years' experience
72 with commercial self-insurance funds formed under s. 624.462,
73 self-insurance funds formed under s. 624.4622, or domestic
74 insurers.

75 (h) Submits to the office copies of contracts used for its
76 members that clearly establish the liability of each member for
77 the obligations of the fund.

78 (i) Annually submits to the office a certification by the
79 governing body of the fund that, to the best of its knowledge,
80 the requirements of this section are met.

81
82 A for-profit or not-for-profit corporation, limited liability
83 company, or other similar business entity in which a public
84 housing authority holds an ownership interest or participates in
85 its governance under s. 421.08(8) may join a self-insurance fund
86 formed under this section in which such public housing authority
87 participates. Such for-profit or not-for-profit corporation,

597-02937-17

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88 limited liability company, or other similar business entity may
89 join the self-insurance fund solely to insure risks related to
90 public housing.

91 (7) Reinsurance companies complying with s. 624.610 may
92 issue coverage directly to a public housing authority or an
93 entity organized by a public housing authority under s.
94 421.08(8) if such public housing authority or entity self-
95 insures ~~self-insuring~~ its liabilities under this section. A
96 public housing authority purchasing reinsurance or an entity
97 that is organized by a public housing authority under s.
98 421.08(8) and that is purchasing reinsurance shall be considered
99 an insurer for the sole purpose of entering into such
100 reinsurance contracts. Contracts of reinsurance issued to public
101 housing authorities self-insuring under this section or to
102 entities that are organized by public housing authorities under
103 s. 421.08(8) and that are self-insuring under this section shall
104 receive the same tax treatment as reinsurance contracts issued
105 to insurance companies. However, the purchase of reinsurance
106 coverage by a public housing authority self-insuring under this
107 section or by an entity that is organized by a public housing
108 authority under s. 421.08(8) and that is self-insuring under
109 this section shall not be construed as authorization to
110 otherwise act as an insurer.

111 Section 2. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 17, 2017

Meeting Date

SB 850

Bill Number (if applicable)

Topic Public Housing Authorities

Amendment Barcode (if applicable)

Name Mike Rogers

Job Title _____

Address 4961 Southern Oaks Dr

Phone _____

Street

Tallahassee

FL

32308

Email _____

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Housing Authority Self-Insurance Fund

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: April 4, 2017

I respectfully request that **Senate Bill #850**, relating to Public Housing Authority, be placed on the:

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

A handwritten signature in green ink that reads "Darryl Rouson".

Senator Darryl 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 Community Affairs

BILL: CS/SB 1494

INTRODUCER: Ethics and Elections Committee and Senator Rader

SUBJECT: Write-in Candidate Qualifying

DATE: April 18, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Ulrich	EE	Fav/CS
2.	Cochran	Yeatman	CA	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE – Technical Changes

I. Summary:

CS/SB 1494 codifies the 2016 Florida Supreme Court decision in *Brinkmann v. Francois*, by repealing the statute that requires a write-in candidate to reside in the district that he or she seeks to represent *at the time of qualifying*.

II. Present Situation:

In November 1998, Florida voters passed Proposition 11,¹ a comprehensive elections amendment to the Florida Constitution proposed by the Constitutional Revision Commission (CRC). Part of Proposition 11 amended Article VI of the Constitution to provide for a “universal” or “open” primary — a contest in which all eligible voters could cast a ballot regardless of party affiliation — wherein the winner of the primary election would face no general election opposition.²

In practice, this situation arises when the only candidates qualifying for an office have the same major party affiliation.

¹ The amendment passed with 64.1% favorable vote, almost 2-to-1. Florida Division of Elections web site, <https://enight.elections.myflorida.com/Index.asp?ElectionDate=11/3/1998&DATAMODE=> (“Election Results” tab, General Election 1998, Constitutional Amendments), last accessed Apr. 11, 2017.

² Art. VI, s. 5(b), FLA. CONST.

The general election ballot contains a blank line for qualified write-in candidates.³ Nonetheless, the 1998 CRC debates and discussions on Proposition 11 never addressed the issue of what impact the presence of a write-in candidate should have in a field otherwise composed entirely of candidates from one of the major parties.

In 2000, the Florida Division of Elections published an opinion stating that the presence of a write-in candidate in an otherwise all-Republican or all-Democratic field “closed” the primary to all voters other than those registered with that particular party.⁴ (Multiple district and appellate courts have since confirmed the Division’s legal position.)⁵

In 2007, faced with write-ins having closed numerous legislative primaries since 2000, the Legislature enacted s. 99.0615, F.S. — which required write-in candidates to reside in the district they sought to represent *at the time of qualifying*.⁶

In February 2016, the Florida Supreme Court struck down the statute as unconstitutional. In *Brinkmann v. Francois*,⁷ a Broward County voter challenged the qualifying status of a write-in candidate, Tyron Francois, for Broward County Commissioner, District 2. Francois did not live in the District at the time of qualifying as required by s. 99.0615, F.S., but he did say that he intended to move there if he won the general election. All of the other candidates that qualified to run for the seat were Democrats. The *Brinkmann* court found that the statute was facially unconstitutional because the timing of its residency requirement (at the time of qualifying) for write-in candidates conflicted with the timing of the residency requirement for county commission candidates in the Constitution (at the time of election).⁸

As a result, beginning with the 2016 election cycle, any registered voter can now qualify to run as a write-in candidate in any contest in the state and close a primary where the only other qualified candidates are from the same party, ***regardless of his or her physical residence***.

III. Effect of Proposed Changes:

The bill codifies the 2016 Florida Supreme Court decision in *Brinkmann v. Francois*. It repeals the statute requiring write-in candidates to reside in the district they seek to represent *at the time of qualifying*.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

³ Section 101.151(2)(b), F.S.

⁴ DOE Opinion 2000-06 (May 11, 2000).

⁵ *Lacasa v. Townsley*, 883 F.Supp2d 1231 (S.D. Fla 2012); see also, *Telli v. Snipes*, 98 So.3d 1284 (4th Fla DCA 2012) (write-in candidates constitute general election opposition under the constitutional open primary provision).

⁶ Ch. 2007-30, s. 56, LAWS OF FLA.

⁷ 184 So. 3d 504 (Fla. 2016).

⁸ Fla Const., Art. VIII, §1(e); see also, *Francois v. Brinkmann*, 147 So. 3d 613, 615 (Fla 4th DCA 2014), *affd.*, *Francois v. Brinkmann*, 184 S.3d 504 (Fla. 2016), citing, *State v. Grassi*, 532 So.2d 1055, 1056 (Fla. 1988) (constitutional provision regarding the residency requirement for county commissioners requires residency at the time of election).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

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 repeals section 99.0615 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 Ethics and Elections on March 28, 2017:

Narrows the title from “elections” to “write-in candidate qualifying.”

B. Amendments:

None.

By the Committee on Ethics and Elections; and Senator Rader

582-03004-17

20171494c1

A bill to be entitled

An act relating to write-in candidate qualifying;
repealing s. 99.0615, F.S., relating to write-in
candidate residency requirements; repealing a
requirement that all write-in candidates must reside
within the district represented by the office sought
at the time of qualification; providing an effective
date.

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

Section 1. Section 99.0615, Florida Statutes, is repealed.

Section 2. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: March 28, 2017

I respectfully request that **Senate Bill #1494**, relating to Elections, be placed on the:

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

A handwritten signature in cursive script that reads "Kevin Rader".

Senator Kevin J. Rader
Florida Senate, District 29



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
3/28/17	SM	Favorable
4/5/17	JU	Fav/CS
4/17/17	CA	Fav/CS
	RC	

March 28, 2017

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/CS/SB 304** – Community Affairs Committee; Judiciary Committee
and Senator Perry Thurston

HB 6531 – Representative Brad Drake
Relief of Dustin Reinhardt by the Palm Beach County School Board

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$4.7 MILLION, BASED ON A STIPULATED FINAL JUDGMENT BETWEEN DUSTIN REINHARDT, THE CLAIMANT, AND THE PALM BEACH COUNTY SCHOOL BOARD. THE BILL COMPENSATES THE CLAIMANT FOR INJURIES HE RECEIVED WHEN A TIRE EXPLODED IN HIS AUTO SHOP CLASS.

FINDINGS OF FACT:

This claim arises out of an accident that took place on September 4, 2013 in the auto shop of the Seminole Ridge Community High School in Loxahatchee, Florida. At the time of the accident, Dustin Reinhardt was 16 years old. He was taking the auto shop as a class for the third year in a row, taught by shop teacher, Raymond Craig.

On the day of the incident, a student in the auto shop class had rims to be worked on. That student and Dustin drilled holes in the truck rims, placed rubber inner tubes inside the tires, and assembled the rubber inner tube and tire on the modified rim. Mr. Craig, according to a statement he made to

a law enforcement officer investigating the incident, knew that the two students had modified the rims in this way.

After Dustin and the other student finished modifying the tires, Dustin began to fill one with air. During that time, Mr. Craig stated that he walked by Dustin and told him to sit the tire upright and not stand directly in front of the tire while filling it. A few seconds later, the tire exploded, knocking Dustin unconscious and injuring his head and brain.

A tire cage is a piece of safety equipment. Inflating a tire that has first been placed inside a tire cage provides stability during the process. However, at the time of the incident, the auto shop did not have a tire cage large enough to accommodate the large truck tire.

After the accident, a medical evacuation team airlifted Dustin to St. Mary's Hospital in West Palm Beach where doctors placed him in a medically-induced coma for a month. Doctors initially told Dustin's father, Scott Reinhardt, that they did not know if Dustin would survive. When doctors brought Dustin out of the coma and sat him up, spinal fluid leaked through his nose, necessitating placement of a shunt in his brain. Dustin underwent multiple additional surgeries, including facial and skull reconstruction. Even after the surgeries, Dustin has been left with a permanent loss of vision in his right eye, considerable facial scarring, short-term memory loss, judgment deficiencies, and severe traumatic brain injury.

On October 9, 2013, the hospital transferred Dustin to a physical rehabilitation facility at the hospital.

On October 24, 2013, the hospital discharged Dustin and he returned home to live with his father, Scott Reinhardt, and Dustin's stepmother, Joann Reinhardt. Upon returning home, Dustin began to display emotional outbursts and significant aggressive behaviors. In addition to the acting out, Dustin needed near-constant supervision to remain safe.

Because of this, Scott Reinhardt and Dustin's doctors decided to place Dustin in a supervised, residential setting. Dustin's family agreed to the placement recommended by doctors, at the Florida Institute for Neurologic Rehabilitation (FINR). Dustin entered the FINR on a residential basis on March 14, 2014. In the area of vocational development, Dustin worked his way up from an hour a day of dusting at the facility, to

going to an off-site landscape nursery and doing general grounds maintenance under supervision for several hours a day.

While at FINR, another brain-injured patient set Dustin on fire. Dustin suffered third-degree burns, necessitating additional surgery.

Dustin stayed at FINR until December 2016, at which time his father had him transported to Neuro International, a facility providing assisted living services. At the facility, the staff check on Dustin every 30 minutes during the day and every 60 minutes at night. When Dustin goes out into the community, he is under constant visual supervision.

Dustin has worked hard to overcome his emotional outbursts. With the assistance of educators at the facility, he also has been able to get his high school diploma. Although Dustin has progressed in various areas while in the care of these institutions, his medical providers and his father agree that Dustin is unable to advance to living independently. For example, medical doctors estimate that Dustin functions developmentally at the equivalent of a 10 to 12 year old. Therefore, a continued stay in a supervised setting such as Neuro International is recommended.

Notably, Dustin was born a triplet and the other triplets are in careers in the armed services. At the time of the accident, Dustin was enrolled in Army Junior ROTC. Additionally, he intended to pursue a career as a long-distance truck driver or truck mechanic.

Dustin's stepmother, Joanna Reinhardt, and his father, Scott Reinhardt, are Dustin's legal guardians.

FUTURE SERVICES REPORT: Both plaintiff and defense experts prepared a Life Care Plan for Dustin. Dr. Craig Lichtblau, a physiatrist, and Dr. David Williams, an economist for the plaintiff, estimate the cost of future care and loss of earnings at \$15 million.

Dr. Alan Raphael, for the defense, estimates future care and loss of earnings at \$4,348,675. Dr. Raphael based this total on a review of Dr. Lichtblau's report and consultations with Dr. Ronald Tolchin, an examining physiatrist.

Plaintiff Estimate: The first table provides a summary of economic damages, as estimated by Dr. Williams. As of the date of the report, June 24, 2015, Dr. Williams estimated Dustin's life expectancy at an additional 58.2 years. Medical expenses that Dustin is expected to incur include medical care; diagnostic tests; surgical procedures related to the artificial eye; therapeutic evaluations, consisting of physical therapy, occupational therapy, speech therapy, and neuropsychometric testing; outpatient therapy for physical therapy, occupational therapy, and speech therapy; medication; support care; and transportation, including costs of a cell phone. Dr. Williams identifies other possible medical complications, but does not calculate them for purposes of the anticipated costs. These complications could present as pulmonary, urological, renal seizure, hydrocephalus, and other possible issues.

Future Medical Expenses	\$12,348,654
Loss of Future Earning Capacity	\$ 1,800,000
Gross Past Medical Expenses	\$ 1,377,129
Total Economic Damages	\$15,525,783

Defense Estimate: The second table assumes a life expectancy of an additional 59.4 years, as of April 24, 2015. The anticipated medical expenses include medical care, therapy, medication, diagnostic tests, future surgery and hospitalization for a shunt revision in the brain and an artificial eye replacement, medical equipment, and costs of living at an assisted living facility. Dr. Raphael recognizes, but does not include estimates for possible expenses relating to the services of a professional guardian and plastic surgery for scar revisions. Additionally, the defense estimate deducts from future earnings typical pay as a landscape technician.

Future Medical Expenses and Care	\$3,194,425
Loss of Future Earning Capacity	\$891,000
Driver (If necessary to provide transport to a part-time job)	\$263, 250
Total Economic Damages	\$4,348,675

LITIGATION HISTORY:

On February 25, 2015, Dustin Reinhardt and Scott Reinhardt filed a Complaint for Damages against the School District of Palm Beach County and USAA General Indemnity Company in the Palm Beach County Circuit Court. The complaint alleged that the School District of Palm Beach County negligently failed to supervise and/or adequately protect Dustin Reinhardt. Due to the negligence of the School District of Palm Beach County, the complaint alleges that Dustin suffered significant physical, mental, and emotional injuries. Additionally, the complaint alleged that Scott Reinhardt incurred medical expenses needed to treat his son's injuries and the loss of his son's services.

After the plaintiffs filed the complaint, the parties engaged in discovery, exchanging interrogatories and taking depositions. Eventually, the Reinhardts and the School District of Palm Beach County entered into a Release and Settlement Agreement. Under its terms, the School District agreed to pay \$300,000 up front, \$100,000 of which the School District paid to Scott Reinhardt individually and \$200,000 of which the School District paid to Scott Reinhardt in his capacity as guardian for Dustin. The School District disbursed the \$300,000 within 20 days after the court approved the settlement agreement.

The court issued its order approving the settlement agreement on February 1, 2017.

The agreement acknowledges that the plaintiff has already received, and will continue to receive the benefit of payment for Dustin's full expenses, including medical, room and board, supervision and therapy at the FINR. These payments, which amount to approximately \$350 a day, or \$124,600 per year, have already been made through the School Board's Omaha Custodial Care Insurance Policy. The payouts will continue until September 2023, based on a ten-year total allowable payout.

In addition to the initial amount payment of \$300,000, the agreement provided for the plaintiffs to receive a total of \$4.7 million through the claim bill process. Of this total, \$1,700,000 will be payable as a lump sum within 30 days after the claim bill is enacted, and \$3,000,000 payable as a \$1 million annual annuity, starting September 2023 or at the time of cessation of the payouts from the Custodial Care Insurance Policy.

CLAIMANT'S POSITION:

To prove a claim of negligence, a plaintiff must show that a defendant owed a duty to the plaintiff, the defendant breached that duty, the defendant's action or inaction caused the plaintiff's injury, and the plaintiff incurred damages. The claimant asserts each of these elements as follows.

Mr. Craig owed a duty to Dustin to provide a safe work environment in the auto shop class and to properly supervise the students. Mr. Craig breached that duty by allowing Dustin to put air in a large tire that had been modified, an extremely dangerous activity, without the benefit of a tire cage. In instructing Dustin to sit the tire upright, Mr. Craig knew or should have known that the tire had a propensity to explode. The explosion of the tire caused irreparable and considerable injury to Dustin.

As a result of the accident, Dustin incurred and continues to incur economic and non-economic damages. Dustin permanently lost the vision in his right eye and has had numerous surgeries. He suffers from short-term memory loss and has severe traumatic brain injury, interfering with his ability to exercise sound judgment and engage in other executive level functioning. Dustin requires lifetime medical care and treatment, including future surgery and various therapies, and room and board at an assisted living facility. Dustin is unable to pursue his dream of serving in the military or otherwise pursue his intended vocation as a long-haul trucker or as a truck mechanic. Additionally, Dustin has repeatedly expressed the desire to live on his own, support himself in the future, drive, marry, have children, and own his own home. Dustin may well not realize these desires.

RESPONDENT'S POSITION:

The School Board of Palm Beach County agrees not to contest the claim bill.

CONCLUSIONS OF LAW:

Section 768.28, F.S., governs this matter. This statute generally allows injured parties to sue the state or local governments for damages caused by their negligence or the negligence of their employees. However, the statute limits the amount of damages which a plaintiff can collect from a judgment against or settlement with a government entity to \$200,000 per person and \$300,000 for all claims or judgments arising out of the same incident. Funds can be paid in excess of these limits only upon the approval of a claim bill by the

Legislature. Therefore, Dustin will not receive the full benefit of the settlement agreement with the School Board of Palm Beach County unless the Legislature approves a claim bill authorizing the additional payment.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence. These elements are duty, breach, causation, and damage. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010).

Although school boards are not strictly liable for the safety of students, well-settled law provides that a school board has a duty to properly supervise students entrusted to the care of the school.¹ In a case in which a plaintiff alleges a lack of supervision, a teacher's duty of care is defined as reasonable, prudent, and ordinary care, or the care that a person of ordinary prudence responsible for those duties would exercise given the same circumstances.² Providing inadequate supervision is a breach of that duty.³

The tire that Dustin worked on the day of the incident was not typical for the tires brought to the auto shop class. Although the plaintiff and the defense describe the tire differently, the defense concedes that the tire was a large buggy tire, incapable of placement inside a tire cage for safety while being filled with air. Mr. Craig knew that Dustin was putting air in the tire as he asked him to sit the tire upright. However, Mr. Craig kept walking after issuing the instruction, thereby providing inadequate supervision.

Mr. Craig was employed by the School Board of Palm Beach County. The long-standing doctrine of respondeat superior provides that an employer is liable for an employee's acts committed within the course and scope of employment. *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4th DCA 2013).

Due to Mr. Craig's breach of his duty of care, he caused the accident and Dustin's damages. The claimant has demonstrated significant economic damages. Dustin's medical costs are considerable and ongoing. Due to his

¹ *Benton v. School Board*, 386 So. 2d 831, 834 (Fla. 4th DCA 1980); *Comuntzis v. Pinellas County School Board*, 508 So. 2d 750, 751 (Fla. 2nd DCA 1987).

² *La Petite Academy v. Nassef*, 674 So. 2d 181, 182 (Fla. 2d DCA 1996).

³ *Doe v. Escambia County School Board*, 599 So. 2d 226 (Fla. 1st DCA 1992).

inability to live on his own, he will likely require lifetime care in a supervised setting. Dustin will never be able to pursue his chosen avocation or sustain himself.

Should this case have proceeded to trial, Dustin appears by all accounts to have presented as a sympathetic plaintiff. Just 16 when the incident happened, he will never have the opportunity to live the life accessible to others. He has also demonstrated a strong commitment to making progress towards recovery.

For these reasons, the undersigned concludes that the settlement is both fair and reasonable.

COLLATERAL SOURCES:

The plaintiff has entered into a settlement agreement with various other defendant(s). The total settlement amount from sources unrelated to the claim bill, \$1,373,000, comes from:

Source	Amount
Homeowner's insurance policy of the owner of the tire	\$303,000
USAA uninsured motorist policy for Scott Reinhardt	\$50,000
Teacher's union insurance policy of Raymond Craig, auto shop teacher	\$1,000,000
Homeowner's policy of Raymond Craig, auto shop teacher	\$20,000
Total	\$1,373,000

FISCAL IMPACT:

The School Board of Palm Beach County is self-insured for personal injury liability claims. If approved by the Legislature, the \$4.7 million will be paid from the School Board of Palm Beach County's Workers' Compensation and Liability Claims Internal Service Fund. The School Board represents that they have reserved the amount necessary to pay this claim.

ATTORNEYS FEES:

The total amount of money requested in the claim bill is \$4.7 million. Should the claim bill become law, and in the amount requested, the attorney's fees, based on a 20 percent recovery, will be \$940,000. Lobbyist fees, based on a 5 percent recovery, will be \$235,000.

The plaintiff and defendant have already entered into a settlement agreement for the \$300,000 permitted by law. Of this, Scott Reinhardt received \$100,000 individually, and \$200,000 as the guardian of Dustin Reinhardt. Attorney's fees for this part of the agreement are \$25,000 and \$50,000, respectively. These attorney's fees represent 25 percent of the total recovery.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 304 (2017) be reported FAVORABLY.

Respectfully submitted,

Cindy M. Brown
Senate Special Master

cc: Secretary of the Senate

CS/CS by Community Affairs:

Adds the claim of CS/SB 24 to CS/SB 304 with some minor changes. The new amount to be paid to Altavious Carter by the Palm Beach County School Board is \$790,000, as reflected in the settlement agreement, and specifies the payment should be made no later than 20 days after the effective date. Below is the special master's report for CS/SB 24.



**THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS**

Location

302 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
2/28/17	SM	Fav/1 amendment
3/08/17	JU	Fav/CS
	CA	

	RC	
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February 28, 2017

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 24** – Judiciary Committee and Senator Anitere Flores
Relief of Altavious Carter

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR \$1,040,864.42 BASED ON A JURY AWARD FOR ALTAVIOUS CARTER (CLAIMANT) AGAINST THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, TO COMPENSATE CLAIMANT FOR DAMAGES HE SUSTAINED WHEN A SCHOOL BUS CRASHED INTO THE REAR END OF A VAN IN WHICH HE WAS A PASSENGER.

CURRENT STATUS:

On February 3, 2011, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, held a de novo hearing on a previous version of this bill, SB 26 (2012). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably with an amendment. That report is attached as an addendum to this report.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Jason Hand. My responsibilities were to review the records relating to the claim bill, be available for questions from the members, and determine whether any changes have occurred since the hearing, which if known at the hearing, might have significantly altered the findings or recommendation in the previous report.

According to counsel for the parties, there have been no substantial changes in the facts and circumstances for the underlying claim. Accordingly, I find no cause to alter the findings and recommendations of the original report, including the recommendation in the "Other Issues" section

of the original report, which recommended that the claim bill be amended to add the August 4, 2010, Final Cost Judgment costs of \$50,394.52 (in response to Plaintiff's Motion to Tax Costs).

However, it appears the claim bill inadvertently identifies the amount of the Final Cost Judgment as \$46,830.11; therefore, I recommend amending the claim bill to include the correct amount of the Final Cost Judgment (\$50,394.52). This change would raise the total amount of the claim bill from \$1,040,864.41 to \$1,044,428.82. Based on the foregoing, I recommend that SB 24 be recommended favorably, as amended.

Additionally, and except for the inclusion of the Final Cost Judgment, the prior claim bills, SB 26 (2012)(died in Special Master on Claims Bills), SB 30 (2013)(died in Judiciary Committee), SB 38 (2014)(withdrawn), and SB 72 (2015)(died in Appropriations Committee) and SB 50 (2016)(died in Appropriations Committee) are effectively identical to the claim bill filed for the 2016 Legislative Session.

Respectfully submitted,
Jason Hand
Senate Special Master
cc: Secretary of the Senate

CS by Judiciary:

The committee substitute, in conformity with a recent opinion of the Florida Supreme Court, does not include limits on the amount of lobbying fees, costs, and similar expenses that may be paid from the proceeds of the bill.



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/02/11	SM	Fav/1 amendment

December 2, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 26 (2012)** – Senator Ellyn Setnor Bogdanoff
Relief of Altavious Carter

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR \$944,034.30 BASED ON A JURY AWARD FOR ALTAVIOUS CARTER (CLAIMANT) AGAINST THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, TO COMPENSATE CLAIMANT FOR DAMAGES HE SUSTAINED WHEN A SCHOOL BUS CRASHED INTO THE REAR END OF A VAN IN WHICH HE WAS A PASSENGER.

FINDINGS OF FACT:

Following a four-day trial in the Palm Beach County Circuit Court a jury found that Claimant had sustained a permanent injury in an accident that occurred December 15, 2005, and awarded him the following damages with the amount of the award in parentheses: past medical expenses (\$96,475.64); future medical expenses (\$175,892.00); past pain and suffering (\$478,333.33); and future pain and suffering (\$343,333.33). The award of damages totaled \$1,094,034.30. The verdict was dated February 12, 2010.

On February 25, 2010, Judge Thomas H. Barkdull entered final judgment for Claimant as follows: "Pursuant to the Jury Verdict rendered in this action, IT IS ADJUDGED: That [Claimant] recover from [the School Board] the sum of [\$1,094,034.30] that shall bear interest annually at the

statutory rate and for which let execution issue for the first One Hundred Thousand Dollars (\$100,000.00) of this judgment and that portion of the judgment that exceeds [\$100,000] may be reported to the legislature, but may not be paid in part or in whole except by further act of the legislature further [sic] to 768.28."

The court retained jurisdiction to determine taxable costs as well as to determine set offs, if any. On August 4, 2010, Judge Barkdull entered a "Final Cost Judgment" in the amount of \$50,394.52 with interest at the statutory rate with the following provision: "but for which execution shall not issue, but this judgment may be reported to the legislature, but may not be paid in part or in whole except by further act of the legislature pursuant to 768.28."

On April 14, 2010, the School Board paid to Claimant the sum of \$100,000.00 in partial satisfaction of the Final Judgment.

At the trial and in this claims proceeding, the School Board stipulated that it is liable for Claimant's damages.

In this claims proceeding, the School Board does not contest the award for Claimant's past medical expenses or the award for Claimant's past pain and suffering. The School Board asserts that the awards for future medical expenses and future pain and suffering are excessive.

Claimant, a male, born September 7, 1991, is a basketball player who currently plays for Santa Fe College. On December 15, 2005, Claimant was being transported from basketball practice to his home in a van being driven by Vincent Merriweather, a volunteer coach for Claimant's team. Mr. Merriweather served as a mentor to Claimant.

On that date Mr. Merriweather's van was stopped at a red light in a westbound lane at the intersection of Forest Hills Boulevard and Olympia Boulevard in Palm Beach County when a school bus owned and operated by the Palm Beach County School District rear-ended the van. It was estimated that the bus was traveling in excess of 45 MPH when it hit the van, and there was no credible evidence that the driver applied his brakes at any point before the accident.

The negligence of the school bus driver was the cause of the accident and was the proximate cause of the damages suffered by Claimant.

Mr. Merriweather was also injured in the accident and suffered damages in excess of \$100,000.00. Mr. Merriweather was granted compensation for his excess damages by Chapter 2009-247, Laws of Florida.

Claimant was wearing a seat belt at the time of the crash. Claimant's seat failed as a result to the force of the impact, and he was thrown into the back of the van and briefly lost consciousness. When he regained consciousness, he began yelling for Mr. Merriweather, who was unable to respond. Claimant was able to exit the van, but he immediately experienced pain in his neck. An unidentified person assisted Claimant by helping him to lie down on the pavement. A person identified as a school nurse told Claimant to be still until emergency services arrived and advised him to stay still.

Emergency responders arrived on the scene in a timely fashion, stabilized Claimant's head and neck, and transported him to Wellington Regional Hospital.

Diagnostic testing at Wellington Regional Hospital reflected that Claimant had suffered a cervical fracture in the region of the neck referred to as C6-C7. The cervical area of the neck, consisting of seven vertebrae, is immediately above the thoracic region. The designation C6-7 (or C6-C7) indicates the area where the sixth cervical vertebrae and the seventh cervical vertebrae are located. Between the two vertebrae is a disc, which serves several purposes, including acting as a shock absorber between the two vertebrae. The spinal cord runs through the vertebrae of the cervical and thoracic regions.

Due to the severity of the injury, which included a risk of paralysis, Wellington Regional Hospital transferred Claimant to the trauma center at St. Mary's Hospital.

At St. Mary's, Claimant was placed in cervical traction consisting of immobilizing hardware being screwed into his skull and being strapped to a bed where he was unable to move.

Dr. Bret Baynham, a certified pediatric orthopedic surgeon, performed the following procedures on Claimant: Open Reduction C6-7 Fracture-Dislocation; Anterior Cervical Discectomy C6-7; Anterior Cervical Decompression, C6-7; Anterior Cervical Interbody Fusion Device C6-7; and Anterior Cervical Fusion C6-7.

In layman's terms, Dr. Baynham fused Claimant's C6-C7 vertebrae. He removed the disc between C6-C7. In the area from which the disc had been removed, he inserted a hollowed metallic dowel, referred to as a cage, filled with particles of bones that were designed to allow the two vertebrae to eventually grow together. He then affixed a metal plate to stabilize C6-C7 using special bone screws. The metal plate is intended to be permanent.

Dr. Baynham provided Claimant excellent care.

Post-surgery, Claimant underwent a grueling rehabilitation. Claimant worked hard during rehabilitation and cooperated fully with his therapists and other treatment providers.

Dr. Baynham continued to follow Claimant's recovery post-surgery. On July 27, 2006, Dr. Baynham found Claimant to be pain free and gradually returning to normal activities. Dr. Baynham's office notes reflect the following recommendation: "At this point we are going to allow [Claimant] to return to full activity. Based on his clinical and radiographic findings he is found to have a stable healed injury without any evidence of any residual instability or neurologic compromise. If he should have any problems as we move forward he is to refrain from activity and contact us immediately. This would include pain recurrence or any signs or symptoms associated with spinal cord or nerve root irritation. Otherwise if he remains well we would like to have him follow up in six months for re-evaluation including radiographs if indicated."

After July 27, 2006, Claimant resumed playing basketball and became a star high school player and a full-scholarship player at Santa Fe College in Gainesville. Claimant has been cleared to play basketball without any medical restrictions attributable to the injuries he received in the 2005 accident.

At present, Claimant experiences periodic neck pain.

Adjacent disc disease (also referred to in the record as "adjacent segment disease") can be a consequence of fusing two vertebrae. When two discs are fused, greater mechanical loading or stress is placed on the vertebrae above or below the fused discs, which may or may not cause disc degeneration and require further intervention. While adjacent disc disease may be discernable by a MRI relatively soon after the fusion, symptoms from the disease typically come later in life, but may not come at all.

Claimant was seen by Dr. Baynham on follow-up on November 27, 2007. His impression was that Claimant was stable with no residual neurologic impairment, no pain in the neck, and no functional loss of motion. His recommendation was that "Based on the clinical and radiographic findings [Claimant] is found to have a stable healed injury without evidence of any residual instability or neurologic compromise. No further treatment is indicated at this time. No restrictions to athletic participation. Follow up prn."

Claimant experienced neck and back pain in 2009 and returned to Dr. Baynham in January and June of that year. In June 2009, Dr. Baynham ordered an MRI for Claimant. Dr. Baynham observed changes in C7-T1 (T1 is the first thoracic vertebrae). Dr. Baynham testified that the changes could be the delayed manifestation of injuries from the initial injury. He also testified that the changes could be the result of adjacent segment disease phenomenon. Dr. Baynham testified that the changes "are certainly consistent with not only the zone of initial injury, but also some additional changes that are probably the result of this adjacent segment disease phenomenon, as best we know."

Dr. Baynham further testified that "based on his young age and his life expectancy and based on the current state of understanding of this phenomenon of the adjacent level disc disease, I think it is probable, most probable that he will continue to experience changes there. And it will, in time, probably rise to the level of becoming clinically significant, meaning a source of pain and potentially a source requiring additional treatment."

Dr. Craig H. Lichtblau is a physiatrist who specializes in physical medicine, rehabilitation, and evaluation. Dr. Lichtblau was retained by Claimant to conduct a Comprehensive Rehabilitation Evaluation of Claimant, give an impairment rating of Claimant, and provide a Continuation of Care plan for Claimant.

Dr. Lichtblau assigned Claimant a 4 percent permanent partial impairment of the whole person.

Dr. Lichtblau's Continuation of Care plan included the services that Dr. Lichtblau believed Claimant would or may need in the future. Dr. Lichtblau's plan included future epidural steroid injections and surgical intervention. Dr. Baynham testified that including epidural steroid injections is reasonable. Dr. Baynham also testified that Claimant is at an increased risk of future surgical intervention.

Bernard E. Pettingill, Jr., Ph.D. is a consulting economist who, on February 12, 2009, prepared an analysis entitled "The Present Value Analysis of the Future Medical Care Costs of [Claimant]". At the time of the analysis, Claimant's life expectancy was projected to be 53.6 years beyond the date of the report.

Claimant represented in his "Summary of Case" that the parties stipulated that Claimant's past medical expenses for purposes of trial were \$96,475.64.

Dr. Pettingill used Dr. Lichtblau's Continuation of Care plan to compute the present value of Claimant's "Total Economic Loss, Period II, Future Loss, After Trial Date". Claimant presented evidence to the jury that the correct total economic loss for the post-trial period, as computed by Dr. Pettingill, was \$363,487.00.

Claimant was examined by Dr. Jordan Grabel, a neurological surgeon, on July 17, 2008, at the request of the School Board. Dr. Grabel reviewed Claimant's medical records and took histories from Claimant and Claimant's mother. Dr. Grabel found that Claimant's surgery had healed and that there were no other abnormalities that could be associated with the accident. Dr. Grabel opined that there was a 50-50

chance that the onset of adjacent segment disease will be discernable by X-ray in future years. He further opined that there is no way to determine whether Claimant will become symptomatic or need future surgical treatment. Dr. Grabel was of the opinion that the Continuation of Care plan prepared by Dr. Lichtblau included non-invasive follow-up treatment that was unnecessary.

The School Board did not have a consulting economist estimate the present value of Claimant's future economic loss based on the services Dr. Grabel believed Claimant would need.

Dr. Mark Rubenstein conducted a compulsory medical examination of Claimant on August 11, 2008. Dr. Rubenstein's evaluation included a physical examination and a review of Claimant's medical records. Dr. Rubenstein's report reflects his opinion that Claimant's future medical care will be limited to physician visits on an as-needed basis and that Claimant will require future MRI studies and X-rays. Although he acknowledged the possibility of adjacent disc disease, he did not believe that intervention was medically probable. Dr. Rubenstein's report reflects the opinion that Claimant's future pain management will be limited to the use of anti-inflammatory medications.

In its position statement, the School Board represents that Dr. Rubenstein is a physiatrist retained by the School Board and that he believed that Claimant's future care not including surgery for adjacent segment disease would be approximately \$25,000.00. The undersigned did not find that figure in Dr. Rubenstein's report.

CLAIMANT'S POSITION:

1. The negligence of the school bus driver was the sole and proximate cause of the injuries and damages sustained by Claimant.
2. Claimant's future damages are not speculative, and the jury's verdict is supported by the evidence.

SCHOOL BOARD'S POSITION:

1. School Board stipulated that it is liable for Claimant's damages.
2. School Board does not dispute the jury award for past medical expenses or for past pain and suffering.

3. School Board asserts that Claimant has healed and has become a star basketball player.

4. School Board contends that awards for future medical expenses and future pain and suffering are excessive and speculative.

5. School Board argues that \$25,000.00 would suffice for future medical expenses and that \$50,000.00 would suffice for future pain and suffering.

6. School Board is self-insured and is experiencing a bleak fiscal year with expected shortfalls of over \$54,000,000.00.

CONCLUSIONS OF LAW:

The bus driver had a duty to exercise reasonable care in the operation of the bus. See generally s. 316.183(1), Fla. Stat. He breached this duty by crashing into the back of Mr. Merriweather's stopped van. See Eppler v. Tarmac America, Inc., 752 So. 2d 592 (Fla. 2000) (rear driver is presumed to be negligent in rear-end collision case absent evidence of a sudden and unexpected stop by the front driver).

The school bus driver was an employee of the School Board acting within the course and scope of his employment at the time of the accident. As a result, the driver's negligence is attributable to the School Board.

Consistent with the School Board's stipulation as to its liability, it is concluded that the bus driver's negligence was the sole and proximate cause of the injuries and damages sustained by Claimant, and that the driver's negligence is attributable to the School Board.

The jury based its verdict on competent, substantial evidence.

LEGISLATIVE HISTORY:

This is the second year that this claim has been presented to the Legislature.

ATTORNEYS FEES:

Claimant's attorney filed an affidavit stating that attorney's fees will be capped at 25 percent in accordance with s. 768.28(8), Florida Statutes. Lobbyist fees are incorporated into the attorney's fees cap.

The Legislature is free to limit those amounts as it sees fit. See Gamble v. Wells, 450 So. 2d 850 (Fla. 1984); Noel v. Schlesinger, 984 So. 2d 1265 (Fla. 4th DCA 2008). The bill provides that the total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

FISCAL IMPACT:

The School Board is self-insured and has no liability insurance applicable to this claim. The School Board expects to face a substantial budgetary shortfall and the passage of this claim bill will add to its budgetary difficulties.

OTHER ISSUES:

The bill, as filed, does not include the sum of \$50,394.52, which is the amount of the "Final Cost Judgment" entered by Judge Barkdull on August 4, 2010. The bill should be amended to add costs in the sum of \$50,394.52, so that the total amount of the award will be increased from the sum of \$994,034.30 to the sum of \$1,044,428.82.

RECOMMENDATIONS:

Based upon the foregoing, I recommend that Senate Bill 26 be reported FAVORABLY, as amended.

Respectfully submitted,



Claude B. Arrington
Senate Special Master

cc: Senator Ellyn Setnor Bogdanoff
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

CS by Judiciary:

This committee substitute includes minor corrections to the facts alleged in the whereas clauses of the claim bill. More significantly, the committee substitute provides for the payments required under the claim bill to be used to fund a special needs trust for the benefit of the claimant. The committee substitute also identifies specific amounts that may be paid from the claim bill for attorney fees and lobbying fees.



284506

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/18/2017	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. (1) The Palm Beach County School Board is authorized and directed to appropriate from funds of the school board not otherwise appropriated and, no later than 20 days after the effective date of this act, draw a warrant in the sum



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of \$790,000, payable to Altavious Carter as compensation for injuries and damages sustained.

(2) The amount paid by the Palm Beach County School Board under s. 768.28, Florida Statutes, and the amount awarded under section 2 of this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries to Altavious Carter. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the total amount awarded under section 2 of this act.

Section 3. (1) The Palm Beach County School Board is authorized and directed to:

(a) Appropriate from funds of the school board not otherwise encumbered and, no later than 30 days after the effective date of this act, draw a warrant in the sum of \$1.7 million payable to Dustin Reinhardt, to be placed in the Special Needs Trust created for the exclusive use and benefit of Dustin Reinhardt, as compensation for injuries and damages sustained.

(b) Purchase, for Dustin Reinhardt's benefit, three separate \$1 million annuities, over a successive 3-year period of time. The first annuity shall be purchased in the year this claim bill is enacted with the other two annuities purchased in successive years thereafter. The first annuity shall make annual disbursements to Dustin Reinhardt, to be placed in the Special Needs Trust created for the exclusive use and benefit of Dustin Reinhardt, beginning on or about September 2023. The second and third annuities shall make annual disbursements to Dustin Reinhardt, to be placed in the Special Needs Trust created for the exclusive use and benefit of Dustin Reinhardt, pursuant to



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their terms.

(2) The amount paid by the Palm Beach County School Board pursuant to s. 768.28, Florida Statutes, and the amount awarded under section 3 of this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Dustin Reinhardt. Of the amount awarded under section 3 of this act, the total amount paid for attorney fees may not exceed \$940,000, the total amount paid for lobbying fees may not exceed \$235,000, and no amount may be paid for costs and other similar expenses relating to this claim. Attorney or lobbying fees may not be assessed against the value of the annuity.

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 the payment of claims by the Palm Beach County School Board; providing for an appropriation to compensate Altavious Carter for injuries sustained as a result of the negligence of a bus driver of the Palm Beach County School District; providing a limitation on the payment of fees; providing for an appropriation and annuity to compensate Dustin Reinhardt for injuries sustained as a result of the negligence of employees of the Palm



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Beach County School District; providing that certain payments and the amount awarded under the act to Dustin Reinhardt satisfy all present and future claims related to the negligent act; providing a limitation on the payment of compensation, fees, and costs; providing an effective date.

WHEREAS, in regards to Altavious Carter, he was a 14-year-old freshman at Summit Christian School in Palm Beach County on December 15, 2005, while riding as a passenger in a vehicle driven by Vincent H. Merriweather, and

WHEREAS, while Vincent H. Merriweather was stopped at a red light at the intersection of Forest Hill Boulevard and Olympia Boulevard in Palm Beach County, his vehicle, a van, was struck by a school bus driven by an employee of the Palm Beach County School District, and

WHEREAS, the bus driver, Dennis Gratham, was cited for careless driving and the speed of the bus at the time of impact was 48.5 miles per hour, and

WHEREAS, the seat in which Altavious Carter was sitting was broken as a result of the crash, and Altavious Carter, who was wearing a seatbelt, was thrown into the back of the van, his neck was broken at the C6 level, and he suffered a C6-7 interior subluxation and reversal of normal cervical lordosis, with spinal cord flattening, and

WHEREAS, Altavious Carter was taken by ambulance to Wellington Regional Medical Center and subsequently to St. Mary's Medical Center, where he was diagnosed and treated for the injuries he sustained, and



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WHEREAS, Altavious Carter received a discectomy and fusion at C6-7, along with placement of a bone graft and cage, plates, and screws to fuse the spine at C6-7, and

WHEREAS, following rehabilitation, an MRI taken in June 2009 indicated a small herniation at the C7-T1 level, representing the start of degenerative disc disease, and

WHEREAS, on February 25, 2010, Altavious Carter received a jury verdict against the Palm Beach County School Board, and the court entered a judgment in the amount of \$1,094,034.30, and

WHEREAS, on August 4, 2010, an additional final cost judgment in the amount of \$46,830.11 was entered in favor of Altavious Carter against the Palm Beach County School Board in the same matter, and

WHEREAS, Altavious Carter and the Palm Beach County School Board have agreed to a settlement of the claim in the amount of \$790,000, and

WHEREAS, in regards to Dustin Reinhardt, he was a student at Seminole Ridge Community High School in Loxahatchee in Palm Beach County in September 2013, and was involved in the Army Junior Reserve Officer Training Corps for which he received honors for his participation, and

WHEREAS, on September 4, 2013, while in auto shop class at Seminole Ridge Community High School, Dustin Reinhardt was inflating a large truck tire, which proceeded to explode, striking him in his head, and

WHEREAS, immediately following the explosion, Dustin Reinhardt was airlifted to St. Mary's Medical Center in West Palm Beach where he underwent multiple surgeries, including skull and facial reconstruction procedures, was placed in a



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127 chemically induced coma, and spent more than 4 weeks in the
128 intensive care unit, and

129 WHEREAS, Dustin Reinhardt has continued to be impacted by
130 the injuries he incurred from the explosion, including the loss
131 of vision in his right eye, short-term memory loss, and a recent
132 diagnosis of severe traumatic brain injury, and

133 WHEREAS, the traumatic brain injury will impair Dustin
134 Reinhardt's executive function and has resulted in symptoms such
135 as the exhibition of socially inappropriate behavior, difficulty
136 in planning and taking initiative, difficulty with verbal
137 fluency, an inability to multitask, and difficulty in
138 processing, storing, and retrieving information, and

139 WHEREAS, because of the explosion, Dustin Reinhardt
140 continues to live in supervised care at the Neuro International
141 and is unlikely to ever live an independent life, and

142 WHEREAS, the injuries that Dustin Reinhardt sustained were
143 foreseeable and preventable and the school had a duty to prevent
144 his injuries, and

145 WHEREAS, Dustin Reinhardt and the Palm Beach County School
146 Board have agreed to a settlement in the sum of \$5 million, and
147 the Palm Beach County School Board has paid \$300,000 of the
148 settlement pursuant to the statutory limits of liability set
149 forth in s. 768.28, Florida Statutes, leaving a remaining
150 balance of \$4.7 million, NOW, THEREFORE,

By the Committee on Judiciary; and Senator Thurston

590-03414-17

2017304c1

A bill to be entitled
An act for the relief of Dustin Reinhardt by the Palm
Beach County School Board; providing for an
appropriation and annuity to compensate him for
injuries sustained as a result of the negligence of
employees of the Palm Beach County School District;
providing that certain payments and the amount awarded
under the act satisfy all present and future claims
related to the negligent act; providing a limitation
on the payment of compensation, fees, and costs;
providing an effective date.

WHEREAS, in September 2013, Dustin Reinhardt was a student
at Seminole Ridge Community High School in Loxahatchee in Palm
Beach County, and was involved in the Army Junior Reserve
Officer Training Corps for which he received honors for his
participation, and

WHEREAS, on September 4, 2013, while in auto shop class at
Seminole Ridge Community High School, Dustin Reinhardt was
inflating a large truck tire, which proceeded to explode,
striking him in his head, and

WHEREAS, immediately following the explosion, Dustin
Reinhardt was airlifted to St. Mary's Medical Center in West
Palm Beach where he underwent multiple surgeries, including
skull and facial reconstruction procedures, was placed in a
chemically induced coma, and spent more than 4 weeks in the
intensive care unit, and

WHEREAS, Dustin Reinhardt has continued to be impacted by
the injuries he incurred from the explosion, including the loss

590-03414-17

2017304c1

of vision in his right eye, short-term memory loss, and a recent diagnosis of severe traumatic brain injury, and

WHEREAS, the traumatic brain injury will impair Dustin Reinhardt's executive function and has resulted in symptoms such as the exhibition of socially inappropriate behavior, difficulty in planning and taking initiative, difficulty with verbal fluency, an inability to multitask, and difficulty in processing, storing, and retrieving information, and

WHEREAS, because of the explosion, Dustin Reinhardt continues to live in supervised care at the Neuro International and is unlikely to ever live an independent life, and

WHEREAS, the injuries that Dustin Reinhardt sustained were foreseeable and preventable and the school had a duty to prevent his injuries, and

WHEREAS, the parties have agreed to a settlement in the sum of \$5 million, and the Palm Beach County School Board has paid \$300,000 of the settlement pursuant to the statutory limits of liability set forth in s. 768.28, Florida Statutes, leaving a remaining balance of \$4.7 million, 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 School Board is authorized and directed to:

(1) Appropriate from funds of the school board not otherwise encumbered and, no later than 30 days after the effective date of this act, draw a warrant in the sum of \$1.7

590-03414-17

2017304c1

59 million payable to Dustin Reinhardt, to be placed in the Special
60 Needs Trust created for the exclusive use and benefit of Dustin
61 Reinhardt, as compensation for injuries and damages sustained.

62 (2) Purchase, for Dustin Reinhardt's benefit, three
63 separate \$1 million annuities, over a successive 3-year period
64 of time. The first annuity shall be purchased in the year this
65 claim bill is enacted with the other two annuities purchased in
66 successive years thereafter. The first annuity shall make annual
67 disbursements to Dustin Reinhardt, to be placed in the Special
68 Needs Trust created for the exclusive use and benefit of Dustin
69 Reinhardt, beginning on or about September 2023. The second and
70 third annuities shall make annual disbursements to Dustin
71 Reinhardt, to be placed in the Special Needs Trust created for
72 the exclusive use and benefit of Dustin Reinhardt, pursuant to
73 their terms.

74 Section 3. The amount paid by the Palm Beach County School
75 Board pursuant to s. 768.28, Florida Statutes, and the amount
76 awarded under this act are intended to provide the sole
77 compensation for all present and future claims arising out of
78 the factual situation described in this act which resulted in
79 injuries and damages to Dustin Reinhardt. Of the amount awarded
80 under this act, the total amount paid for attorney fees may not
81 exceed \$940,000, the total amount paid for lobbying fees may not
82 exceed \$235,000, and no amount may be paid for costs and other
83 similar expenses relating to this claim. Attorney or lobbying
84 fees may not be assessed against the value of the annuity.

85 Section 4. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: April 4, 2017

I respectfully request that **Senate Bill #304**, relating to Relief of Dustin Reinhardt by the Palm Beach County School Board, be placed on the:

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

Perry E. Thurston, Jr.

Senator Perry E. Thurston, Jr.
Florida Senate, District 33



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Rules, *Vice Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Education
Judiciary
Regulated Industries

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR PERRY E. THURSTON, JR.

Democratic Caucus Rules Chair
33rd District

April 4, 2017

The Honorable Tom Lee
Florida Senate
418 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Lee,

I am writing you this letter because my bill SB 304: Relief of Dustin Reinhardt by the Palm Beach County School Board, has been referred to the Senate Community Affairs Committee. I am writing respectfully requesting you to place the bill on you committee' calendar for the next committee agenda.

Thank you for your consideration. Please contact me if you have any questions.

Respectfully,

Perry E. Thurston, Jr.

Perry E. Thurston, Jr.
District 33

REPLY TO:

- ☐ 2151 NW 6th Street, Fort Lauderdale, Florida 33311 (954) 321-2705 FAX: (954) 321-2707
- ☐ 208 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

SPECIAL MASTER'S FINAL REPORT – CS/SB 14

February 28, 2017

Page 1



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
2/28/17	SM	Fav/1 amendment
3/06/17	JU	Fav/CS
4/18/17	CA	Favorable
	RC	

February 28, 2017

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 14** – Judiciary Committee and Senator Frank Artiles
HB 6529 -- Representative Cord Byrd
Relief of Lillian Beauchamp, as the personal representative of the Estate of Aaron
Beauchamp

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF \$8.7 MILLION AGAINST THE ST. LUCIE COUNTY SCHOOL DISTRICT FOR THE WRONGFUL DEATH OF AARON BEAUCHAMP WHICH OCCURRED WHILE HE WAS A PASSENGER IN A DISTRICT SCHOOL BUS THAT WAS STRUCK BY A TRACTOR TRAILER.

FINDINGS OF FACT:

This matter arises out of a school bus accident that occurred on March 26, 2012, in St. Lucie County, at the intersection of Okeechobee Road and Midway Road. The intersection is located on a four-lane divided highway with a speed limit of 55 mph, and it is not controlled by an overhead traffic signal. The weather at the time of the accident was clear, and there were no visual obstructions.

The Accident

At approximately 3:45 pm, Albert Hazen, a St. Lucie County School District (district) employee, was driving a school bus

westbound on Okeechobee Road. The school bus had 30 student passengers from Frances K. Sweet Elementary School on board. The school bus was equipped with four video surveillance cameras that provided various viewpoints of the crash.

Also at approximately 3:45 pm, Charles Cooper was driving a tractor trailer, owned by Cypress Trucking, in the right eastbound lane of Okeechobee Road. The tractor trailer had a flatbed semi-trailer attached and was loaded with sod.

The bus entered the left turn lane to turn left across the eastbound lanes of Okeechobee Road to reach Midway Road. As the bus turned left at the intersection, it slowed without stopping and turned in front of the tractor trailer driven by Mr. Cooper. Mr. Hazen attempted to accelerate across Okeechobee Road to avoid a collision with the tractor trailer. Mr. Cooper also attempted an evasive action by turning his steering wheel to the right prior to impact.

The front of the tractor trailer collided with the passenger side of the school bus near its rear axle. The impact caused the school bus to spin clockwise approximately 180-degrees. The accident forced the tractor trailer off of the right eastbound lane of Okeechobee Road, rolled the truck portion of the tractor trailer on its left side, and flipped the flatbed trailer upside down. The tractor trailer came to rest in the grassy area on the side of Okeechobee Road. At the time of the crash, the school bus was traveling at approximately 15 mph; whereas, the tractor trailer was traveling at 63 mph approximately 3 seconds before impact.

Mr. Hazen had been assigned an additional bus route the day of the accident, and was driving that extra route when the accident occurred. Mr. Hazen had driven this bus route ten to twelve times before. The onboard cameras captured Mr. Hazen after the crash stating, "Oh my God what I have done."

At the time of the accident, neither Mr. Hazen nor Mr. Cooper were under the influence of alcoholic beverages or narcotics. Both had valid driver licenses for the vehicles they were driving.

The accident caused one fatality and numerous injuries to the student passengers on the bus. Specifically, eight students were seriously injured, eleven students had minor injuries,

and ten students were uninjured. Mr. Hazen received minor injuries and Mr. Cooper was uninjured.

Aaron Beauchamp

Aaron Beauchamp was a 9-year-old student at Frances K. Sweet Elementary School and was onboard the school bus at the time of the accident. Aaron was seated in row 10 on the driver's side of the school bus. It was determined after the accident that Aaron had been wearing his seatbelt at the time of the accident.

The accident caused Aaron to be ejected out of his seat and be thrown about the interior of the school bus. Aaron was found on the school bus floor behind the last seats of the school bus. The medical examiner determined Aaron's cause of death was multiple blunt trauma injuries, and the manner of death was an accident.

Bus Seat and Seatbelt

The National Transportation Safety Board (NTSB) investigated the crash for the limited purpose of understanding the survival factors of the student passengers in support of another ongoing NTSB investigation. The NTSB's investigation provided detailed information concerning the condition of the bus seats and seatbelts after the crash.

The bus seats were a tubular steel frame that had plywood for the seat and the seatback. The plywood was covered with foam and vinyl fabric. The bus seats were designed to flip up to allow for the cleaning of the floor under the seat. The front of the seat cushion was mounted to the seat frame by two steel C-shaped brackets that allowed the seat to flip up. The NTSB's investigation after the crash found that the seat cushion latch for the seat that Aaron Beauchamp was sitting in was not engaged. The two front brackets of Aaron's seat were deformed, nearly flat, and the right front bracket was missing a screw.

The seatbelt Aaron was wearing at the time of the accident was a lap seatbelt. Upon inspection, Aaron's seatbelt had a load mark, meaning it was likely in use at the time of the accident. The seatbelt's attachment points to the seat were also rotated toward the impact point of the accident.

LEGAL PROCEEDINGS:

The claimant (Lillian Beauchamp, as the Personal Representative of the Estate of Aaron Beauchamp, a deceased child) filed suit against the district, Cypress Trucking, IC BUS, and IMMI (the seatbelt manufacturer).

The claimant settled with Cypress Trucking for \$575,000. The claimant also settled with IC BUS and IMMI; however, the terms of the settlement are confidential and not disclosed to the undersigned.

The district has settled all of the claims associated with this accident except for the claimant's claim.

The claimant and the district were unable to reach a settlement agreement and proceeded to trial on September 1, 2015. The trial was held in the Nineteenth Judicial Circuit Court in St. Lucie County. The jury returned a verdict on September 8, 2015, in the favor of the claimant. The jury found that the district was 87 percent negligent in the death of Aaron Beauchamp. The jury also apportioned 13 percent of negligence to Cypress Trucking and zero percent of negligence to IC BUS, though they were not parties to the lawsuit.

The jury awarded \$10 million to the claimant, the Estate of Aaron Beauchamp, and apportioned it in the following manner: \$1 million each for Lillian and Simon Beauchamp's past mental pain and suffering caused by the wrongful death of Aaron and \$4 million each for Lillian and Simon Beauchamp's future mental pain and suffering caused by the wrongful death of Aaron.

The proportion of the jury verdict attributed to the district is \$8.7 million.

CLAIMANT'S ARGUMENTS:

The claimant agrees with the jury's apportionment of 87 percent liability to the district and agrees with the award of \$8.7 million.

RESPONDENT'S ARGUMENTS:

The district admitted negligence but disputes the amount of negligence proportioned to it by the jury. The district argues that Cypress Trucking should have received a larger portion of the negligence percentage. The district also contends that there was clear evidence of negligence by IC BUS that

contributed to the death of Aaron Beauchamp and the jury should have proportioned some liability to IC BUS.

The district is opposed to the claim bill.

CONCLUSIONS OF LAW:

The district owned the school bus driven by its employee, Mr. Hazen and is covered by the provisions of s. 768.28, F.S. Section 768.28, F.S., generally allows injured parties to sue state or local governments for damages caused by their negligence or the negligence of their employees by waiving the government's sovereign immunity from tort actions. However, the statute limits the amount of damages that a plaintiff can collect from a judgment against or settlement with a government entity to \$200,000 per person and \$300,000 for all claims or judgments arising out of the same incident. Funds can be paid in excess of these limits only upon the approval of a claim bill by the Legislature.

The district has settled all claims associated with this accident except for the claimant's claim. In settling with the other parties, the district has exhausted the statutory cap amount of \$300,000 and its excess insurance policy in the amount of \$1 million. The claimant has not received any money from the district and will not receive the full benefit of the jury verdict unless the Legislature approves a claim bill.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence. These elements are duty, breach, causation, and damages. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010) (quoting *Jefferies v. Amery Leasing, Inc.*, 698 So. 2d 368, 370-71 (Fla. 5th DCA 1997)).

Section 768.81, F.S., Florida's comparative fault statute, allows damages in negligence cases to be apportioned against each liable party. The Florida Supreme Court has found that "in determining noneconomic damages fault must be apportioned among all responsible entities who contribute to an accident even though not all of them have been joined as defendants." *Nash v. Wells Fargo Guard Servs.*, 678 So. 2d 1262, 1263 (Fla. 1996).

The driver of a motor vehicle has a duty to use reasonable care, in light of the attendant circumstances, to prevent injuring persons within the vehicle's path. *Gowdy v. Bell*, 993

So. 2d 585, 586 (Fla. 1st DCA 2008). Reasonable care is the degree of care a reasonably careful person would have used under like circumstances. *Foster v. State*, 603 So. 2d 1312, 1316 (Fla. 1st DCA 1992).

The long-standing doctrine of *respondeat superior* provides that an employer is liable for an employee's acts committed within the course and scope of employment. *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4th DCA 2013). Florida's dangerous instrumentality doctrine imposes "vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another." *Aurbach v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000). Motor vehicles have been considered dangerous instrumentalities under Florida law for over a century. See *Anderson v. S. Cotton Oil Co.*, 74 So. 975, 978 (Fla. 1917).

Mr. Hazen was employed by the district and was acting within the scope of his employment at the time of the accident. Accordingly, the negligence of Mr. Hazen is attributable to the district.

Mr. Cooper was employed by Cypress Trucking and was acting within the scope of his employment at the time of the accident. Accordingly, the negligence of Mr. Cooper is attributable to Cypress Trucking.

Mr. Hazen's Negligence

Section 316.122, F.S., requires drivers who are intending to turn left to yield to the right-of-way of any vehicle approaching from the opposite direction. When Mr. Hazen turned left across Okeechobee Road and failed to yield to the tractor trailer driven by Mr. Cooper, Mr. Hazen violated s. 316.122, F.S., and breached his duty to operate the school bus with reasonable care. Mr. Hazen was issued a Uniform Traffic Citation for violating s. 316.122, F.S.

Mr. Hazen's negligence and breach of duty of care caused the accident and contributed the wrongful death of Aaron Beauchamp.

Mr. Cooper's Negligence

Section 316.183(4)(a), F.S., prohibits any person from driving at a speed that is greater than reasonable and

prudent and requires the driver to appropriately reduce speed when approaching and crossing an intersection. Mr. Cooper was traveling at 63 mph at the time of the crash, 8 mph faster than the posted speed limit of 55 mph. Mr. Cooper violated s. 316.183, F.S., and breached his duty to drive with reasonable care by driving 8 mph over the 55 mph speed limit and is partially at fault for the accident.

Section 316.302(1)(a), F.S., provides that all commercial motor vehicles in Florida engaged in interstate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 385, and 390-397.

The Florida Highway Patrol investigation of the accident found a violation of 49 C.F.R. 393.47(e), which sets the limits for clamp brakes. The investigation found that the tractor trailer's left #3 clamp-type brake was out of adjustment, with the pushrod travel measured at two and half inches. The federal regulation allows a maximum pushrod travel of two inches for clamp-type brakes.

The investigation also found a violation of 49 C.F.R. 571.121 S5.2.2(a), which requires automatic brake adjustment systems to compensate for the wear of brakes. The tractor trailer did not compensate for the wear of the brakes and thus violated 49 C.F.R. 571.121 s5.2.2(a).

Another federal regulation, 49 C.F.R. 395.8(f)(1), requires a driver to record his or her duty status. Mr. Cooper had not updated his duty status log book the day of the accident to indicate that he was on duty.

Mr. Cooper was issued three Uniform Traffic Citations after the accident. His negligence due to speeding and having faulty brakes contributed to the wrongful death of Aaron Beauchamp.

Conclusion

Florida's comparative fault statute, s. 768.81, F.S., applies to this case because Mr. Hazen and Mr. Cooper both violated Florida law in this accident.

Mr. Hazen caused the accident when he turned left across Okeechobee Road and failed to yield to the tractor trailer driven by Mr. Cooper, violating s. 316.122, F.S., and

breached his duty to operate the school bus with reasonable care.

Mr. Cooper contributed to the accident by driving 63 mph when the posted speed limit was 55 mph and by failing to keep the tractor trailer in compliance with federal rules and regulations.

IC BUS manufactured the seats of the bus. The damage to the seat brackets on Aaron's seat may have contributed to his death. However, the undersigned was presented with the same evidence as the jury at trial and finds that there is insufficient evidence to alter the jury's apportionment of no fault on IC BUS.

The jury sat through a multiple-day trial, listened to all of the evidence presented, and reached a verdict based on competent and substantial evidence. While Mr. Hazen and Mr. Cooper were partially at fault in this matter, Mr. Hazen's negligence far outweighs Mr. Cooper's negligence. Aaron Beauchamp died after suffering multiple blunt force trauma injuries. The undersigned finds there is no newly presented evidence to alter the jury verdict and finds that the damages of \$8.7 million sought by the claimant are reasonable and justly apportionable to the district as a result of Mr. Hazen's negligence.

LEGISLATIVE HISTORY:

This is the first claim bill presented to the Senate in this matter.

ATTORNEYS FEES:

The claimant's attorney has agreed to limit his fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S. The bill provides that the total amount paid for lobbying fees, costs, and other similar expenses relating to the claim are included in the 25 percent limit. However, the limits on lobbying fees, costs, and other similar expenses should be removed to conform to a recent opinion of the Florida Supreme Court. See *Searcy, Denney, Scarola, Barnhart & Shipley v. State*, 42 Fla. L. Weekly S92 (Fla. 2016).

FISCAL IMPACT:

The district is self-insured through a self-insured consortium for the statutory cap amount of \$300,000. The district also maintained an insurance policy for excess coverage in the amount of \$1 million. The statutory cap amount and the district's insurance funds have been consumed by other

claims arising out of the bus accident. If the bill is approved, the district will have to pay the claim from its general operating funds.

SPECIAL ISSUES

The bill refers to the school district as the *St. Lucie School Board*. The proper name for the school district is the St. Lucie School District. The undersigned recommends the bill is amended to correct this error.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 14 (2017) be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Lauren Jones
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute conforms the bill to the terms of a settlement between the parties for \$1.5 million. The amount of the original claim was \$8.7 million. The amendment also specifies the amounts that may be paid for attorney fees, lobbying fees, and costs. However, these amounts are consistent with the contractual obligations of the parties. As such, specifying the amounts for fees and costs in the claim bill is not inconsistent with the recent Florida Supreme Court opinion limiting the authority of the Legislature insert limits on fees and costs in claim bills.

By the Committee on Judiciary; and Senator Artiles

590-03420-17

201714c1

A bill to be entitled

An act for the relief of Lillian Beauchamp, as the personal representative of the Estate of Aaron Beauchamp, by the St. Lucie County School Board; providing for an appropriation to compensate the Estate of Aaron Beauchamp for his wrongful death as a result of the negligence of the St. Lucie County School District; providing a limitation on the payment of compensation, fees, and costs; providing an effective date.

WHEREAS, on the afternoon of March 26, 2012, 9-year-old Aaron Beauchamp boarded a school bus driven by St. Lucie County School District employee, Albert Hazen, and

WHEREAS, shortly before Mr. Hazen reported to work that afternoon, the district assigned him an additional bus route that was unfamiliar to him, and

WHEREAS, at approximately 3:45 p.m., Mr. Hazen was driving the school bus along the unfamiliar route, headed west on Okeechobee Road with approximately 30 elementary school students on board, and

WHEREAS, Mr. Hazen's first stop that afternoon was at the St. Lucie County Fairgrounds, which he planned to reach by making a left turn from Okeechobee Road onto Midway Road, and

WHEREAS, the school bus driven by Mr. Hazen was equipped with a district-installed surveillance camera which captured the events of that afternoon, and

WHEREAS, as Mr. Hazen approached the intersection of Okeechobee Road and Midway Road and activated his left turn

590-03420-17

201714c1

signal, the weather was clear and there were no visual obstructions in the roadway, and

WHEREAS, Mr. Hazen turned onto Midway Road without stopping at the intersection, travelling directly into the path of an oncoming, fully-loaded tractor trailer, and

WHEREAS, Mr. Hazen operated the school bus in a negligent manner and the district, through the negligent action of its employee, Mr. Hazen, breached a duty of care to Aaron Beauchamp, and

WHEREAS, the tractor trailer violently slammed into the rear passenger side of the school bus, propelling it into the air and spinning it around, and

WHEREAS, the impact of the crash inflicted numerous catastrophic injuries upon the students, and first responders to the accident had to follow procedures for a mass casualty event, and

WHEREAS, Aaron Beauchamp was sitting in the back of the school bus on the driver's side and, despite the fact that he was wearing his seatbelt, was ejected from his seat into the interior of the bus, and

WHEREAS, Aaron Beauchamp suffered massive injuries to his spine and brain and died at the scene of the crash, and

WHEREAS, Aaron Beauchamp is survived by his mother, Lillian Beauchamp, a school principal and long-time district employee, his father, Simon Beauchamp, and an older brother, Benjamin Beauchamp, and

WHEREAS, Lillian Beauchamp, as the personal representative of the estate of Aaron Beauchamp, filed a wrongful death lawsuit against the district in the case of *Lillian Beauchamp*, as

590-03420-17

201714c1

Personal Representative of the Estate of Aaron Beauchamp, a deceased Child v. The St. Lucie County School District, which was assigned case number 2013CA000569, and

WHEREAS, on September 8, 2015, a jury returned a unanimous verdict awarding \$10 million to Lillian Beauchamp, as the personal representative of the estate of Aaron Beauchamp, finding that the district was 87 percent at fault for the accident, and

WHEREAS, on November 2, 2015, the judge in the case entered a final judgment against the district for \$8.7 million, which the district did not appeal, and

WHEREAS, in accordance with s. 768.28, Florida Statutes, the district paid the statutory limit of \$300,000 to other children who were injured in the same incident that resulted in the wrongful death of Aaron Beauchamp, and

WHEREAS, the district and Lillian Beauchamp, as the personal representative of the estate of Aaron Beauchamp, have reached a settlement agreement in the amount \$1.5 million, 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 St. Lucie County School District is authorized and directed to appropriate from its funds not otherwise encumbered and, on or before November 1, 2017, to draw a warrant in the amount of \$1.5 million payable to Lillian Beauchamp, as the personal representative of the estate of Aaron

590-03420-17

201714c1

88 Beauchamp, as compensation for damages sustained in connection
89 with his wrongful death.

90 Section 3. The amount awarded under this act is intended to
91 provide the sole compensation for all present and future claims
92 arising out of the factual situation described in this act which
93 resulted in the wrongful death of Aaron Beauchamp. Of the amount
94 awarded under this act, the total amount paid for attorney fees
95 may not exceed \$300,000, the total amount paid for lobbying fees
96 may not exceed \$75,000, and the total amount paid for costs and
97 other similar expenses relating to this claim may not exceed
98 \$4,246.02.

99 Section 4. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: April 4, 2017

I respectfully request that **Senate Bill #14**, relating to Relief of Lillian Beauchamp by the St. Lucie County School Board, be placed on the:

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



Senator Frank Artiles
Florida Senate, District 40



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
3/29/17	SM	Unfavorable
3/30/17	JU	Favorable
4/18/17	CA	Favorable
	RC	

March 29, 2017

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 314** – Senator Gary M. Farmer, Jr.
HB 6545 – Representative Jake Raburn
Relief of Jerry Cunningham by Broward County

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED CLAIM FOR \$550,000, IN LOCAL FUNDS, AGAINST BROWARD COUNTY FOR AN INCIDENT INVOLVING ONE OF ITS BUSES AND THE CLAIMANT, JERRY CUNNINGHAM. THE UNDERLYING SETTLEMENT IS FOR \$850,000, OF WHICH THE COUNTY HAS PAID \$300,000, AS PERMITTED BY LAW.

FINDINGS OF FACT:

On the morning of May 10, 2013, the Claimant and his mother walked to a Broward County Transit bus stop. The Claimant, who was 14 years old at the time, was on his way to school. On that morning, he grasped a moving Broward County Transit bus and attempted to run alongside it. Upon losing his grip and his footing, the Claimant fell to the pavement, incurring severe injuries.

Transit Bus Surveillance Video

The Claimant's counsel presented video from the bus. This video begins several minutes before the accident and continues for several minutes after the accident. The video featured an indication of the bus's speed at each moment of the footage. And it was shot from eight different camera angles simultaneously. For example, one camera was above the head of the driver, Reinaldo Soto, pointed toward the door.

Another camera was on the outside of the side of the bus opposite the driver's side, perhaps on the rear half of the bus, pointed toward the front. This video sufficiently supports the following findings of fact.

On the morning of the incident, the bus approached a stop where two women were waiting for the bus, but the Claimant was not waiting at the bus stop with them. As the bus came to a stop, one or more passengers alerted Mr. Soto that there were "runners coming." The two women safely and uneventfully entered the bus upon its arrival at the bus stop. Upon entering, the women remained at the front of the bus, as least far forward as Mr. Soto. While the women remained there, and just after the doors had begun to close, the Claimant came to the exterior of the front doors of the bus.

At the same time, the bus was just starting to ease away from the stop at 2 miles per hour. Within 3 seconds of the Claimant arriving at the front doors, and within 4 seconds of the bus beginning to ease away from the stop, the doors appear to have fully closed, and the bus had reached 6-10 miles per hour. And as for the operation or mechanics of the doors, they came together from opposite sides, meeting in the middle of the doorway, as they appear designed to do.

As the bus left the stop, the Claimant walked, then jogged, and then ran alongside the bus, with his right arm reaching across his body and his right hand making constant contact with the bus. With his left hand, the Claimant tapped on the door.

Then, with the doors closed, the bus increased its speed. It traveled at 16-19 miles per hour for several seconds, with the Claimant still running alongside of it, perhaps aided by the power of the bus.¹ At one point, and before the fall that caused his injuries, the Claimant momentarily lost his footing, yet was able to keep from falling by hanging onto the bus.

After the bus traveled several more seconds at speeds between 16 and 19 miles per hour, the Claimant fell to the pavement, thus sustaining his injuries. The video does not

¹ At the hearing, Claimant's counsel stated that it was unreasonable to think that the Claimant could run 18 or 19 miles per hour. The Special Master does not necessarily disagree that the Claimant could not reach those speeds on his own. But the evidence showed that the Claimant's speed may have been aided by the bus as he held onto it.

include any images showing that the Claimant's arm, wrist, or hand were trapped between the doors of the bus.^{2, 3}

Within 5 seconds after the Claimant fell, and as passengers screamed, Mr. Soto stopped the bus.

Injuries

As a result of the accident, the Claimant incurred multiple injuries. He suffered a traumatic brain injury, skull fractures, facial fractures, rib fractures, a right clavicle fracture, a right scapular fracture, a right pulmonary contusion, and a left medial malleolus fracture.

The Claimant's Hand, Arm, or Wrist Was Not Trapped

An essential factual component of the Claimant's claim is that his hand, arm, or wrist was trapped in the bus's door. However, the preponderance of the evidence shows that the Claimant's hand, arm, or wrist was not caught in the door of the bus. Rather, the Claimant placed his hand on or in between the doors of the moving bus, and then attempted to run alongside it until he lost both his grip and his footing. At that point, he hit the ground and sustained his injuries. The following evidence was weighed in making these findings of fact.

Detective Michael Kelliher

Detective Michael Kelliher of the Traffic Homicide Unit of the Broward County Sheriff's Office investigated the accident. Det. Kelliher determined that the door of the bus could not have trapped the Claimant's arm, wrist, or hand. Instead, Det. Kelliher believed that the Claimant grabbed the door and held on as he attempted to run alongside the bus.

Det. Kelliher conducted several controlled exercises with the bus involved in the accident. One exercise involved a Detective DeJesus, who was approximately the size that the Claimant was at the time. Det. DeJesus placed his forearm

² The Claimant's attorney presented an audio recording of an interview by his investigator of the passenger sitting closest to the door, Brian Clark. During this recording, the *interviewer* states: "But at that point Jerry had [inaudible] reached for the bus and was already caught with his hand, hand [sic] in the door." Mr. Clark then said, "Yes." The interviewer quickly moved on. The witness's statement has little probative value for several reasons. First, the statement was not given under oath or subject to cross-examination. Secondly, the witness's "yes" answer was in response to a compound, leading question. Finally, the witness never explained what he saw that led him to conclude that the Claimant's hand was caught.

³ The Claimant stated he has no memory of the incident.

through the open front doorway, and the doors were closed. Upon closing the doors, the 4-inch rubber safety guards (or “flaps”) on the doors formed around Det. DeJesus’s arm, which was in “no way constrained” by the doors. And he could remove his arm “with minimal effort.”

A similar exercise was conducted with a Detective Michael Wiley, who was bigger than the Claimant was at the time of the accident. Detective Wiley was able to remove his arm “without resistance from the doors.”

Assistant State Attorney Alexander Fischer

The Broward County Sherriff’s Office referred the case to the State Attorney’s Office in Broward County for possible prosecution. Assistant State Attorney Alex Fischer conducted a legal and factual investigation under the supervision of Assistant State Attorney Peter Holden. Mr. Fischer and Assistant State Attorney David Weigel examined a bus of the same year, make, and model as the bus involved in the Claimant’s accident.

Both Mr. Fischer and Mr. Weigel “freely slid” their “entire arms through the closed door of the bus.” Moreover, they discovered that the rubber flaps on the two front doors closed in such a way that the more forward door’s flap was on the outside of the other flap. This created a “path” through which one may pull something, such as an arm, toward the back of the bus from the outside.

Mr. Fischer concluded that the Claimant’s arm or hand was not trapped or stuck. Instead, the Claimant, perhaps with his hand in the rubber flap area of the door, was voluntarily trying to keep up with the bus.

With regard to the testing by the Sherriff’s Office and the State Attorney, the Claimant’s attorney attempted to discredit those tests for not being performed on a moving bus. The reports describing the testing do not state whether the tests involved a moving or a stationary bus. However, even if the tests were performed only on stationary buses, it would not undermine the conclusions of these reports. Given the construction and the operation of the doors as described above, the bus’s moving away from the Claimant would have made it easier, not harder, for him to remove his hand from the doors.

Transit Bus Surveillance Video

The surveillance video appears to show the Claimant voluntarily running alongside the bus. If his arm was caught in the bus's doors, one would have expected the video of the incident to show the Claimant make a jerking motion or a tugging motion in an attempt to part with the bus. But the Claimant made no such motion.

Nonetheless, argument was presented to support the contrary conclusion—namely, that the Claimant's arm was trapped in the door of the bus, and thus the Claimant was forced to attempt to run alongside the bus until he could no longer. At one point in the video, just moments before his ultimate fall, the Claimant loses his footing yet appears to keep his hand(s) on the bus and does not fall to the ground. According to the Claimant's counsel, this proves that the Claimant's arm was caught in the doors. However, this conclusion is not required.

The fact that the Claimant momentarily lost his footing and yet did not fall to the ground could be explained by him continuing to hold onto the bus's door. Moreover, if it was the Claimant's trapped arm that prevented him from falling when he momentarily lost his footing, then it is unclear how his arm suddenly became un-trapped moments later, allowing him to fall to the ground. The Claimant's attorney did not explain how the Claimant's arm could suddenly become free. A better explanation of the moment when the Claimant lost his footing is that his arm was not trapped and that he chose to hang onto the door. As such, the Claimant kept his grip during his first loss of footing but was unable to hold on when he took his ultimate fall. Alternatively, perhaps he purposefully let go of the bus, hoping he could safely part with the bus before it reached even greater speeds.

The time elapsed from when the bus left the bus stop until the Claimant fell was approximately 9 seconds.

Parties' Stipulation

The parties stipulated in this matter that the Claimant's arm was "apparently caught in the door." However, the stipulation was not supported by the evidence presented to the Special Master. And under the Senate Rules, the Special Master is not bound by the stipulation. In contrast to the stipulation, the evidence shows that the Claimant grabbed onto the bus and

could have removed his arm or hand from it with minimal force.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine, based on the evidence presented to the Special Master, whether Broward County is liable for the Claimant's injuries, and if so, whether the amount of the claim is reasonable.

The Claimant asserted that the bus driver, Mr. Soto, as an agent for Broward County, negligently operated the bus, causing the Claimant to incur economic and non-economic damages.

A negligence claim has four essential elements. The Claimant must prove that the Respondent owed him or her a certain *duty* of care, that the Respondent *breached* this duty, and that the breach *caused* the Claimant to incur *damages*. Thus, the four elements of negligence are often referred to in short as (1) duty, (2) breach, (3) causation, and (4) damages.

Here, the Claimant did not prove causation. That is, the Claimant did not prove that the Respondent's alleged breach of its alleged duty caused the Claimant's injuries. Instead, the preponderance of the evidence showed that the Claimant caused his own injuries. Therefore, the Claimant failed to prove his claim.

Analysis

After briefly mentioning the Claimant's allegations as to duty and breach, the analysis will move into a discussion of causation. The Special Master's ultimate conclusion rests on the determination that the Claimant did not prove that the Respondent was the legal cause of the Claimant's accident and injuries; so, the causation element is discussed in relative depth. The issue of monetary damages is not discussed because the lack of causation makes the issue of damages moot.

Duty: The Claimant's counsel asserted three theories of duty. One of these theories was that the Respondent owed the Claimant whatever duty is owed under ordinary negligence. The Claimant's counsel also argued that the Respondent owed a heightened duty of care as a "common carrier." Third, the Claimant asserted that several rules in the Florida Administrative Code constituted duties of care. So, the

argument went, where these rules required the County to do something, the County was required to do so or face possible liability. This last theory is often referred to as “negligence *per se*.” Upon questioning by the Special Master, counsel for the Claimant finally disclosed that the trial court had found, as a matter of law, that the Claimant’s negligence *per se* claim was invalid.

Breach: The Claimant asserted that Mr. Soto breached his duties to the Claimant by (1) easing away from the bus stop before fully closing the doors on the bus, (2) failing to check the rearview mirrors (in which he allegedly would have seen the Claimant), (3) leaving the bus stop with passengers at the front of the bus (ahead of the “standee line”), and (4) not stopping the bus when passenger’s alerted him that someone was outside the bus. As such, to prove the causation element of negligence, the Claimant needed to prove that one or more of these actions/inactions caused his injuries.

Causation: The type of causation required to sustain a negligence claim is referred to as “proximate” causation, which has two necessary elements. In short, these elements are referred to as cause-in-fact and foreseeability. Specifically, the Claimant must show (1) that the Respondent’s breach in fact caused his injuries, and (2) that the accident that resulted from the Respondent’s breach was a reasonably foreseeable result of the Respondent’s conduct. *Coker v. Wal-Mart Stores, Inc.*, 642 So. 2d 774 (Fla. 1st DCA 1994).

The second element—foreseeability—is itself comprised of three standards set forth in case law, each of which must be met for a claimant to prove his or her case. Accordingly, causation is outlined in terms of its elements as follows:

1. Cause-in-fact.
2. Foreseeability.
 - a. Natural and Probable Consequences Standard.
 - b. Scope of Danger Standard.
 - c. Remote Consequences Standard.

In sum, if a claimant fails to prove any of the above elements or standards, his or her claim fails. As explained below, the Claimant failed to prove (at least) the foreseeability element of causation, because he failed to prove that his claim met (at least) the first two standards of foreseeability.

The “natural and probable consequences standard” has been explained by the Florida Supreme Court as follows:

“Natural and probable” consequences are those which a person by prudent human foresight can be expected to anticipate as *likely* to result from an act, *because they happen so frequently from commission of such act that in the field of human experience they may be expected to happen again*. “Possible” consequences [on the other hand] are those which happen so infrequently from the commission of a particular act, that in the field of human experience, they are not expected as likely to happen again from the commission of the same act.

Cone v. Inter County Tel. and Tel. Co., 40 So. 2d 148, 149 (Fla. 1949) (Emphasis added). However, “it is immaterial that the [Respondent] could not foresee the *precise* manner in which the injury occurred or its *exact* extent.” *McCain v. Florida Power Corp.*, 593 So. 2d 500 (1992) (emphasis in the original).

Here, the Claimant’s accident was not a natural and probable consequence of Mr. Soto’s alleged negligence. A person, “by prudent human foresight,” would not think it *likely* that Mr. Soto’s alleged breaches of his alleged duty would result in a young man, grabbing the door of the moving bus and holding onto it while the bus picked up considerable speed.

The second foreseeability standard is the scope of danger standard. Under this standard, it is not necessary that a respondent foresee the exact course of events that led to an accident, but “it must be shown that the ... general-type accident was a reasonably foreseeable consequence of the [respondent’s] negligence.” *Tieder v. Little*, 502 So. 2d 923, 926 (Fla. 3d DCA 1987).

Here, the general-type accident that occurred was clearly not a reasonably foreseeable consequence of any of the Respondent’s allegedly wrongful conduct. Rather, it was a totally unforeseeable type of accident.

The third standard that comprises the foreseeability component of proximate causation is the remote consequences standard. However, because the Claimant’s

case failed to meet the first two standards, whether the Claimant met this standard is irrelevant.

In sum, the Claimant failed to meet the foreseeability element of causation. Therefore, the Claimant failed to prove the causation element of negligence, an essential element of his negligence claim.

ATTORNEY'S FEES:

Section 768.28(8), F.S., limits the Claimant's attorney's fees to 25 percent of the Claimant's total recovery by way of any judgment or settlement. The Claimant's attorney and lobbyist submitted separate affidavits stating that, in the aggregate, the Claimant's attorney and lobbyist would receive no more than 25 percent of the amount awarded by this bill. Further, the affidavits stated that the Claimant, Jerry Cunningham, would receive 75 percent of any amount awarded under this bill.

RECOMMENDATIONS:

Based on the foregoing, I recommend that Senate Bill 314 (2017) be reported UNFAVORABLY.

Respectfully submitted,

Adam Stallard
Senate Special Master

cc: Secretary of the Senate

By Senator Farmer

34-00587-17

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1 A bill to be entitled
2 An act for the relief of Jerry Cunningham by Broward
3 County; providing for an appropriation to compensate
4 him for injuries sustained as a result of the
5 negligence of Broward County; providing that the
6 appropriation settles all present and future claims
7 related to the negligent act; providing a limitation
8 on the payment of compensation, fees, and costs;
9 providing an effective date.

10
11 WHEREAS, on May 10, 2013, Jerry Cunningham and his mother
12 walked from their home to a bus stop for Broward County Transit
13 on Sample Road in Pompano Beach, where Jerry was to board the
14 bus to take him to school, and

15 WHEREAS, Jerry Cunningham presented himself at the
16 threshold of the bus and was attempting to board the bus with
17 its door still open when the bus driver proceeded to close the
18 door on Jerry's arm, and

19 WHEREAS, the bus driver began to leave the bus stop even
20 though passengers allegedly alerted the driver to Jerry
21 Cunningham's presence and even though two other passengers who
22 had just boarded had not yet crossed the standee line to find a
23 seat, which was in direct violation of state requirements and a
24 policy issued in a Broward County Transit memorandum in March
25 2013, and

26 WHEREAS, as the bus continued to pull away, Jerry
27 Cunningham attempted to run alongside the bus with his arm
28 caught in the doors until he eventually fell to the pavement,
29 unable to keep up with the bus's speed, and was subsequently
30 struck by the bus, and

31 WHEREAS, after the accident, Jerry Cunningham was
32 immediately transported to Broward Health North and was

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subsequently airlifted to the pediatric intensive care unit at Broward Health Medical Center, and

WHEREAS, on June 13, 2013, Jerry Cunningham was transferred to Jackson Memorial Hospital's family-centered pediatric rehabilitation program in order to receive intensive occupational, physical, speech, and neuropsychological therapy, and

WHEREAS, as a result of the accident, Jerry Cunningham suffered traumatic brain injury, multiple skull fractures, multiple facial fractures, multiple rib fractures, a right clavicle fracture, a right scapular fracture, a right pulmonary contusion, and a left medial malleolus fracture and was placed in a medically induced coma for approximately 1 month, and

WHEREAS, Jerry Cunningham was unable to return to school for approximately 18 months and continues to be impacted by the accident through his diagnoses of neurocognitive disorder, adjustment disorder with depression, central auditory processing disorder, neuropsychological impairment in processing speed and memory, motor dexterity impairment, and various physical limitations, and

WHEREAS, the bus driver owed a duty of care to Jerry Cunningham, and Broward County is vicariously liable for the negligence of the bus driver, who was acting within the normal scope of his employment, and

WHEREAS, Jerry Cunningham and his parents, Lillian and Gerrard Cunningham, have agreed to a settlement with Broward County in the sum of \$850,000, and Broward County has agreed to pay \$300,000 of the settlement pursuant to the statutory limits of liability set forth in s. 768.28, Florida Statutes, leaving a

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62 remaining balance of \$550,000, NOW, THEREFORE,

63
64 Be It Enacted by the Legislature of the State of Florida:

65
66 Section 1. The facts stated in the preamble to this act are
67 found and declared to be true.

68 Section 2. Broward County is authorized and directed to
69 appropriate from funds not otherwise encumbered and to draw a
70 warrant in the sum of \$550,000, plus interest accruing at the
71 rate of 7 percent per annum until paid, payable to Jerry
72 Cunningham as compensation for injuries and damages sustained.

73 Section 3. The amount paid by Broward County pursuant to s.
74 768.28, Florida Statutes, and the amount awarded under this act
75 are intended to provide the sole compensation for all present
76 and future claims arising out of the factual situation described
77 in this act which resulted in injuries and damages to Jerry
78 Cunningham. The total amount paid for attorney fees, lobbying
79 fees, costs, and similar expenses relating to this claim may not
80 exceed 25 percent of the amount awarded under this act.

81 Section 4. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Higher Education
Appropriations Subcommittee on Pre-K - 12 Education
Banking and Insurance
Education
Environmental Preservation and Conservation

SENATOR GARY M. FARMER, JR.

34th District

April 4th, 2017

President Lee,
Community Affairs
404 South Monroe Street
Tallahassee, FL 32399-1100
Sent via email to Lee.Tom@flsenate.gov

President Lee,

I respectfully request that you place SB 314 relating to relief of Jerry Cunningham by Broward County on the agenda of the Community Affairs 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 "Gary M. Farmer, Jr.", written in a cursive style.

Senator Gary Farmer
District 34

CC:

Tom Yeatman, Staff Director
Ann Whittaker, Committee Administrative Assistant
Charlie Anderson, Legislative Assistant to Senator Lee
Sarah Schwirian, Legislative Assistant to Senator Lee
Pierce Schuessler, Legislative Assistant to Senator Lee

REPLY TO:

- ☐ Broward College Campus, 111 East Las Olas Boulevard, Suite 913, Fort Lauderdale, Florida 33301 (954) 467-4227
- ☐ 216 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5034

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
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 Community Affairs

BILL: CS/CS/SB 278

INTRODUCER: Community Affairs Committee; Ethics and Elections Committee; and Senators Steube and Brandes

SUBJECT: Local Tax Referenda

DATE: April 18, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Ulrich	EE	Fav/CS
2.	Present	Yeatman	CA	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 278 provides that a referendum to adopt or amend a local option discretionary sales surtax under s. 212.055, F.S., must be held only at a general election and must be approved by a majority vote unless the surtax will be revenue-neutral to the county or special taxing district. If the discretionary sales surtax is revenue-neutral to the county or special taxing district, the referendum may be held at a special election or conducted by mail ballot.

II. Present Situation:

Discretionary Sales Surtax

The Florida Constitution preempts all forms of taxation to the state, except for ad valorem taxes on real estate and tangible personal property, unless otherwise provided by general law.¹

Counties have limited authority to levy discretionary sales surtaxes on transactions subject to state sales tax.^{2,3} The Legislature has prescribed authorized uses for the local option discretionary sales surtax revenues, which include:

- Operating a transportation system in a charter county;⁴

¹ Art. VII, s. 1(a), Fla. Const.

² Sections 212.054 and 212.055, F.S.

³ Surtaxes only apply to the first \$5,000 of a taxable transaction pursuant to s. 212.054(2)(b)1, F.S.

⁴ Section 212.055(1), F.S.

- Financing local government infrastructure projects;⁵
- Providing additional revenue for counties having less than 50,000 residents as of April 1, 1992;⁶
- Providing medical care for indigent persons;⁷
- Funding trauma centers;⁸
- Operating, maintaining, and administering a county public general hospital;⁹
- Constructing and renovating schools;¹⁰
- Providing emergency fire rescue services and facilities;¹¹ and
- Funding pension liability shortfalls.¹²

The surtax is collected by the Department of Revenue (DOR) using the same procedures utilized for the administration, collection, and enforcement of the general state sales tax.¹³ DOR places these funds into the Discretionary Sales Surtax Clearing Trust Fund. A separate account is established for each county imposing a discretionary surtax. The proceeds of the surtax are distributed to the county on a monthly basis, minus an administrative fee of the lesser of 3 percent or administrative costs solely and directly attributable to the surtax. Each county is liable for administrative costs equal to its prorated share of discretionary sales surtax revenue to the amount collected statewide.¹⁴

New surtaxes and rate changes to existing surtaxes take effect on January 1, while the repeal of an existing surtax takes effect on December 31.¹⁵ The governing body of the county or the school district must notify DOR of the imposition, termination, or rate change of a discretionary sales surtax within 10 days of final adoption by ordinance or referendum, but no later than November 16. The notification must include the duration of the surtax, the surtax rate, a copy of the ordinance, and any additional information DOR requires by rule.¹⁶ If the county or school district fails to provide timely notice, the effective date of the change is delayed by 1 year.¹⁷ Counties and school districts are also required to notify DOR if a referendum or consideration of an ordinance to impose, terminate, or change the rate of a surtax is to occur after October 1.¹⁸

The 49 counties and 16 school districts levying one or more discretionary sales surtaxes are projected to realize \$2.35 billion in revenue in fiscal year 2016-17.¹⁹ If all counties and school

⁵ Section 212.055(2), F.S.

⁶ Section 212.055(3), F.S.

⁷ Section 212.055(4)(a), F.S. (for counties with more than 800,000 residents); s. 212.055(7), F.S. (for counties with less than 800,000 residents).

⁸ Section 212.055(4)(b), F.S.

⁹ Section 212.055(5), F.S.

¹⁰ Section 212.055(6), F.S.

¹¹ Section 212.055(8), F.S.

¹² Section 212.055(9), F.S.

¹³ Section 212.054(4)(a), F.S.

¹⁴ Section 212.054(4)(b), F.S.

¹⁵ Section 212.054(5), F.S.

¹⁶ Section 212.054(7)(a), F.S.

¹⁷ *Id.*

¹⁸ Section 212.054(7)(b), F.S. The deadline for this notification is October 1.

¹⁹ 2017 *Florida Tax Handbook*, Office of Economic and Demographic Research, p. 220, available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2017.pdf> (last visited April 7, 2017).

districts levied discretionary sales surtaxes at the maximum possible rate, they would be projected to raise \$11.68 billion in revenue in fiscal year 2016-17.²⁰

Most local discretionary sales surtaxes may only be approved by referendum, while some may be approved by an extraordinary vote of the county commission.²¹ For those requiring voter approval, the referendum must be approved by a majority of electors voting.²² Except for the emergency fire rescue services and facilities surtax, the date of the referendum is at the discretion of the county commission.²³

Referendum Process

The Florida Election Code states the general requirements for a referendum.²⁴ The question presented to voters must contain a ballot summary with clear and unambiguous language, such that a “yes” or “no” vote on the measure indicates approval or rejection, respectively.²⁵ The ballot summary should explain the chief purpose of the measure and may not exceed 75 words.²⁶ The ballot summary and title must be included in the resolution or ordinance calling for the referendum.²⁷ For some discretionary sales surtaxes, the form of the ballot question is specified by statute.²⁸

Five types of elections exist under the Election Code: primary elections, special primary elections, special elections, general elections, and presidential preference primary elections.²⁹ A “general election” is held on the first Tuesday after the first Monday in November in even-numbered years to fill national, state, county, and district offices, and for voting on constitutional amendments.³⁰ A “special election” is an election called for the purpose of voting on a party nominee to fill a vacancy in the national, state, county, or district office.³¹

III. Effect of Proposed Changes:

The bill provides that a referendum to adopt or amend a local option discretionary sales surtax under s. 212.055, F.S., must be held only at a general election and must be approved by a majority of the voters voting on the ballot question for passage unless the surtax will be revenue-

²⁰ 2016 Local Government Financial Information Handbook, Office of Economic and Demographic Research, p. 150, available at <http://edr.state.fl.us/Content/local-government/reports/lgfi16.pdf> (last visited April 7, 2017).

²¹ See generally s. 212.055, F.S., but see s. 212.055(3), F.S. (small county surtax may be approved by extraordinary vote of the county commission, as long as surtax revenues are not used for servicing bond indebtedness), s. 212.055(4), F.S. (indigent care and trauma center surtax may be approved by extraordinary vote of the county commission), and s. 212.055(5), F.S. (county public hospital surtax may be approved by extraordinary vote of the county commission).

²² Section 212.055, F.S.

²³ E.g. s. 212.055(1)(c), F.S. (referendum for charter county and regional transportation system to be held at a time “set at the discretion of the governing body”); but see s. 212.055(8)(b), F.S. (referendum for emergency fire rescue services and facilities surtax must be placed on the ballot of a “regularly scheduled election”).

²⁴ Section 101.161, F.S.

²⁵ Section 101.161(1), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ See s. 212.055(4)(b)1., F.S. (ballot question for discretionary sales surtax for trauma centers).

²⁹ Section 97.021(11), F.S.

³⁰ Art. VI, s. 5(a), Fla. Const. (also codified as s. 97.021(16), F.S.).

³¹ Section 97.021(34), F.S.

neutral to the county or special taxing district. If the discretionary sales surtax is revenue-neutral to the county or special taxing district, the referendum may be held at a special election or conducted by mail ballot. For purposes of the bill, the definitions recited in the present situation section of this analysis for the terms “general election” and “special election” apply.

The Constitution Revision Commission will likely be placing constitutional amendments on the 2018 general election ballot. The last Constitution Revision Commission placed 13 items on the ballot at the ensuing general election. In order to prevent an unusually large general election ballot in the 2018 ballot, the effective date will occur after the 2018 general election.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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:

It is unclear what the term “revenue-neutral” means. Given the propensity of a county’s tax base to grow year-to-year, a local government’s revenues may increase despite no change in tax rate.

Additionally, the concept of revenue-neutral may require a general election even if the local government revenues decrease in comparison to the previous year.

VIII. Statutes Affected:

This bill substantially amends section 212.055 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Community Affairs Committee on April 17, 2017:

- Provides that a referendum to adopt or amend a local option discretionary sales surtax under s. 212.055, F.S., must be held only at a general election and must be approved by a majority vote unless the surtax will be revenue-neutral to the county or special taxing district; and
- Provides that if the discretionary sales surtax is revenue-neutral to the county or special taxing district, the referendum may be held at a special election or conducted by mail ballot.

CS by Ethics and Elections on March 22, 2017:

- Allows a local option discretionary sales surtaxes referendum to be conducted at either a primary or general election;
- Specifies that, if put on the ballot at the primary election, the vote required to pass a local option discretionary sales surtaxes conducted at a primary election is 60 percent of the voters who are voting on the referendum; and
- Changes the effective date to July 1, 2019, so that local option discretionary sales surtaxes are not added to the 2018 general election ballot with the Constitution Revision Commission proposals.

B. Amendments:

None.



682170

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/18/2017	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 460
and insert:
requires the approval of at least 60 percent of the voters
voting on the



870392

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/18/2017	.	
	.	
	.	
	.	

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

Senate Substitute for Amendment (682170) (with title amendment)

Delete lines 456 - 464
and insert:

(10) DATES FOR REFERENDA.—Other than a surtax that will be revenue-neutral to the county, a referendum to adopt or amend a local government sales surtax under this section shall be held only at a general election, as defined in s. 97.021, and requires the approval of a majority of the voters voting on the



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ballot question for passage. A referendum on a surtax that will
be revenue neutral to the county may be held at a special
election or conducted by mail ballot.

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

And the title is amended as follows:

Delete lines 3 - 7

and insert:

212.055, F.S.; requiring referenda adopting or
amending local government discretionary sales
surtaxes, except for revenue-neutral surtaxes, to be
held only at a general election and specifying the
required approval of voters necessary for passage;
authorizing referenda for revenue-neutral surtaxes to
be held at a special election or conducted by mail
ballot; conforming provisions to changes made by the
act; providing an effective date.



788106

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/18/2017	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (870392) (with title amendment)

Delete lines 7 - 12

and insert:

revenue-neutral to the county, special taxing district, or both,
a referendum to adopt or amend a local government sales surtax
under this section shall be held only at a general election, as
defined in s. 97.021, and requires the approval of a majority of
the voters voting on the ballot question for passage. A



788106

referendum on a surtax that will be revenue-neutral to the
county, special taxing district, or both may be held at a
special

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

And the title is amended as follows:

 Delete line 21

and insert:

 surtaxes, except for surtaxes that are revenue-neutral
 to a county, special taxing district, or both, to be

By the Committee on Ethics and Elections; and Senator Steube

582-02734-17

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A bill to be entitled
An act relating to local tax referenda; amending s.
212.055, F.S.; requiring local government
discretionary sales surtax referenda to be held on the
date of a primary election or on the date of a general
election and specifying the required approval of
voters for passage; providing an effective date.

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

Section 1. Paragraphs (a) and (c) of subsection (1),
paragraph (a) of subsection (2), paragraph (a) of subsection
(3), subsections (4) and (5), paragraph (a) of subsection (6),
paragraph (a) of subsection (7), paragraph (b) of subsection
(8), and paragraph (a) of subsection (9) of section 212.055,
Florida Statutes, are amended, and subsection (10) is added to
that section, to read:

212.055 Discretionary sales surtaxes; legislative intent;
authorization and use of proceeds.—It is the legislative intent
that any authorization for imposition of a discretionary sales
surtax shall be published in the Florida Statutes as a
subsection of this section, irrespective of the duration of the
levy. Each enactment shall specify the types of counties
authorized to levy; the rate or rates which may be imposed; the
maximum length of time the surtax may be imposed, if any; the
procedure which must be followed to secure voter approval, if
required; the purpose for which the proceeds may be expended;
and such other requirements as the Legislature may provide.
Taxable transactions and administrative procedures shall be as

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provided in s. 212.054.

(1) CHARTER COUNTY AND REGIONAL TRANSPORTATION SYSTEM
SURTAX.—

(a) Each charter county that has adopted a charter, each county the government of which is consolidated with that of one or more municipalities, and each county that is within or under an interlocal agreement with a regional transportation or transit authority created under chapter 343 or chapter 349 may levy a discretionary sales surtax, ~~subject to approval by a majority vote of the electorate of the county or by a charter amendment approved by a majority vote of the electorate of the county.~~

(c) The proposal to adopt a discretionary sales surtax as provided in this subsection and to create a trust fund within the county accounts shall be placed on the ballot in accordance with law and must be approved in a referendum as set forth in subsection (10) ~~at a time to be set at the discretion of the governing body.~~

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

(a)1. The governing authority in each county may levy a discretionary sales surtax of 0.5 percent or 1 percent. The levy of the surtax shall be pursuant to ordinance enacted by a majority of the members of the county governing authority and approved by ~~a majority of~~ the electors of the county, as set forth in subsection (10), voting in a referendum on the surtax. If the governing bodies of the municipalities representing a majority of the county's population adopt uniform resolutions establishing the rate of the surtax and calling for a referendum on the surtax, the levy of the surtax shall be placed on the

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59 ballot and shall take effect if approved by ~~a majority of the~~
60 electors of the county, as set forth in subsection (10), voting
61 in the referendum on the surtax.

62 2. If the surtax was levied pursuant to a referendum held
63 before July 1, 1993, the surtax may not be levied beyond the
64 time established in the ordinance, or, if the ordinance did not
65 limit the period of the levy, the surtax may not be levied for
66 more than 15 years. The levy of such surtax may be extended only
67 by approval of ~~a majority of the electors of the county~~, as set
68 forth in subsection (10), voting in a referendum on the surtax.

69 (3) SMALL COUNTY SURTAX.—

70 (a) The governing authority in each county that has a
71 population of 50,000 or fewer ~~less~~ on April 1, 1992, may levy a
72 discretionary sales surtax of 0.5 percent or 1 percent. The levy
73 of the surtax shall be pursuant to ordinance enacted by an
74 extraordinary vote of the members of the county governing
75 authority if the surtax revenues are expended for operating
76 purposes. If the surtax revenues are expended for the purpose of
77 servicing bond indebtedness, the surtax shall be approved by ~~a~~
78 ~~majority of the electors of the county~~, as set forth in
79 subsection (10), voting in a referendum on the surtax.

80 (4) INDIGENT CARE AND TRAUMA CENTER SURTAX.—

81 (a)1. The governing body in each county the government of
82 which is not consolidated with that of one or more
83 municipalities, which has a population of at least 800,000
84 residents and is not authorized to levy a surtax under
85 subsection (5), may levy, pursuant to an ordinance either
86 approved by an extraordinary vote of the governing body or
87 conditioned to take effect only upon approval by ~~a majority vote~~

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88 ~~of~~ the electors of the county, as set forth in subsection (10),
89 voting in a referendum, a discretionary sales surtax at a rate
90 that may not exceed 0.5 percent.

91 2. If the ordinance is conditioned on a referendum, a
92 statement that includes a brief and general description of the
93 purposes to be funded by the surtax and that conforms to the
94 requirements of s. 101.161 shall be placed on the ballot by the
95 governing body of the county. The following questions shall be
96 placed on the ballot:

97
98 FOR THE. . . .CENTS TAX
99 AGAINST THE. . . .CENTS TAX
100

101 3. The ordinance adopted by the governing body providing
102 for the imposition of the surtax shall set forth a plan for
103 providing health care services to qualified residents, as
104 defined in subparagraph 4. Such plan and subsequent amendments
105 to it shall fund a broad range of health care services for both
106 indigent persons and the medically poor, including, but not
107 limited to, primary care and preventive care as well as hospital
108 care. The plan must also address the services to be provided by
109 the Level I trauma center. It shall emphasize a continuity of
110 care in the most cost-effective setting, taking into
111 consideration both a high quality of care and geographic access.
112 Where consistent with these objectives, it shall include,
113 without limitation, services rendered by physicians, clinics,
114 community hospitals, mental health centers, and alternative
115 delivery sites, as well as at least one regional referral
116 hospital where appropriate. It shall provide that agreements

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117 negotiated between the county and providers, including hospitals
118 with a Level I trauma center, will include reimbursement
119 methodologies that take into account the cost of services
120 rendered to eligible patients, recognize hospitals that render a
121 disproportionate share of indigent care, provide other
122 incentives to promote the delivery of charity care, promote the
123 advancement of technology in medical services, recognize the
124 level of responsiveness to medical needs in trauma cases, and
125 require cost containment including, but not limited to, case
126 management. It must also provide that any hospitals that are
127 owned and operated by government entities on May 21, 1991, must,
128 as a condition of receiving funds under this subsection, afford
129 public access equal to that provided under s. 286.011 as to
130 meetings of the governing board, the subject of which is
131 budgeting resources for the rendition of charity care as that
132 term is defined in the Florida Hospital Uniform Reporting System
133 (FHURS) manual referenced in s. 408.07. The plan shall also
134 include innovative health care programs that provide cost-
135 effective alternatives to traditional methods of service
136 delivery and funding.

137 4. For the purpose of this paragraph, the term "qualified
138 resident" means residents of the authorizing county who are:

139 a. Qualified as indigent persons as certified by the
140 authorizing county;

141 b. Certified by the authorizing county as meeting the
142 definition of the medically poor, defined as persons having
143 insufficient income, resources, and assets to provide the needed
144 medical care without using resources required to meet basic
145 needs for shelter, food, clothing, and personal expenses; or not

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being eligible for any other state or federal program, or having medical needs that are not covered by any such program; or having insufficient third-party insurance coverage. In all cases, the authorizing county is intended to serve as the payor of last resort; or

c. Participating in innovative, cost-effective programs approved by the authorizing county.

5. Moneys collected pursuant to this paragraph remain the property of the state and shall be distributed by the Department of Revenue on a regular and periodic basis to the clerk of the circuit court as ex officio custodian of the funds of the authorizing county. The clerk of the circuit court shall:

a. Maintain the moneys in an indigent health care trust fund;

b. Invest any funds held on deposit in the trust fund pursuant to general law;

c. Disburse the funds, including any interest earned, to any provider of health care services, as provided in subparagraphs 3. and 4., upon directive from the authorizing county. However, if a county has a population of at least 800,000 residents and has levied the surtax authorized in this paragraph, notwithstanding any directive from the authorizing county, on October 1 of each calendar year, the clerk of the court shall issue a check in the amount of \$6.5 million to a hospital in its jurisdiction that has a Level I trauma center or shall issue a check in the amount of \$3.5 million to a hospital in its jurisdiction that has a Level I trauma center if that county enacts and implements a hospital lien law in accordance with chapter 98-499, Laws of Florida. The issuance of the checks

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on October 1 of each year is provided in recognition of the Level I trauma center status and shall be in addition to the base contract amount received during fiscal year 1999-2000 and any additional amount negotiated to the base contract. If the hospital receiving funds for its Level I trauma center status requests such funds to be used to generate federal matching funds under Medicaid, the clerk of the court shall instead issue a check to the Agency for Health Care Administration to accomplish that purpose to the extent that it is allowed through the General Appropriations Act; and

d. Prepare on a biennial basis an audit of the trust fund specified in sub-subparagraph a. Commencing February 1, 2004, such audit shall be delivered to the governing body and to the chair of the legislative delegation of each authorizing county.

6. Notwithstanding any other provision of this section, a county shall not levy local option sales surtaxes authorized in this paragraph and subsections (2) and (3) in excess of a combined rate of 1 percent.

(b) Notwithstanding any other provision of this section, the governing body in each county the government of which is not consolidated with that of one or more municipalities and which has a population of fewer ~~less~~ than 800,000 residents, may levy, by ordinance subject to approval by ~~a majority of~~ the electors of the county, as set forth in subsection (10), voting in a referendum, a discretionary sales surtax at a rate that may not exceed 0.25 percent for the sole purpose of funding trauma services provided by a trauma center licensed pursuant to chapter 395.

1. A statement that includes a brief and general

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description of the purposes to be funded by the surtax and that conforms to the requirements of s. 101.161 shall be placed on the ballot by the governing body of the county. The following shall be placed on the ballot:

FOR THE. . . .CENTS TAX
AGAINST THE. . . .CENTS TAX

2. The ordinance adopted by the governing body of the county providing for the imposition of the surtax shall set forth a plan for providing trauma services to trauma victims presenting in the trauma service area in which such county is located.

3. Moneys collected pursuant to this paragraph remain the property of the state and shall be distributed by the Department of Revenue on a regular and periodic basis to the clerk of the circuit court as ex officio custodian of the funds of the authorizing county. The clerk of the circuit court shall:

a. Maintain the moneys in a trauma services trust fund.

b. Invest any funds held on deposit in the trust fund pursuant to general law.

c. Disburse the funds, including any interest earned on such funds, to the trauma center in its trauma service area, as provided in the plan set forth pursuant to subparagraph 2., upon directive from the authorizing county. If the trauma center receiving funds requests such funds be used to generate federal matching funds under Medicaid, the custodian of the funds shall instead issue a check to the Agency for Health Care Administration to accomplish that purpose to the extent that the

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agency is allowed through the General Appropriations Act.

d. Prepare on a biennial basis an audit of the trauma services trust fund specified in sub-subparagraph a., to be delivered to the authorizing county.

4. A discretionary sales surtax imposed pursuant to this paragraph shall expire 4 years after the effective date of the surtax, unless reenacted by ordinance subject to approval by ~~a majority of~~ the electors of the county, as set forth in subsection (10), voting in a subsequent referendum.

5. Notwithstanding any other provision of this section, a county shall not levy local option sales surtaxes authorized in this paragraph and subsections (2) and (3) in excess of a combined rate of 1 percent.

(5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in s. 125.011(1) may levy the surtax authorized in this subsection pursuant to an ordinance either approved by extraordinary vote of the county commission or conditioned to take effect only upon approval by ~~a majority vote of~~ the electors of the county, as set forth in subsection (10), voting in a referendum. In a county as defined in s. 125.011(1), for the purposes of this subsection, "county public general hospital" means a general hospital as defined in s. 395.002 which is owned, operated, maintained, or governed by the county or its agency, authority, or public health trust.

(a) The rate shall be 0.5 percent.

(b) If the ordinance is conditioned on a referendum, the proposal to adopt the county public hospital surtax shall be placed on the ballot in accordance with subsection (10) ~~law at a time to be set at the discretion of the governing body~~. The

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referendum question on the ballot shall include a brief general description of the health care services to be funded by the surtax.

(c) Proceeds from the surtax shall be:

1. Deposited by the county in a special fund, set aside from other county funds, to be used only for the operation, maintenance, and administration of the county public general hospital; and

2. Remitted promptly by the county to the agency, authority, or public health trust created by law which administers or operates the county public general hospital.

(d) Except as provided in subparagraphs 1. and 2., the county must continue to contribute each year an amount equal to at least 80 percent of that percentage of the total county budget appropriated for the operation, administration, and maintenance of the county public general hospital from the county's general revenues in the fiscal year of the county ending September 30, 1991:

1. Twenty-five percent of such amount must be remitted to a governing board, agency, or authority that is wholly independent from the public health trust, agency, or authority responsible for the county public general hospital, to be used solely for the purpose of funding the plan for indigent health care services provided for in paragraph (e);

2. However, in the first year of the plan, a total of \$10 million shall be remitted to such governing board, agency, or authority, to be used solely for the purpose of funding the plan for indigent health care services provided for in paragraph (e), and in the second year of the plan, a total of \$15 million shall

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be so remitted and used.

(e) A governing board, agency, or authority shall be chartered by the county commission upon this act becoming law. The governing board, agency, or authority shall adopt and implement a health care plan for indigent health care services. The governing board, agency, or authority shall consist of no more than seven and no fewer than five members appointed by the county commission. The members of the governing board, agency, or authority shall be at least 18 years of age and residents of the county. No member may be employed by or affiliated with a health care provider or the public health trust, agency, or authority responsible for the county public general hospital. The following community organizations shall each appoint a representative to a nominating committee: the South Florida Hospital and Healthcare Association, the Miami-Dade County Public Health Trust, the Dade County Medical Association, the Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade County. This committee shall nominate between 10 and 14 county citizens for the governing board, agency, or authority. The slate shall be presented to the county commission and the county commission shall confirm the top five to seven nominees, depending on the size of the governing board. Until such time as the governing board, agency, or authority is created, the funds provided for in subparagraph (d)2. shall be placed in a restricted account set aside from other county funds and not disbursed by the county for any other purpose.

1. The plan shall divide the county into a minimum of four and maximum of six service areas, with no more than one participant hospital per service area. The county public general

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hospital shall be designated as the provider for one of the service areas. Services shall be provided through participants' primary acute care facilities.

2. The plan and subsequent amendments to it shall fund a defined range of health care services for both indigent persons and the medically poor, including primary care, preventive care, hospital emergency room care, and hospital care necessary to stabilize the patient. For the purposes of this section, "stabilization" means stabilization as defined in s.

397.311(44). Where consistent with these objectives, the plan may include services rendered by physicians, clinics, community hospitals, and alternative delivery sites, as well as at least one regional referral hospital per service area. The plan shall provide that agreements negotiated between the governing board, agency, or authority and providers shall recognize hospitals that render a disproportionate share of indigent care, provide other incentives to promote the delivery of charity care to draw down federal funds where appropriate, and require cost containment, including, but not limited to, case management. From the funds specified in subparagraphs (d)1. and 2. for indigent health care services, service providers shall receive reimbursement at a Medicaid rate to be determined by the governing board, agency, or authority created pursuant to this paragraph for the initial emergency room visit, and a per-member per-month fee or capitation for those members enrolled in their service area, as compensation for the services rendered following the initial emergency visit. Except for provisions of emergency services, upon determination of eligibility, enrollment shall be deemed to have occurred at the time services

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were rendered. The provisions for specific reimbursement of emergency services shall be repealed on July 1, 2001, unless otherwise reenacted by the Legislature. The capitation amount or rate shall be determined before program implementation by an independent actuarial consultant. In no event shall such reimbursement rates exceed the Medicaid rate. The plan must also provide that any hospitals owned and operated by government entities on or after the effective date of this act must, as a condition of receiving funds under this subsection, afford public access equal to that provided under s. 286.011 as to any meeting of the governing board, agency, or authority the subject of which is budgeting resources for the retention of charity care, as that term is defined in the rules of the Agency for Health Care Administration. The plan shall also include innovative health care programs that provide cost-effective alternatives to traditional methods of service and delivery funding.

3. The plan's benefits shall be made available to all county residents currently eligible to receive health care services as indigents or medically poor as defined in paragraph (4) (d).

4. Eligible residents who participate in the health care plan shall receive coverage for a period of 12 months or the period extending from the time of enrollment to the end of the current fiscal year, per enrollment period, whichever is less.

5. At the end of each fiscal year, the governing board, agency, or authority shall prepare an audit that reviews the budget of the plan, delivery of services, and quality of services, and makes recommendations to increase the plan's

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efficiency. The audit shall take into account participant hospital satisfaction with the plan and assess the amount of poststabilization patient transfers requested, and accepted or denied, by the county public general hospital.

(f) Notwithstanding any other provision of this section, a county may not levy local option sales surtaxes authorized in this subsection and subsections (2) and (3) in excess of a combined rate of 1 percent.

(6) SCHOOL CAPITAL OUTLAY SURTAX.—

(a) The school board in each county may levy, pursuant to resolution conditioned to take effect only upon approval by ~~a majority vote of the electors of the county~~, as set forth in subsection (10), voting in a referendum, a discretionary sales surtax at a rate that may not exceed 0.5 percent.

(7) VOTER-APPROVED INDIGENT CARE SURTAX.—

(a)1. The governing body in each county that has a population of fewer than 800,000 residents may levy an indigent care surtax pursuant to an ordinance conditioned to take effect only upon approval by ~~a majority vote of the electors of the county~~, as set forth in subsection (10), voting in a referendum. The surtax may be levied at a rate not to exceed 0.5 percent, except that if a publicly supported medical school is located in the county, the rate shall not exceed 1 percent.

2. Notwithstanding subparagraph 1., the governing body of any county that has a population of fewer than 50,000 residents may levy an indigent care surtax pursuant to an ordinance conditioned to take effect only upon approval by ~~a majority vote of the electors of the county~~, as set forth in subsection (10), voting in a referendum. The surtax may be levied at a rate not

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to exceed 1 percent.

(8) EMERGENCY FIRE RESCUE SERVICES AND FACILITIES SURTAX.—

(b) Upon the adoption of the ordinance, the levy of the surtax must be placed on the ballot by the governing authority of the county enacting the ordinance. The ordinance will take effect if approved by ~~a majority of~~ the electors of the county, as set forth in subsection (10), voting in a referendum held for such purpose. The referendum shall be placed on the ballot of a regularly scheduled election. The ballot for the referendum must conform to the requirements of s. 101.161.

(9) PENSION LIABILITY SURTAX.—

(a) The governing body of a county may levy a pension liability surtax to fund an underfunded defined benefit retirement plan or system, pursuant to an ordinance conditioned to take effect upon approval by ~~a majority vote of~~ the electors of the county, as set forth in subsection (10), voting in a referendum, at a rate that may not exceed 0.5 percent. The county may not impose a pension liability surtax unless the underfunded defined benefit retirement plan or system is below 80 percent of actuarial funding at the time the ordinance or referendum is passed. The most recent actuarial report submitted to the Department of Management Services pursuant to s. 112.63 must be used to establish the level of actuarial funding for purposes of determining eligibility to impose the surtax. The governing body of a county may only impose the surtax if:

1. An employee, including a police officer or firefighter, who enters employment on or after the date when the local government certifies that the defined benefit retirement plan or system formerly available to such an employee has been closed

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may not enroll in a defined benefit retirement plan or system that will receive surtax proceeds.

2. The local government and the collective bargaining representative for the members of the underfunded defined benefit retirement plan or system or, if there is no representative, a majority of the members of the plan or system, mutually consent to requiring each member to make an employee retirement contribution of at least 10 percent of each member's salary for each pay period beginning with the first pay period after the plan or system is closed.

3. The pension board of trustees for the underfunded defined benefit retirement plan or system, if such board exists, is prohibited from participating in the collective bargaining process and engaging in the determination of pension benefits.

4. The county currently levies a local government infrastructure surtax pursuant to subsection (2) which is scheduled to terminate and is not subject to renewal.

5. The pension liability surtax does not take effect until the local government infrastructure surtax described in subparagraph 4. is terminated.

(10) DATES FOR REFERENDA.—A referendum to adopt or amend a local government discretionary sales surtax under this section shall be held only:

(a) At a primary election, as defined in s. 97.021, and requires approval of 60 percent of the voters voting on the ballot question for passage; or

(b) At a general election, as defined in s. 97.021, and requires the approval of a majority of the voters voting on the ballot question for passage.

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465

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

278
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Andrew Hosek

Job Title Policy Analyst

Address 200 W College Ave

Phone _____

Street

Tallahassee

FL

City

State

Zip

Email ahosek@afphq.org

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)

4-17-17

Meeting Date

278

Bill Number (if applicable)

870392 (SA)

Amendment Barcode (if applicable)

Topic Local Surtax Referenda

Name Amber Hughes

Job Title Senior Legislative Advocate

Address ^{PO Box} 1757

Street

Tallahassee

City

State

Zip

Phone 721-3621

Email ahughes@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)

Meeting Date _____

274
Bill Number (if applicable)

Topic _____

870392
Amendment Barcode (if applicable)

Name SEBASTIAN ALEKSANDER

Job Title _____

Address PO BOX 1800
Street

Phone 561.591.559

WEST PALM BEACH 33402
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing PALM BEACH FIREFIGHTERS

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

278
Bill Number (if applicable)

788106
Amendment Barcode (if applicable)

Topic _____

Name EID O' BERRY

Job Title LEGISLATIVE VICE PRESIDENT

Address 13940 182 CT N Jupiter FL 33478 Phone 561-262-8660
Street City State Zip

Email eloberry@jpl.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing PALM BEACH FIREFIGHTERS

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

March 22, 2017

The Honorable Tom Lee
Florida Senate
418 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Lee,

I am writing this letter because my bill, SB 278 Local Tax Referenda, has been referred to the Senate Community Affairs Committee. This bill passed the Senate Ethics and Elections Committee on March 22. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

A handwritten signature in blue ink, appearing to read "W. Gregory Steube".

W. Gregory Steube, District 23

REPLY TO:

- ☐ 722 Apex Road, Unit A, Sarasota, Florida 34240 (941)342-9162
- ☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
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 Community Affairs

BILL: CS/CS/SB 188

INTRODUCER: Community Affairs Committee; Regulated Industries Committee; and Senators Steube and Perry

SUBJECT: Vacation Rentals

DATE: April 18, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 188 permits local governments to amend certain vacation rental laws, ordinances, or regulations to be less restrictive, including providing regulatory relief for certain military personnel and disabled veterans.

II. Present Situation:

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR) 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 length 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.
3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.
4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent.
5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895.
6. Any establishment inspected by the Department of Health and regulated by chapter 513.
7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.
8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.
9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242.

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 40,341 public lodging establishments licensed by the division are distributed as follows:⁵

- Hotels – 1,834 licenses;
- Motels – 2,609 licenses;
- Nontransient apartments – 17,772 licenses;
- Transient apartments – 981 licenses;
- Bed and Breakfast Inns – 256 licenses;
- Vacation rental condominiums – 4,402 licenses;
- Vacation rental dwellings – 12,539 licenses; and
- Vacation rental timeshare projects- 17 licenses.

Inspections of Vacation Rentals

The division must inspect each licensed public lodging establishment at least biannually, but transient and nontransient apartments must be inspected at least annually. However, the division is not required to inspect vacation rentals, but vacation rentals must be available for inspection upon a request by the division.⁶ The division inspects a vacation rental in response to a consumer complaint related to sanitation issues or unlicensed activity. In Fiscal Year 2015-2016, the division received 113 consumer complaints regarding vacation rentals and inspected the vacation rentals.⁷

² Section 509.242(1), F.S.

³ Fla. Admin. Code R. 61C-1.002(4)(a)1.

⁴ The division further classifies a vacation rental license as a single, group, or collective license. See Fla. Admin. Code R. 61C-1.002(4)(a)1. A single license may include one single-family house or townhouse, or a unit or group of units within a single building that are owned and operated by the same individual person or entity. A group license is a license issued by the division to a licensed agent to cover all units within a building or group of buildings in a single complex. A collective license is a license issued by the division to a licensed agent who represents a collective group of houses or units found on separate locations not to exceed 75 houses per license.

⁵ *Division of Hotels and Restaurants Annual Report for FY 2015-2016*, Department of Business and Professional Regulation. A copy of the report is available at:

http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2015_16.pdf (Last visited March 22, 2017).

⁶ Section 509.032(2)(a), F.S.

⁷ See *supra* note 5, at 20.

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.”

Section 509.032(7)(b), F.S., prohibits local laws, ordinances, or regulations that prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. However, this prohibition does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

Section 509.032(7)(c), F.S., provides that the prohibition in s. 509.032(7)(b), F.S., does not apply to local laws, ordinances, or regulations exclusively relating to property valuation as a criterion for vacation rental if the law, ordinance or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.⁸

Legislative History

In 2011, the Legislature preempted 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.⁹

This legislation grandfathered any local law, ordinance, or regulation that was enacted by a local government on or before June 1, 2011.¹⁰

In 2014, the Legislature revised the preemption to its current form with an effective date of July 1, 2014.¹¹ 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.”¹²

Attorney General Opinion

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

⁸ This exemption relates to the Village of Islamorada. According to a representative for the village, its housing ordinance is regularly amended at the DCA's direction, and without this provision they were concerned that the grandfather provision in s. 509.032(7)(b), F.S., would not be sufficient.

⁹ Chapter 2011-119, Laws of Fla.

¹⁰ *Id.*

¹¹ Chapter 2014-71, Laws of Fla.; codified in s. 509.032(7)(b), F.S.

¹² *Id.*

homes that were zoned, prior to June 1, 2011, for single-family residential use.¹³ 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.

A second advisory opinion was issued by the Attorney General on November 13, 2014, for 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 which fail to comply with the registration and licensing requirements in s. 509.241, F.S., which requires public lodging establishments to obtain a license from the division.¹⁴

In addition, the Attorney General issued a third 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.¹⁵ 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.¹⁶

III. Effect of Proposed Changes:

The bill allows local laws, ordinances, or regulations that were in existence on or before June 1, 2011, that prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals, to be amended to be less restrictive. These grandfathered regulations may also reduce local regulatory burdens on vacation rentals owned in whole or in part by a person who is currently serving on active duty or temporary duty in a branch of the United States Armed Services. This also applies to vacation rentals owned by a disabled veteran with a service connected evaluation of such disability of 30 percent or more, according to the United States Department of Veterans Affairs.

The bill takes effect upon becoming law.

¹³ Florida Attorney General, Informal Legal Opinion to Mr. Albert Hadeed, Flagler County Attorney, regarding “Vacation Rental Operation-Local Ordinances,” dated October 22, 2013.

¹⁴ Florida Attorney General, AGO 2014-09, Vacation Rentals - Municipalities - Land Use, November 13, 2014, available at: <http://www.myfloridalegal.com/ago.nsf/printview/5DFB7F27FB483C4685257D900050D65E>. (last visited March 29, 2017).

¹⁵ Florida Attorney General, AGO 2016-12, Municipalities - Vacation Rentals - Zoning, October 5, 2016, available at: <http://www.myfloridalegal.com/ago.nsf/printview/3AF7050D48068C10852580440051386C> (last visited March 29, 2017).

¹⁶ *Id.*

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

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 509.032 of the Florida Statutes.

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

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

CS/CS by Community Affairs Committee on April 17, 2017:

- Allows local regulations that were adopted on or before June 1, 2011, that prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals, to be amended to be less restrictive and to provide relief from regulatory burdens on certain military personnel.

CS by Regulated Industries Committee on March 21, 2017:

- Permits a local law, ordinance, or regulation that regulates activities that arise when a property is used as a vacation rental. However, such regulation must apply uniformly to all residential properties without regard to whether the property is used as a vacation rental or a long-term rental under ch. 83, F.S., or is rented by the property owner.
- Removes from the bill a prohibition against a local law, ordinance, or regulation that restricts the use, prohibits, or regulates vacation rentals based solely on their classification, use, or occupancy.
- Retains the current requirement that local governments cannot prohibit vacation rentals or regulate the duration or frequency of vacations rentals.
- Retains the grandfather provision in current law that exempts from the preemption any local law, ordinance, or regulation that was adopted by a local government on or before June 1, 2011, and seeks to also permit a local government to amend a law, ordinance or regulation adopted on or before June 1, 2011, to be less restrictive. See Section VI, Technical Deficiencies.

B. Amendments:

None.



530754

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/18/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (b) of subsection (7) of section
509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(7) PREEMPTION AUTHORITY.—

(b) A local law, ordinance, or regulation may not prohibit
vacation rentals or regulate the duration or frequency of rental



530754

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:

1. Is being amended to be less restrictive; or
2. Reduces local regulatory burdens on vacation rentals owned, in whole or in part, by a person who is currently serving on active duty or temporary duty in a branch of the United States Armed Services or owned by a disabled veteran with a service-connected evaluation of such disability of 30 percent or more, according to the United States Department of Veterans Affairs.

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 vacation rentals; amending s.
509.032, F.S.; revising applicability for a preemption
of certain local laws, ordinances, or regulations
regarding vacation rentals; providing an effective
date.



112524

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/18/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 21
and insert:
property owner chooses not to rent the property. A local law, ordinance, or regulation may require that a copy of the vacation rental license required under chapter 509, a copy of the certificate of registration required under s. 212.18, and an emergency contact telephone number be submitted to the local jurisdiction. Such law, ordinance, or regulation may not impose



112524

a fee for this submission. The submission is for informational
purposes only and cannot be used as an enforcement mechanism by
the local jurisdiction. A

===== 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:

regulations apply uniformly to all properties;
authorizing local governments to require copies of a
vacation rental license, certificate of registration,
and an emergency contact; prohibiting the assessment
of a fee for such submissions;



314494

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/18/2017	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (112524)

Delete lines 11 - 13
and insert:
a fee for this submission. A



736436

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/18/2017	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 26 - 27
and insert:
except when such law, ordinance, or regulation:
1. Is being amended to be less restrictive; or
2. Applies to a vacation rental owned, in whole or in part,
by a person who is activated, deployed, or temporarily assigned
to military service ~~A local law, ordinance, or regulation may~~



703600

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/18/2017	.	
	.	
	.	
	.	

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

Senate Substitute for Amendment (736436)

Delete lines 26 - 27
and insert:
including any amendment to such law, ordinance or regulation or
regulation to:
1. Make it less restrictive; or
2. Reduce local regulatory burdens on vacation rentals
owned, in whole or in part, by a person who is currently serving
on active duty or temporary duty in a branch of the United



703600

11 States Armed Services or owned by a disabled veteran with a
12 service-connected evaluation of such disability of 30 percent or
13 more, according to the United States Department of Veteran
14 Affairs ~~A local law, ordinance, or regulation may~~

By the Committee on Regulated Industries; and Senators Steube and Perry

580-02662-17

2017188c1

A bill to be entitled
An act relating to vacation rentals; amending s.
509.032, F.S.; authorizing local laws, ordinances, or
regulations to regulate activities relating to
vacation rentals only if such laws, ordinances, or
regulations apply uniformly to all properties;
providing applicability; providing an effective date.

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

Section 1. Paragraph (b) of subsection (7) of section
509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(7) PREEMPTION AUTHORITY.—

(b) A local law, ordinance, or regulation may regulate activities that arise when a property is used as a vacation rental provided such 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 or a long-term rental subject to the provisions of Chapter 83 or whether a 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 rentals of vacation rentals. This paragraph does not apply to any local law, ordinance or regulation adopted on or before June 1, 2011, except when such law, ordinance or regulation is being amended to be less restrictive ~~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~~

580-02662-17

2017188c1

~~apply to any local law, ordinance, or regulation adopted on or
before June 1, 2011.~~

Section 2. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

April 17, 2017

Meeting Date

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

188

Bill Number (if applicable)

736436

Amendment Barcode (if applicable)

Topic Vacation Rentals

Name Armando Ibarra

Job Title

Address 1674 Meridian Avenue #420

Street

Phone 786-514-2965

Miami Beach

FL

33139

City

State

Zip

Email armando@aiadvisory.co

Speaking: ☐ For ☒ Against ☐ Information

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

Representing The Greater Miami & the Beaches Hotel 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)

April 17, 2017
Meeting Date

188
Bill Number (if applicable)

Topic Vacation Rentals

786 434
Amendment Barcode (if applicable)

Name Jessica Fernandez

Job Title _____

Address 1674 Meridian Avenue #420 Phone 305-785-5489
Street

Miami Beach FL 33139 Email jessica@airadvisory.co
City State Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing The Greater Miami & the Beaches Hotel Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 17, 2017
Meeting Date

188
Bill Number (if applicable)

Topic Vacation Rentals

703600
Amendment Barcode (if applicable)

Name Jessica Fernandez

Job Title _____

Address 1674 Meridian Avenue #420
Street

Phone 305-785-5489

Miami Beach FL 33139
City State Zip

Email jessica@ciadvisory.co

Speaking: ☐ For ☒ Against ☐ Information

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

Representing The Greater Miami & the Beaches Hotel Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Apr 17 2017
Meeting Date

188
Bill Number (if applicable)

Topic Vacation Rentals

703600
Amendment Barcode (if applicable)

Name Armando Ibarra

Job Title _____

Address 1674 Meridian Avenue #420
Street
Miami Beach FL 33139
City State Zip

Phone 786-514-2965

Email armando@aiadvisory.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing The Greater Miami & the Beaches Hotel 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)

7/1
Meeting Date

188
Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name ERIN POOLE

Job Title Asst. Leg. Dir.

Address 100 Monroe St
Street
Tallahassee FL
City State Zip

Phone 978 4300

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/17/17

Meeting Date

SB 188

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Troy Flanagan

Job Title VP, State Affairs

Address 310 Escambia St.

Phone 202 285 4371

Fernandina Bch FL 32034
City State Zip

Email tflanagan@ahla.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing American Hotel & Lodging Assn.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-17-17

Meeting Date

CS SB 122

Bill Number (if applicable)

Topic VACATION RENTALS

Amendment Barcode (if applicable)

Name AL HADEED

Job Title COUNTY ATTORNEY

Address 1769 E MURRAY BLVD

Phone 386-313-4005

Street

BUNNELL

City

FL

State

32110

Zip

Email ahadeed@

fla1stcounty.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLA 1ST COUNTY BOARD OF COUNTY COMMISSIONERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

188
Bill Number (if applicable) _____

Topic _____

Amendment Barcode (if applicable) _____

Name Andrew Hasek

Job Title Policy Analyst

Address 200 W College Ave

Phone _____

Street

Tallahassee

City

FL

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)

4/17/17

Meeting Date

188

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Casey Cook

Job Title Senior Legislative Advocate

Address PO Box 1757

Street

Phone 701 3701

Tallahassee FL 32302

City

State

Zip

Email ccook@flcities.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/17/17

Meeting Date

188

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Dexon West

Job Title Legislative Affairs Director

Address _____

Phone _____

Street

Stuart

City

FL

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Martin County Board of County Commissioners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

April 17, 2017

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

188

Meeting Date

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Edgar G. Fernandez

Job Title _____

Address 201 W. Park Avenue, Suite 100

Phone 786 255 5755

Street

Tallahassee

FL

32301

Email edgar@anfieldflorida.com

City

State

Zip

Speaking: For Against Information

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

Representing Indian River County

Appearing at request of Chair: Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 17th 2017
Meeting Date

SB188
Bill Number (if applicable)

Topic VACATION Rentals

Amendment Barcode (if applicable)

Name RICHARD TURNER

Job Title General Counsel

Address 230 S. Adams
Street

Phone 850224-2250

Tallahassee FL 32301
City State Zip

Email RTURNER@FRLA.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Restaurant & Lodging Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 17, 2017
Meeting Date

188
Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Jessica Fernandez

Job Title _____

Address 1674 Meridian Avenue #420
Street

Phone 3/785-5489

Miami Beach FL 33139
City State Zip

Email jessica@aiadvisory.co

Speaking: ☐ For ☒ Against ☐ Information

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

Representing The Greater Miami & the Beaches Hotel Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

April 17, 2017
Meeting Date

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

188
Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Armando Ibarra

Job Title _____

Address 1674 Meridian Avenue #420
Street
Miami Beach FL 33139
City State Zip

Phone 786-514-2965

Email Armando@aiadvisory.co

Speaking: ☐ For ☒ Against ☐ Information

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

Representing The Greater Miami & the Beaches Hotel Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/17/17

Meeting Date

189

Bill Number (if applicable)

Topic Vacational Rentals

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 Ocean Hammock Property Owners Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/17/17

Meeting Date

188

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Andy Gonzalez

Job Title Public Policy Representative

Address 200 S. Monroe St
Street

Phone (850) 224-1406

Tallahassee FL 32301
City State Zip

Email Andy.g@floridarealtors.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Realtors

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/17/2017

Meeting Date

188

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Jennifer Green

Job Title President

Address 113 E. College Ave.

Phone (850) 841-1726

Street

Tallahassee

FL

32301

City

State

Zip

Email jennifer@libertypartnersfl.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing HomeAway

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)

APRIL 17, 2017

188

Meeting Date

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name RICHARD PINSKY

Job Title _____

Address 106 E. College Ave Suite 1200

Phone _____

Street

Tallahassee

FL

Email _____

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing CITY of LAKE WORTH

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-17-17

Meeting Date

188

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Lori Killinger

Job Title attorney/lobbyist

Address 315 S. Calhoun St. Ste 830

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850 222 5702

Email lkilling@llw-law.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Vacation Rental Managers Assn.

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 _____

188
Bill Number (if applicable) _____

Topic _____

Amendment Barcode (if applicable) _____

Name JESS McCARTY

Job Title ASS'T COUNTY ATTORNEY

Address 111 NW 1ST ST 2810

Phone 305-979-7110

Street

MIAMI

33126

City

State

Zip

Email JMM2@MIAMI-DADE.GOV

Speaking: ☐ For ☐ Against ☐ Information

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

Representing MIAMI-DADE COUNTY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/17/17

Meeting Date

SB 188

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Cari Roth

Job Title _____

Address 215 S. Monroe St, Suite 815
Street

Phone 850-999-4100

Tallahassee FL 32303
City State Zip

Email croth@deanmead.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing City of Holmes Beach

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-17-17

Meeting Date

188

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Sue Mullins

Job Title Ramba Consulting Group

Address 120 S. Monroe St

Street

Tallahassee FL 32301

City

State

Zip

Phone 850/590-8000

Email smprambalaw.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing City of Bradenton Beach; Town of Longboat Key

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/17/17
Meeting Date

188
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Nicole Fogarty

Job Title Legislative Affairs

Address 2300 Virginia Ave.

Phone 772.462-6406

St. Pierce FL 34982

Email fogartyn@stluc.co

Speaking: ☐ For ☐ Against ☐ Information

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

Representing St. Lucie County Board of County Commissioners

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/17/17
Meeting Date

188
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Nicole Fogarty

Job Title Legislative Affairs Director

Address 2300 Virginia Ave
Street
Ft. Pierce FL 34982
City State Zip

Phone 772-462-6406

Email fogartyn@stlucie.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Fort Pierce

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/11/17

Meeting Date

SB 188

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Rebecca DelaRosa

Job Title Legislative Affairs Director

Address 301 N Olive Ave, 1101

Phone 850.284.7235

Street

City

State

Zip

West Palm Beach, FL 33401

Email rdela@pbegov.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Palm Beach County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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 _____

188
Bill Number (if applicable) _____

Topic VACATION RENTALS

Amendment Barcode (if applicable) _____

Name CHRISTOPHER EMMANUEL

Job Title POLICY DIRECTOR

Address _____
Street

Phone _____

City

State

Zip

Email CEMMANUEL@GMAIL

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA CHAMBER OF COMMERCE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/17/17
Meeting Date

188
Bill Number (if applicable)

Topic VACATION RENTALS

Amendment Barcode (if applicable)

Name KERRI McNULTY

Job Title ASSISTANT CITY ATTORNEY

Address 444 SW 2ND AVE
Street

Phone (305) 416-1800

MIAMI FL 33130
City State Zip

Email KMcNulty@miamirigor.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing CITY OF MIAMI

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

March 21, 2017

The Honorable Tom Lee
Florida Senate
418 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Lee,

I am writing this letter because my bill, SB 188 Vacation Rentals, has been referred to the Senate Community Affairs Committee. This bill passed the Senate Regulated Industry Committee on March 21. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

A handwritten signature in blue ink, appearing to read "W. Gregory Steube".

W. Gregory Steube, District 23

REPLY TO:

- ☐ 722 Apex Road, Unit A, Sarasota, Florida 34240 (941)342-9162
- ☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
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 Community Affairs

BILL: CS/CS/SB 1372

INTRODUCER: Community Affairs Committee; Regulated Industries Committee; and Senator Perry

SUBJECT: Electrical and Alarm System Contracting

DATE: April 18, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	Fav/CS
2.	Present	Yeatman	CA	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1372 authorizes certified electrical contractors and alarm system contractors (certified contractors) to:

- Act as prime contractors on a project when the majority of the contracted work is within the scope of the certified contractor's license; or
- Subcontract to other licensed contractors any contracted work on a project that is outside the scope of the certified contractor's license.

The bill mirrors current law in part I of ch. 489, F.S., which authorizes prime contracting and subcontracting by construction contractors.

The bill also changes the process by which revisions are made to the Florida Building Code.

Current law requires the Florida Building Commission (commission) to revise the Florida Building Code every 3 years to automatically adopt the most recent versions of the International Code Council I-Codes (I-Codes) and the International Energy Conservation Code (IECC) into the foundation of the Florida Building Code. Additionally, under current law, amendments and modifications to the Florida Building Code only remain in effect until the effective date of a new edition of the Florida Building Code.

Under the new process, the commission must use the I-Codes, the National Electric Code (NFPA), or other nationally adopted model codes and standards for updates to the Florida

Building Code. The commission must adopt an updated Florida Building Code every 3 years through reviews of the I-Codes, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association.

However, the commission must adopt any provision from the I-Codes, the National Electrical Code, or any other code necessary to maintain eligibility for federal funding from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development and maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction. If amendments or modifications are made to the Florida Building Code, those amendments and modifications will be carried forward until the next edition of the Florida Building Code. The Florida Building Code updating process will remain on a 3-year cycle.

In addition, the bill provides that a technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government is not rendered void when the Florida Building Code is updated if the amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621, F.S. However, any such technical amendment carried forward into the next edition of the Florida Building Code is subject to review or modification.

The bill also requires the commission to adopt the Florida Building Code by a two-thirds vote of the members present. Furthermore, a technical advisory committee may favorably recommend a proposal to the commission with a two-thirds vote of the members present.

II. Present Situation:

Construction Contracting

Chapter 489, F.S., dealing with construction contracting, provides for the regulation of contractors based on the type of contracting engaged in by the contractor. Part I of ch. 489, F.S., relating to construction contracting, addresses regulation of the construction industry.¹ Part II of ch. 489, F.S., deals with the licensing of electrical and alarm system contractors.²

Construction Contracting

The Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating the construction industry in this state.³ The CILB is divided into two divisions with separate jurisdictions:

- Division I is comprised of the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.⁴

¹ See ss. 489.101-489.146, F.S.

² See ss. 489.501-489.538, F.S. Part III, dealing with registration of septic tank contractors is not relevant to SB 1372; see ss. 489.551-489.558, F.S.

³ See s. 489.107, F.S.

⁴ See s. 489.107(4)(a), F.S.

- Division II is comprised of the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.⁵

A specialty contractor is one whose scope of work and responsibility is limited to a particular phase of construction as detailed in an administrative rule adopted by the CILB. Jurisdiction is dependent on the scope of work and whether Division I or Division II has jurisdiction over such work in accordance with the applicable administrative rule.⁶

The CILB is authorized to:

- Reprimand or place licensees on probation;
- Revoke, suspend, or deny the issuance or renewal of a certificate or registration;
- Require financial restitution to a consumer for financial harm directly related to a violation;
- Impose an administrative fine not to exceed \$10,000 per violation;
- Require continuing education; or
- Assess costs associated with investigation and prosecution.⁷

Electrical and Alarm System Contracting

Part II of ch. 489, F.S., dealing with electrical and alarm system contracting, sets forth requirements for qualified persons to be licensed if they have sufficient technical expertise in the applicable trade and have been tested on technical and business matters.⁸ The Electrical Contractors' Licensing Board (ECLB) in the DBPR implements part II of ch. 489, F.S.⁹ An alarm system is "any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency."¹⁰ An alarm system includes home-automation equipment, thermostats, and video cameras.¹¹

Section 489.505, F.S., specifies the types of contractors who may lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace or service alarm systems. An alarm system contractor is a person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to conduct all alarm services for compensation, for all types of alarm systems for all purposes.¹² The term also includes any person, firm, or corporation that engages in the business of alarm contracting under an expressed or implied contract or that

⁵ See s. 489.107(4)(b), F.S.

⁶ See, for example, Fla. Admin. Code R. 61G4-15.032 (2016), dealing with the various types of pool/spa contractors.

⁷ See s. 489.129(1)(a) - (q), F.S., for the acts that may result in the imposition of discipline by the CILB.

⁸ See s. 489.501, F.S.

⁹ See ss. 489.507 through 489.517, F.S., concerning the powers and duties of the ECLB.

¹⁰ See s. 489.505(1), F.S.

¹¹ See s. 553.793(1)(b), F.S.

¹² See s. 489.505(2), F.S.

undertakes, offers to undertake, or submits a bid to engage in the business of alarm contracting.¹³ An alarm system contractor whose business includes all types of alarm systems for all purposes is designated as an “alarm system contractor I;” the practice area of an “alarm system contractor II” is identical except that it does not include fire alarm systems.¹⁴

The DBPR may also issue geographically unlimited certificates of competency to an alarm system contractor (certificateholder).¹⁵ The scope of certification is limited to specific alarm circuits and equipment.¹⁶ No mandatory licensure requirement is created by the availability of a certification.¹⁷

Authority to Act as Prime Contractor, or to Subcontract Work

Pursuant to s. 489.113(9)(a), F.S., no provision in part I of ch. 489, F.S., prevents any contractor from acting as a prime contractor¹⁸ where the majority of the work to be performed under the contract is within the scope of his or her license or from subcontracting to other licensed contractors work that is part of the project.

The Florida Building Code and the Florida Building Commission

In 1974, Florida adopted a state minimum building code law requiring all local governments to adopt and enforce a building code that would ensure minimum standards for the public’s health and safety. Four separate model codes were available that local governments could consider and adopt. In that system, the state’s role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.¹⁹

In 1996, a study commission was appointed to review the system of local codes created by the 1974 law and to make recommendations for modernizing the entire system. The 1998 Legislature adopted the study commission’s recommendations for a single state building code and an enhanced oversight role for the state in local code enforcement. The 2000 Legislature authorized

¹³ *Id.*

¹⁴ See s. 489.505(2)(a) and (b), F.S.

¹⁵ See ss. 489.505(4), 489.505(5), and 489.515(1), F.S.

¹⁶ Section 489.505(7), F.S., describes the limitations on the scope of a certificate of competency as those circuits originating in alarm control panels, equipment governed by the Articles 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition, as well as the installation, repair, fabrication, erection, alteration, addition, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 98 volts (RMS), when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks. RMS is the abbreviation for “root mean square,” a statistical term defined as the square root of mean square. See <http://www.practicalphysics.org/explaining-rms-voltage-and-current.html> (last visited Apr. 11, 2017).

¹⁷ *Id.*

¹⁸ A “prime contractor” is a contractor who has contracted with an owner of a project and has full responsibility for its completion; a prime contractor agrees to perform a complete contract, and may employ (and manage) one or more subcontractors to carry out specific parts of the contract. See <http://www.businessdictionary.com/definition/prime-contractor.html> (last visited Apr. 11, 2017).

¹⁹ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, available at http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Jan. 18, 2017).

implementation of the Florida Building Code, and that first edition replaced all local codes on March 1, 2002. In 2004, for the second edition of the Florida Building Code, the state adopted the I-Codes.²⁰ All subsequent Florida Building Codes have been adopted utilizing the I-Codes as the base code. The most recent Florida Building Code is the fifth edition, which is referred to as the 2014 Florida Building Code. The 2014 Florida Building Code went into effect June 30, 2015.²¹

The commission was statutorily created to implement the Florida Building Code. The commission, which is housed within the DBPR, is a 27-member technical body responsible for the development, maintenance, and interpretation of the Florida Building Code. The commission also approves products for statewide acceptance. Members are appointed by the Governor and confirmed by the Senate and include design professionals, contractors, and government experts in the various disciplines covered by the Florida Building Code.²²

Most substantive issues before the commission are vetted through a workgroup process. Consensus recommendations are developed and submitted by appointed representative stakeholder groups in an open process with several opportunities for public input.

According to the commission,

General consensus is a participatory process whereby, on matters of substance, the members strive for agreements which all of the members can accept, support, live with or agree not to oppose. In instances where, after vigorously exploring possible ways to enhance the members' support for the final decision on substantive decisions, and the Commission finds that 100 percent acceptance or support is not achievable, final decisions require at least 75 percent favorable vote of all members present and voting.²³

Building Code Cycle

Pursuant to s. 553.73(7)(a), F.S., the commission must update the Florida Building Code every 3 years. When updating the Florida Building Code, the commission is required to use the most current version of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, the International Residential Code, and the International Electrical Code. These I-Codes form the foundation codes of the updated Florida Building Code.

Any amendments or modifications to the foundation codes found within the Florida Building Code remain in effect only until the effective date of a new edition of the Florida Building Code,

²⁰ The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to “construct safe, sustainable, affordable and resilient structures.” The ICC publishes I-Codes: a complete set of model comprehensive, coordinated building safety and fire prevention codes, for all aspects of construction, that have been developed by ICC members. All 50 states have adopted the I-Codes.

²¹ Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Jan. 18, 2017).

²² Section 553.74, F.S.

²³ Florida Building Commission, Florida Building Commission Consensus-Building Process, *available at* http://www.floridabuilding.org/fbc/commission/FBC_0608/Commission/FBC_Discussion_and_Public_Input_Processes.htm (last visited Jan. 18, 2017).

every 3 years.²⁴ At that point, the amendments or modifications to the foundation codes are removed, unless the amendments or modifications are related to state agency regulations or are related to the wind-resistance design of buildings and structures within the high-velocity hurricane zone of Miami-Dade and Broward Counties, which are carried forward into the next edition of the Florida Building Code.

When a provision of the current Florida Building Code is not part of the foundation codes, an industry member or another interested party must resubmit the provision to the commission during the Florida Building Code adoption process in order to be considered for the next edition of the Florida Building Code.²⁵

Amendments between Cycles

Section 553.73(8), F.S., authorizes the commission to approve amendments pursuant to the rule adoptions procedure in ch. 120, F.S., which are needed to address:

- Conflicts within the updated Florida Building Code;
- Conflicts between the updated Florida Building Code and the Florida Fire Prevention Code adopted pursuant to ch. 633, F.S.;
- Unintended results from the integration of the previously adopted Florida-specific amendments;
- Equivalency of standards;
- Changes to or inconsistencies with federal or state law; or
- Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

However, the commission may not approve amendments that would weaken the construction requirements relating to wind resistance or the prevention of water intrusion.

The commission may also approve technical amendments to the Florida Building Code once a year for statewide or regional application if the amendment:²⁶

- Is needed in order to accommodate the specific needs of Florida.
- Has a reasonable and substantial connection with the health, safety, and welfare of the general public.
- Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction.
- Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities.
- Does not degrade the effectiveness of the Florida Building Code.

²⁴ Section 553.73(7)(g), F.S.

²⁵ Section 553.73(7)(g), F.S.

²⁶ Section 553.73(9), F.S.

The 6th Edition of the Florida Building Code

The commission is currently conducting its rule development process for the 6th Edition of the Florida Building Code. Under s. 553.73(7)(e), F.S., a rule updating the Florida Building Code does not take effect until 6 months after the publication of the updated Florida Building Code. The 6th Edition of the Florida Building Code is tentatively expected to go into effect on December 31, 2017.²⁷

The 6th Edition of the Florida Building Code will incorporate the latest version of the I-Codes (2015). The next edition of the I-Codes will be the 2018 I-Codes.

Voting Processes for the Technical Advisory Committees and the Commission

Under s. 553.73(3)(b), F.S., in order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a three-fourths vote of the members present at the meeting, and at least half of the regular members must be present in order to conduct the meeting.

The Florida Administrative Code, under 61G20-2.002(7), F.A.C., provides a similar requirement for votes taken by the commission. Specifically, the provision provides that “the decision of the commission to approve a proposed amendment shall be by 75% vote. Those proposals failing to meet the vote requirement shall not be adopted.”

III. Effect of Proposed Changes:

Section 1 amends s. 489.516, F.S., to provide that no provision in part II, ch. 489, dealing with electrical contracting and alarm system contracting, may prevent certified electrical contractors and alarm system contractors (certified contractors) from:

- Acting as prime contractors on a project when the majority of the contracted work is within the scope of the certified contractor’s license; or
- Subcontracting to other licensed contractors any contracted work on a project that is outside the scope of the certified contractor’s license.

The bill mirrors s. 489.113(9)(a), F.S., under part I of ch. 489, F.S., which is expressly limited to construction contracting under part I of ch. 489, F.S. The DBPR and the CILB have applied s. 489.113(9)(a), F.S., to electrical and alarm system licensees regulated under part II of ch. 489, F.S.²⁸

Section 2 amends s. 553.73, F.S., to require the commission to use the International Code Council, the National Electric Code (NFPA), or other nationally adopted model codes and standards for updates to the Florida Building Code. The commission shall adopt an updated Florida Building Code every 3 years through reviews of the International Building Code, the

²⁷ 6th Edition (2017) FBC Code Update Development Tasks, *available at* http://www.floridabuilding.org/fbc/thecode/2017_Code_Development/Timelines/FBC_WorkplanOption1-2015.pdf (Last visited Jan. 18, 2017).

²⁸ See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for HB 227 (identical to SB 1372), dated Feb. 15, 2017 (on file with Senate Committee on Regulated Industries) at page 2.

International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association. At a minimum, the commission must adopt any provision from the I-Codes, the National Electric Code, or any other code that is necessary to maintain eligibility for federal funding from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development. The commission shall also review and adopted updates based substantially on the International Energy Conservation Code; however, the commission must maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction pursuant to s. 553.901, F.S. The commission shall adopt updated codes by rule.

Amendments and modifications, other than local amendments under s. 553.73(4), F.S., to the Florida Building Code, will now remain effective when a new edition of the Florida Building Code is published.

In order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a two-thirds vote of the members present at the meeting. Current law requires a three-fourths vote of the members present at the meeting.

The bill also provides that a technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government is not rendered void when the Florida Building Code is updated if the amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621, F.S. However, any such technical amendment carried forward into the next edition of the Florida Building Code is subject to review or modification.

The bill removes references to Florida-specific amendments because the entire building code will now be Florida-specific. The bill also makes other conforming and clarifying changes in terminology.

Section 3 amends s. 553.76, F.S., to require the commission to adopt the Florida Building Code, and amendments thereto, by a two-thirds vote of the members present.

Section 4 provides for an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides clear statutory authority for electrical and alarm system contractors to act as prime contractors and to subcontract work, as currently permitted in accordance with the administrative interpretation by the DBPR and the CILB of the applicability of s. 489.113(9)(a), F.S., to such contractors. The authorization benefits affected electrical and alarm system contractors if they were burdened with higher insurance rates due to the uncertainty created by the administrative interpretation by the DBPR and the CILB.

Builders and building code officials may benefit from the increased continuity of the Florida Building Code and increased transparency of the updated code adoption process.

C. Government Sector Impact:

The DBPR notes that the portions of the bill relating to certified electrical contractors and certified alarm system contractors have no fiscal impact on state government.²⁹

The commission will have to review each change to the I-Codes and the IECC individually rather than approving wholesale changes to the Florida Building Code. However, the DBPR stated the changes in the bill relating to the revised Florida Building Code adoption process could be accomplished with current resources.³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 489.516, 553.73, and 553.76.

²⁹ *Id.* at page 3.

³⁰ See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SPB 7000, dated January 23, 2017 at page 5.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Community Affairs Committee on April 17, 2017:**

- Revises the process by which the Florida Building Code will be adopted such that the commission shall use the I-Codes, the National Electric Code, or other nationally adopted model codes and standards for updates to the Code and shall review the most current updates of such codes;
- Requires the commission to adopt any provision from the I-Codes, the National Electrical Code, or any other code necessary to maintain eligibility for federal funding from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development;
- Provides that a technical advisory committee must receive a two-thirds vote, rather than a three-fourths vote, of the members present at the meeting in order to make a favorable recommendation to the commission;
- Provides that a technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government is not rendered void when the Florida Building Code is updated if the amendment is necessary to protect or provide for more efficient use of water resources. However, any carried forward technical amendment is subject to review or modification under certain circumstances; and
- Requires the commission to adopt the Florida Building Code by a two-thirds vote of the members present.

CS by Regulated Industries Committee on April 4, 2017:

- Authorizes electrical and alarm systems contractors to act as prime contractors and subcontractors, consistent with a similar provision in part I of ch. 489, F.S., authorizing such activities by construction contractors.

B. Amendments:

None.



504446

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/18/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 23
and insert:
the project contracted. If a majority of the work is within the
scope of an alarm system contractor's license, but the remaining
electrical contracting work that is part of the project
contracted exceeds the scope of the license authorized under s.
489.505(7), then this section does not apply.



504446

11 ===== T I T L E A M E N D M E N T =====
12 And the title is amended as follows:
13 Between lines 8 and 9
14 insert:
15 providing applicability;



352768

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/18/2017	.	
	.	
	.	
	.	

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

Senate Substitute for Amendment (504446) (with title amendment)

Delete line 23

and insert:

the project contracted. This subsection does not apply if a majority of the work is within the scope of an alarm system contractor's license, but the remaining electrical contracting work that is part of the project contracted exceeds the scope of the license authorized under s. 489.505(7).



352768

11

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

13 And the title is amended as follows:

14 Between lines 8 and 9

15 insert:

16 providing applicability;



587522

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/18/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 23 and 24
insert:

Section 2. Subsection (3) of section 553.73, Florida Statutes, is amended, paragraph (d) is added to subsection (4) of that section, and subsections (7) and (8) and paragraphs (a) and (b) of subsection (9) of that section are amended, to read:

553.73 Florida Building Code.—

(3) The commission shall use the ~~International Codes~~



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11 ~~published by the~~ International Code Council, the National
12 Electric Code (NFPA 70), or other nationally adopted model codes
13 and standards for updates to needed to develop the base code in
14 ~~Florida to form the foundation for~~ the Florida Building Code.
15 The ~~Florida Building~~ commission may approve technical amendments
16 to the code as provided in, ~~subject to~~ subsections (8) and (9),
17 ~~after the amendments have been~~ subject to all of the following
18 conditions:

19 (a) The proposed amendment must have ~~has~~ been published on
20 the commission's website for a minimum of 45 days and all the
21 associated documentation must have ~~has~~ been made available to
22 any interested party before ~~any~~ consideration by a technical
23 advisory committee.†

24 (b) In order for a technical advisory committee to make a
25 favorable recommendation to the commission, the proposal must
26 receive a two-thirds ~~three-fourths~~ vote of the members present
27 at the ~~technical advisory committee~~ meeting. ~~and~~ At least half
28 of the regular members must be present in order to conduct a
29 meeting.†

30 (c) After the technical advisory committee has considered
31 and recommended ~~consideration and a recommendation for~~ approval
32 of any proposed amendment, the proposal must be published on the
33 commission's website for at least 45 days before ~~any~~
34 consideration by the commission.†~~and~~

35 (d) A proposal may be modified by the commission based on
36 public testimony and evidence from a public hearing held in
37 accordance with chapter 120.

38
39 The commission shall incorporate within ~~sections of~~ the Florida



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Building Code provisions that ~~which~~ address regional and local concerns and variations. The commission shall make every effort to minimize conflicts between the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code.

(4)

(d) A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government pursuant to this subsection is not rendered void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621. However, any such technical amendment carried forward into the next edition of the code pursuant to this paragraph is subject to review or modification as provided in this part.

(7) (a) The commission, ~~by rule adopted pursuant to ss. 120.536(1) and 120.54,~~ shall adopt an updated ~~update the~~ Florida Building Code every 3 years ~~through review of. when updating the~~ ~~Florida Building Code, the commission shall select~~ the most current updates ~~version~~ of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by ~~adopted~~ by the International Code Council, and the National Electrical Code, which is copyrighted and published ~~adopted~~ by the National Fire Protection Association. At a minimum, the commission shall adopt any updates to such codes or any other code necessary to maintain eligibility for federal funding from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing



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69 ~~and Urban Development, to form the foundation codes of the~~
70 ~~updated Florida Building Code, if the version has been adopted~~
71 ~~by the applicable model code entity.~~ The commission shall also
72 review and adopt updates based substantially on ~~select the most~~
73 ~~current version of~~ the International Energy Conservation Code
74 (IECC) ~~as a foundation code; however, the IECC shall be modified~~
75 ~~by~~ the commission shall ~~to~~ maintain the efficiencies of the
76 Florida Energy Efficiency Code for Building Construction adopted
77 and amended pursuant to s. 553.901. The commission shall adopt
78 updated codes by rule.

79 (b) Codes regarding noise contour lines shall be reviewed
80 annually, and the most current federal guidelines shall be
81 adopted.

82 (c) The commission may adopt as a technical amendment to
83 the Florida Building Code ~~modify~~ any portion of the ~~foundation~~
84 codes identified in paragraph (a), but only as needed to
85 accommodate the specific needs of this state. Standards or
86 criteria adopted from these ~~referenced by the~~ codes shall be
87 incorporated by reference to the specific provisions adopted. If
88 a referenced standard or criterion requires amplification or
89 modification to be appropriate for use in this state, only the
90 amplification or modification shall be set forth in the Florida
91 Building Code. The commission may approve technical amendments
92 to the updated Florida Building Code after the amendments have
93 been subject to the conditions set forth in paragraphs (3)(a)-
94 (d). Amendments that ~~to the foundation codes which~~ are adopted
95 in accordance with this subsection shall be clearly marked in
96 printed versions of the Florida Building Code so that the fact
97 that the provisions are ~~Florida-specific~~ amendments ~~to the~~



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~~foundation codes~~ is readily apparent.

(d) The commission shall further consider the commission's own interpretations, declaratory statements, appellate decisions, and approved statewide and local technical amendments and shall incorporate such interpretations, statements, decisions, and amendments into the updated Florida Building Code only to the extent that they are needed to ~~modify the foundation codes to~~ accommodate the specific needs of the state. A change made by an institute or standards organization to any standard or criterion that is adopted by reference in the Florida Building Code does not become effective statewide until it has been adopted by the commission. Furthermore, the edition of the Florida Building Code which is in effect on the date of application for any permit authorized by the code governs the permitted work for the life of the permit and any extension granted to the permit.

(e) A rule updating the Florida Building Code in accordance with this subsection shall take effect no sooner than 6 months after publication of the updated code. Any amendment to the Florida Building Code which is adopted upon a finding by the commission that the amendment is necessary to protect the public from immediate threat of harm takes effect immediately.

(f) Provisions of the Florida Building Code ~~foundation codes~~, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be modified to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, modify the provisions to enhance those construction requirements.



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~~(g) Amendments or modifications to the foundation code pursuant to this subsection shall remain effective only until the effective date of a new edition of the Florida Building Code every third year. Amendments or modifications related to state agency regulations which are adopted and integrated into an edition of the Florida Building Code shall be carried forward into the next edition of the code, subject to modification as provided in this part. Amendments or modifications related to the wind-resistance design of buildings and structures within the high-velocity hurricane zone of Miami-Dade and Broward Counties which are adopted to an edition of the Florida Building Code do not expire and shall be carried forward into the next edition of the code, subject to review or modification as provided in this part. If amendments that expire pursuant to this paragraph are resubmitted through the Florida Building commission code adoption process, the amendments must specifically address whether:~~

~~1. The provisions contained in the proposed amendment are addressed in the applicable international code.~~

~~2. The amendment demonstrates by evidence or data that the geographical jurisdiction of Florida exhibits a need to strengthen the foundation code beyond the needs or regional variations addressed by the foundation code, and why the proposed amendment applies to this state.~~

~~3. The proposed amendment was submitted or attempted to be included in the foundation codes to avoid resubmission to the Florida Building Code amendment process.~~

~~If the proposed amendment has been addressed in the~~



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~~international code in a substantially equivalent manner, the
Florida Building commission may not include the proposed
amendment in the foundation Code.~~

(8) Notwithstanding ~~the provisions of~~ subsection (3) or
subsection (7), the commission may address issues identified in
this subsection by amending the code pursuant ~~only~~ to the rule
adoption procedures ~~contained~~ in chapter 120. ~~Provisions of The~~
Florida Building Code, including provisions ~~those~~ contained in
referenced standards and criteria which relate, ~~relating~~ to wind
resistance or the prevention of water intrusion, may not be
amended pursuant to this subsection to diminish those standards
~~construction requirements~~; however, the commission may, ~~subject~~
~~to conditions in this subsection,~~ amend the Florida Building
Code ~~the provisions~~ to enhance such standards ~~those construction~~
~~requirements~~. Following the approval of any amendments to the
Florida Building Code by the commission and publication of the
amendments on the commission's website, authorities having
jurisdiction to enforce the Florida Building Code may enforce
the amendments. The commission may approve amendments that are
needed to address:

- (a) Conflicts within the updated code;
- (b) Conflicts between the updated code and the Florida Fire
Prevention Code adopted pursuant to chapter 633;
- (c) Unintended results from the integration of previously
adopted ~~Florida-specific~~ amendments with the model code;
- (d) Equivalency of standards;
- (e) Changes to or inconsistencies with federal or state
law; or
- (f) Adoption of an updated edition of the National



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Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

(9)(a) The commission may approve technical amendments to the Florida Building Code once each year for statewide or regional application upon a finding that the amendment:

1. Is needed in order to accommodate the specific needs of this state.

2. Has a reasonable and substantial connection with the health, safety, and welfare of the general public.

3. Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction.

4. Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities.

5. Does not degrade the effectiveness of the Florida Building Code.

The Florida Building Commission may approve technical amendments to the code once each year to incorporate into the Florida Building Code its own interpretations of the code which are embodied in its opinions, final orders, declaratory statements, and interpretations of hearing officer panels under s.

553.775(3)(c), but only to the extent that the incorporation of interpretations is needed to modify the code ~~foundation codes~~ to accommodate the specific needs of this state. Amendments



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approved under this paragraph shall be adopted by rule after the amendments have been subjected to subsection (3).

(b) A proposed amendment must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall be established by rule by the commission and shall include the impact to local government relative to enforcement, the impact to property and building owners, and the impact to industry, relative to the cost of compliance. The amendment must demonstrate by evidence or data that the state's geographical jurisdiction exhibits a need to strengthen the ~~foundation~~ code beyond the needs or regional variations addressed by the ~~foundation~~ code and why the proposed amendment applies to this state.

Section 3. Subsection (2) of section 553.76, Florida Statutes, is amended to read:

553.76 General powers of the commission.—The commission is authorized to:

(2) Issue memoranda of procedure for its internal management and control. The commission may adopt rules related to its consensus-based decisionmaking process, including, but not limited to, super majority voting requirements ~~for commission actions relating to the adoption of the Florida Building Code or amendments to the code.~~ However, the commission must adopt the Florida Building Code, and amendments thereto, by at least a two-thirds vote of the members present at a meeting.

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

And the title is amended as follows:



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243 Delete lines 2 - 8
244 and insert:
245 An act relating to building-related contracting;
246 amending s. 489.516, F.S.; specifying that provisions
247 regulating certified electrical contractors and
248 certified alarm system contractors do not prevent such
249 contractors from acting as a prime contractor or from
250 subcontracting work to other licensed contractors
251 under certain circumstances; amending s. 553.73, F.S.;
252 requiring the Florida Building Commission to use
253 certain entities and codes for updates to the Florida
254 Building Code; revising voting requirements for a
255 technical advisory committee to make a favorable
256 recommendation to the commission; providing that
257 certain technical amendments to the Florida Building
258 Code which are adopted by a local government are not
259 rendered void when the code is updated; specifying
260 that such amendments are subject to review or
261 modification if carried forward into the next edition
262 of the code; requiring the commission to update the
263 Florida Building Code through a review of the most
264 current updates of specified codes; requiring the
265 commission to adopt specified provisions from certain
266 codes; deleting provisions limiting how long an
267 amendment or modification is effective; deleting a
268 provision requiring certain amendments or
269 modifications to be carried forward into the next
270 edition of the code, subject to certain conditions;
271 deleting certain requirements for the resubmission of



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272 expired amendments; deleting a provision prohibiting a
273 proposed amendment from being included in the code if
274 it has been addressed in the international code;
275 conforming provisions to changes made by the act;
276 amending s. 553.76, F.S.; requiring the commission to
277 adopt the Florida Building Code, and amendments
278 thereto, by a minimum percentage of votes;

By the Committee on Regulated Industries; and Senator Perry

580-03440-17

20171372c1

1 A bill to be entitled
2 An act relating to electrical and alarm system
3 contracting; amending s. 489.516, F.S.; specifying
4 that provisions regulating certified electrical
5 contractors and certified alarm system contractors do
6 not prevent such contractors from acting as a prime
7 contractor or from subcontracting work to other
8 licensed contractors under certain circumstances;
9 providing an effective date.

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

12
13 Section 1. Present subsection (5) of section 489.516,
14 Florida Statutes, is renumbered as subsection (6), and a new
15 subsection (5) is added to that section, to read:

16 489.516 Qualifications to practice; restrictions;
17 prerequisites.—

18 (5) This part does not prevent any certified electrical or
19 alarm system contractor from acting as a prime contractor where
20 the majority of the work to be performed under the contract is
21 within the scope of his or her license or from subcontracting to
22 other licensed contractors that remaining work that is part of
23 the project contracted.

24 Section 2. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/17/17

Meeting Date

1372

Bill Number (if applicable)

Topic Electrical + Alarm System Contracting

Amendment Barcode (if applicable)

Name David Shepp

Job Title Lobbyist

Address P.O. Box 3739

Street

Phone 863 581-4250

Lakeland

City

FL

State

33802

Zip

Email sheppesstrategy.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Independent Electrical Contractors

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-19-17

Meeting Date

SB 1372

Bill Number (if applicable)

587522

Amendment Barcode (if applicable)

Topic

Code Process

Name

KARI HEBRANK

Job Title

Address

113 EAST CONEY AVE #200

Street

Tallahassee

FL

32301

City

State

Zip

Phone

850-516-7824

Email

khebrank@wilsonmgmt.com

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

FLORIDA HOME BUILDERS ASSOC.

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-17-17

Meeting Date

1372

Bill Number (if applicable)

587522

Amendment Barcode (if applicable)

Topic BUILDING CODES

Name AM FONTTRISS

Job Title LEG. COUNSEL

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Street

TALL

City

FL

State

32312

Zip

Phone 850-222-2772

Email AFONTTRISS@AOL.COM

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

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

Representing FLA ROOFING & SHEET METAL CONTRACTORS ASSN
FLA REFRIGERATION & A/C CONTRACTORS ASSN

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

4-17-17

Meeting Date

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

1372

Bill Number (if applicable)

587522

Amendment Barcode (if applicable)

Topic _____

Name Dale Calhoun

Job Title _____

Address 201 S Monroe St Unit A

Street

Tallahassee FL 32301

City

State

Zip

Phone 850 681 0496

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Natural Gas Association & Florida Propane Gas Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/17/17

Meeting Date

SB 1372

Bill Number (if applicable)

352768

Amendment Barcode (if applicable)

Topic ELECTRICAL IAWARM CONTRACTING

Name JIMMY SHARKEY

Job Title PRES, CAPITOL ALLIANCE GROUP

Address 1070 E College Ave # 640

Street

TLH

City

FL

State

32301

Zip

Phone 850 224 1660

Email jimmysharkey@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing NATIONAL ELECTRICAL CONTRACTORS 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 Community Affairs

BILL: CS/SB 1312

INTRODUCER: Community Affairs Committee and Senator Perry

SUBJECT: Construction

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Favorable
2.	Present	Yeatman	CA	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1312 amends various provisions of the Florida Statutes relating to construction and the Florida Building Code. Specifically, the bill:

- Requires the Department of Business and Professional Regulation (DBPR) to use \$150,000 from the surcharge assessed on building permits to fund, for the 2017-2018 fiscal year, the University of Florida School of Construction Management continuation of the Construction Industry Workforce Taskforce (CIWT);
- Requires professional engineers to disclose whether they have professional liability insurance and, if so, the limits of the policy prior to contracting for engineering;
- Provides that a professional engineer may certify solar energy systems in lieu of the Florida Solar Energy Center;
- Provides that a pool/spa contractor is not required to subcontract electrical work relating to the installation, replacement, disconnection or reconnection of power wiring of the load side of the dedicated existing electrical disconnecting means, but is required to subcontract certain work related to the circuit breaker;
- Prohibits a political subdivision from adopting or enforcing ordinances or building permit requirements that conflict with corporate trademarks, service marks, logos, color patterns or other corporate branding on real property in connection with business activities related to the sale of liquid fuels or other franchises; providing for preemption of certain local laws and regulations; and providing for retroactive applicability;
- Requires the Florida Building Commission to amend the Florida Building Code-Energy Conservation to eliminate duplicative commissioning reporting requirements for HVAC and

electrical systems; authorize commissioning reports to be provided by a licensed design professional, electrical engineer, or mechanical engineer; and to adopt certain standards relating to the substitution of components for residential exterior doors;

- Prohibits the Florida Building Commission from adopting national energy conservation standards related to automatic lights;
- Prohibits special or independent districts from requiring the payment of additional fees, charges, or expenses related to providing proof of licensure and insurance coverage;
- Prohibits a county, municipality, special taxing district, public utility, or private utility from:
 - Requiring a separate water connection for a fire sprinkler system for a one-family or two-family dwelling if the dwelling's original water connection can meet the needs of the sprinkler system; or
 - Except under specified circumstances, charging a water or sewer rate for a larger water meter for a one-family or two-family dwelling because of the installation of a fire sprinkler system above that which is charged to a one-family and two-family dwelling with a base meter.
- Prohibits a local government from requiring an owner of a residence to obtain a permit to paint the residence, regardless of whether the residence is owned by a limited liability company;
- Includes municipal gas utilities in the exemption from construction contracting licensure requirements for public utilities;
- Requires the Department of Education, in conjunction with the Department of Economic Opportunity, to create a study to implement the recommendations of the CIWT dated January 20, 2017. The Department of Education must provide the study to the Governor, the President of the Senate, and the Speaker of the House of Representatives before January 9, 2018;
- Requires CareerSource Florida, Inc., to fund construction training programs using existing federal funds awarded to the corporation for training, and to use the previous statewide Florida ReBuilds program as an implementation model for such programs;
- Provides that the Florida Department of Education and the Florida Department of Economic Opportunity must develop a plan to implement the recommendations of the CIWT report, and submit the plan to the Taskforce by July 1, 2018;
- Provides that CareerSource Florida, Inc., must develop a plan to implement the recommendations of the Construction Industry Workforce Taskforce using existing federal funds and the Florida ReBuilds implementation model, and submit the plan to the Taskforce by July 1, 2018;
- Revises the process by which the Florida Building Code will be adopted such that the commission shall use the I-Codes, the National Electric Code, or other nationally adopted model codes and standards for updates to the Florida Building Code and shall review the most current updates of such codes;
- Requires the commission to adopt any provision from the I-Codes, the National Electrical Code, or any other code necessary to maintain eligibility for federal funding from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development;
- Provides that a technical advisory committee must receive a two-thirds vote, rather than a three-fourths vote, of the members present at the meeting in order to make a favorable recommendation to the commission;

- Provides that a technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government is not rendered void when the Florida Building Code is updated if the amendment is necessary to protect or provide for more efficient use of water resources. However, any carried forward technical amendment is subject to review or modification under certain circumstances; and
- Requires the commission to adopt the Florida Building Code by a two-thirds vote of the members present.

II. Present Situation:

The Florida Building Code and the Florida Building Commission (Bill Sections 6 and 7)

In 1974, Florida adopted a state minimum building code law requiring all local governments to adopt and enforce a building code that would ensure minimum standards for the public's health and safety. Four separate model codes were available that local governments could consider and adopt. In that system, the state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.¹

In 1996, a study commission was appointed to review the system of local codes created by the 1974 law and to make recommendations for modernizing the entire system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and an enhanced oversight role for the state in local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code, and that first edition replaced all local codes on March 1, 2002. In 2004, for the second edition of the Florida Building Code, the state adopted the I-Codes.² All subsequent Florida Building Codes have been adopted utilizing the I-Codes as the base code. The most recent Florida Building Code is the fifth edition, which is referred to as the 2014 Florida Building Code. The 2014 Florida Building Code went into effect June 30, 2015.³

The commission was statutorily created to implement the Florida Building Code. The commission, which is housed within the DBPR, is a 27-member technical body responsible for the development, maintenance, and interpretation of the Florida Building Code. The commission also approves products for statewide acceptance. Members are appointed by the Governor and confirmed by the Senate and include design professionals, contractors, and government experts in the various disciplines covered by the Florida Building Code.⁴

¹ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, available at http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Apr. 18, 2017).

² The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." The ICC publishes I-Codes: a complete set of model comprehensive, coordinated building safety and fire prevention codes, for all aspects of construction, that have been developed by ICC members. All 50 states have adopted the I-Codes.

³ Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Apr. 18, 2017).

⁴ Section 553.74, F.S.

Most substantive issues before the commission are vetted through a workgroup process. Consensus recommendations are developed and submitted by appointed representative stakeholder groups in an open process with several opportunities for public input.

According to the commission,

General consensus is a participatory process whereby, on matters of substance, the members strive for agreements which all of the members can accept, support, live with or agree not to oppose. In instances where, after vigorously exploring possible ways to enhance the members' support for the final decision on substantive decisions, and the Commission finds that 100 percent acceptance or support is not achievable, final decisions require at least 75 percent favorable vote of all members present and voting.⁵

Building Code Cycle

Pursuant to s. 553.73(7)(a), F.S., the commission must update the Florida Building Code every 3 years. When updating the Florida Building Code, the commission is required to use the most current version of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, the International Residential Code, and the International Electrical Code. These I-Codes form the foundation codes of the updated Florida Building Code.

Any amendments or modifications to the foundation codes found within the Florida Building Code remain in effect only until the effective date of a new edition of the Florida Building Code, every 3 years.⁶ At that point, the amendments or modifications to the foundation codes are removed, unless the amendments or modifications are related to state agency regulations or are related to the wind-resistance design of buildings and structures within the high-velocity hurricane zone of Miami-Dade and Broward Counties, which are carried forward into the next edition of the Florida Building Code.

When a provision of the current Florida Building Code is not part of the foundation codes, an industry member or another interested party must resubmit the provision to the commission during the Florida Building Code adoption process in order to be considered for the next edition of the Florida Building Code.⁷

Amendments between Cycles

Section 553.73(8), F.S., authorizes the commission to approve amendments pursuant to the rule adoptions procedure in ch. 120, F.S., which are needed to address:

- Conflicts within the updated Florida Building Code;

⁵ Florida Building Commission, Florida Building Commission Consensus-Building Process, *available at* http://www.floridabuilding.org/fbc/commission/FBC_0608/Commission/FBC_Discussion_and_Public_Input_Processes.htm (last visited Apr. 18, 2017).

⁶ Section 553.73(7)(g), F.S.

⁷ Section 553.73(7)(g), F.S.

- Conflicts between the updated Florida Building Code and the Florida Fire Prevention Code adopted pursuant to ch. 633, F.S.;
- Unintended results from the integration of the previously adopted Florida-specific amendments;
- Equivalency of standards;
- Changes to or inconsistencies with federal or state law; or
- Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

However, the commission may not approve amendments that would weaken the construction requirements relating to wind resistance or the prevention of water intrusion.

The commission may also approve technical amendments to the Florida Building Code once a year for statewide or regional application if the amendment:⁸

- Is needed in order to accommodate the specific needs of Florida;
- Has a reasonable and substantial connection with the health, safety, and welfare of the general public;
- Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction;
- Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities; and
- Does not degrade the effectiveness of the Florida Building Code.

The 6th Edition of the Florida Building Code

The commission is currently conducting its rule development process for the 6th Edition of the Florida Building Code. Under s. 553.73(7)(e), F.S., a rule updating the Florida Building Code does not take effect until 6 months after the publication of the updated Florida Building Code. The 6th Edition of the Florida Building Code is tentatively expected to go into effect on December 31, 2017.⁹

The 6th Edition of the Florida Building Code will incorporate the latest version of the I-Codes (2015). The next edition of the I-Codes will be the 2018 I-Codes.

Voting Processes for the Technical Advisory Committees and the Commission

Under s. 553.73(3)(b), F.S., in order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a three-fourths vote of the members present at the meeting, and at least half of the regular members must be present in order to conduct the meeting.

⁸ Section 553.73(9), F.S.

⁹ 6th Edition (2017) FBC Code Update Development Tasks, *available at* http://www.floridabuilding.org/fbc/thecode/2017_Code_Development/Timelines/FBC_WorkplanOption1-2015.pdf (Last visited Apr. 18, 2017).

The Florida Administrative Code, under 61G20-2.002(7), F.A.C., provides a similar requirement for votes taken by the commission. Specifically, the provision provides that “the decision of the commission to approve a proposed amendment shall be by 75% vote. Those proposals failing to meet the vote requirement shall not be adopted.”

Solar Energy Systems (Bill Section 1)

Florida Solar Energy Center

The Florida Statutes require that all solar energy systems¹⁰ manufactured or sold in the state must meet standards established by the Florida Solar Energy Center (FSEC or center).¹¹ To accomplish this, the Florida Statutes require the FSEC to:

- Identify the most reliable designs and types of solar energy systems by consulting with people in research centers who are engaged in researching and experimenting with solar energy systems;
- Develop and promulgate standards for solar energy systems;
- Establish criteria for testing the performance of solar energy systems; and
- Maintain the necessary capability for testing or evaluating performance of solar energy systems.¹²

The FSEC may accept test results from other persons or entities if the tests are conducted according to the criteria established by the center and if the testing entity does not have a vested interest in the manufacture, distribution, or sale of solar energy systems.¹³

The FSEC also accepts standards and certifications for solar thermal products from the Solar Rating and Certification Program (SRCC) and the International Association of Plumbing and Mechanical Officials (IAPMO).¹⁴

In 2009, the Office of Program Policy Analysis & Government Accountability (OPPAGA) reported that FSEC had a 2-year backlog for testing and certifying solar energy systems, adversely affecting both manufacturers and citizens.¹⁵ However, in 2011, OPPAGA reported that

¹⁰ The term “solar energy systems” means equipment that collects and uses incident solar energy for water heating, space heating or cooling, or other applications which normally require a conventional source of energy such as petroleum products, natural gas, or electricity, and which performs primarily with solar energy. If solar energy is used in a supplemental way, only those components that collect and transfer solar energy are included. Section 377.705(3)(b), F.S.

¹¹ Section 377.705(4), F.S.

¹² *Id.*

¹³ *Id.*

¹⁴ Florida Solar Energy Center, *Testing and Certification*, <http://www.fsec.ucf.edu/En/certification-testing/index.htm>. SRCC produces solar thermal standards and certifications that are used globally. Solar Rating & Certification Corporation, *About Us – General*, <http://www.solar-rating.org/about/general.html>. IAPMO certifies solar thermal products for use in North America. International Association of Plumbing and Mechanical Officials, *Solar Product Certification*, <http://www.iapmorg.org/Pages/SolarCertification.aspx> (last visited April 18, 2017).

¹⁵ OPPAGA, Report No. 09-17, *Florida Solar Energy Center Conducts Research and Development; Legislature Could Direct Fee Increases and Drop Certification Requirement*, p. 1 (March 2009), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0917rpt.pdf>.

the FSEC had eliminated the backlog and testing times were down to 129 days due to streamlined testing procedures.¹⁶

Professional Engineers (Bill Section 2)

Current law provides that only professional engineers or licensed engineers may practice engineering in Florida. Engineers are regulated by the Florida Board of Professional Engineers (Board). The Board is responsible for reviewing applications, administering exams, licensing qualified applicants, and regulating and enforcing the proper practice of engineering in the state. The Board is comprised of 11 members appointed by the Governor and meets six times a year.¹⁷ Administrative, investigative, and prosecutorial services are provided to the Board by the Florida Engineers Management Corporation (FEMC).¹⁸ FEMC is a non-profit, single purpose corporation that operates through a contract with DBPR.

In order to obtain licensure as a professional engineer, applicants must pass a fundamentals examination and a principles and practice examination, have good moral character, obtain a degree from a four year engineering curriculum, and have four years of engineering experience.¹⁹

Current law does not require professional engineers to maintain professional liability insurance unless the engineer is performing building inspection services.²⁰ A professional engineer is also not required to disclose to a client whether they maintain professional liability insurance. If the professional engineer does have professional liability insurance, they are not currently required to disclose the limits of such policy.

Construction Industry Workforce Taskforce Recommendations (Bill Sections 14 and 15)

In 2016, the Legislature created the Construction Industry Workforce Taskforce to address the construction industry labor force shortage in the state.²¹ The CIWT proposed a list of recommendations to remediate the shortage of construction industry workers, including recommending that the Legislature:

- Expand the definition of a Local Educational Agency (LEA), as used in apprenticeship programs in Florida, to include institutions other than public schools, such as private training organization (for profit and nonprofit), labor unions, industry trade associations, or other community based organizations;
- Create a legislative study to consider the appropriateness of moving apprenticeship programs from the Department of Education (DOE) to the Department of Economic Opportunity (DEO), and to address and clarify how current apprenticeships are funded from the state to the LEAs and what options the LEAs have in how they spend apprenticeship funding;

¹⁶ OPPAGA, Report No. 11-19, The Florida Solar Energy Center Eliminated the Backlog for Testing and Certification and Reduced its Reliance on State Funds, p. 1 (September 2011), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1119rpt.pdf>.

¹⁷ The Florida Board of Professional Engineers, *About Florida Board of Professional Engineers*, <https://fbpe.org/about/about-fbpe/> (last visited on Apr. 18, 2017).

¹⁸ The Florida Board of Professional Engineers, *About Florida Engineers Management Corporation*, <https://fbpe.org/about/about-femc/> (last visited on Apr. 18, 2017).

¹⁹ Section 471.015, F.S.

²⁰ Section 471.033(1), F.S.

²¹ Chapter 2016-129, Laws of Fla.

- Require DOE to recognize the National Center for Construction Education and Research curriculum, or other comparable national curriculum, as eligible for high school credits, college credits, and state supported scholarships (e.g., Bright Futures Scholarship Program);
- Provide additional state Career and Technical Education (CTE) support to be directed towards K-12 programs so that “shop” or other construction related programs are added back into CTE programs;
- Extend for 4 additional years the “sunset” timeframe for CIWT and provide funding of \$100,000 per year and a mechanism to obtain matching funds to continue to coordinate CIWT. Funding will be used to continue data collection and analysis, ongoing economic impact studies, and subsequent strategies, implementation planning, and follow up;
- Direct CareerSource Florida, Inc. (CSF) to set aside existing federal training dollars for construction training programs using the previous state-wide Florida reBuilds Initiative (FRI) as an implementation model;
- Provide funding from the existing DBPR Building Permit Surcharge trust fund that is dedicated to better code compliance through the recruitment and training of a qualified workforce;
- Allow for an alternative instructor certification process through the DOE that does not require certification through an LEA;
- Create a joint legislative audit committee to review compliance regarding use of building permit fees beyond the scope of supporting the building department activities; and
- Support The Building Officials Association of America, Inc., in the development of initiatives to further opportunities for potential building code enforcement professionals.²²

CareerSource Florida, Inc. (Bill Section 15)

CSF is a not-for-profit corporation administratively housed within the DEO and is the principal workforce policy organization for the state. CSF designs and implements strategies that help Floridians enter, remain in, and advance in the workplace. CSF procures and disburses funds for workforce development.²³

Florida reBuilds Initiative

The FRI was a program formed in 2005 to counter the growing shortage of construction workers. The former Florida Agency for Workforce Innovation (AWI) performed a survey of 50,000 employers, which identified 13,712 construction job vacancies. In order to tackle the issue, AWI sought to provide individuals with short-term, entry-level training to enable them to enter into the construction trades.²⁴

The FRI targeted areas for training programs were:

- Air Conditioning, Refrigeration, and Heating Technology (maximum of 240 class hours);
- Carpentry (maximum of 120 class hours);

²² University of Florida, Florida Construction Workforce Taskforce 9-10 (January 27, 2017), <http://www.cce.ufl.edu/projects/current-projects/construction-workforce-taskforce/reports/>.

²³ Section 445.004, F.S.

²⁴ Florida Division of Emergency Management, *Lt. Governor Jennings Unveils Florida Rebuilds Initiative to Assist with Labor Shortage and Hurricane Recovery* (December 13, 2005), available at http://www.floridadisaster.org/eoc/eoc_Activations/Wilma05/Reports/FLRebuilds.pdf/.

- Dry wall (maximum of 120 class hours);
- Electricity (maximum of 240 class hours);
- Masonry (maximum of 80 class hours);
- Plumbing (maximum of 180 class hours); and
- Roofing (maximum of 120 class hours).

Participants were eligible for FRI programs if they were 18 years of age, a United States citizen, and willing to commit to attend the full program. If an eligible participant registered for the program, they were entered into a database run by a regional workforce made available to educational providers. Once the educational provider recruited enough eligible participants and was authorized by AWI to begin the program, the participants were enrolled in classes lasting up to 8 weeks.

The educational providers were reimbursed \$9 per class hour, up to the maximum hours identified per program area. Regional workforce boards were paid \$25 per participant in an approved program and \$250 per participant who was placed on a job site within 90 days of the program completion.²⁵

Building Commissioning (Bill Section 11)

The Florida Building Code defines “building commissioning” to mean that selected building systems have been designed, installed, and function according to the owner’s project requirements, construction documents, and the minimum requirements of the Florida Building Code.²⁶ Commissioning reports are performed by registered design professionals. A registered design professional is anyone licensed in Florida as an architect, landscape architect, professional engineer, or a land surveyor and mapper.²⁷

Section C408 of the 5th edition of the Florida Building Code (Energy Conservation) requires a commercial building to receive a commissioning report prior to receiving a passing mechanical final inspection. Heating, ventilation, air conditioning, and the lighting systems are tested in the report. The commissioning report includes:

- A commission plan which includes:
 - A description of the activities to accomplish in the report including the personnel intended to accomplish the activities;
 - A listing of the equipment, appliances, or systems to be tested, and a description of the tests to be performed;
 - The functions to be tested;
 - Conditions under which the test will be performed; and
 - Measurable criteria for performance.
- A preliminary report of tests and results which must identify:
 - Deficiencies found during testing that have not been corrected; and

²⁵ Florida Agency for Workforce Innovation, *Florida Rebuilds Program Operations*, available at http://floridajobs.org/pdg/Memos/FIReBuildsProgOp_Atchmnt_121305.pdf/.

²⁶ Section C202 of the 5th edition of the Florida Building Code (Energy Conservation).

²⁷ Section 725.08(4), F.S.

- Tests that cannot be performed because of climate conditions and the conditions required to perform the tests.
- A final report which includes:
 - Test results;
 - Disposition of deficiencies found during testing; and
 - A test procedure used for repeatable testing outcomes.²⁸

Door components (Bill Section 16)

Door components are the items such as the hinge, lockset, weatherstrip, trim, and rails that make up a door.

Section R612.9 of the 5th edition of the Florida Building Code (Residential) provides that residential door components may be substituted or interchanged in exterior door assemblies if the components have been approved by an approved product evaluation entity, certification agency, testing laboratory or engineer, and the door components provide equal or greater structural performance as demonstrated by accepted engineering practices.²⁹

American National Standards Institute and World Millwork Alliance (Bill Section 16)

The American National Standards Institute (ANSI) is a non-profit organization that aims to strengthen the U.S. market place, protect the environment, and assure the safety and health of consumers by creating and promulgating thousands of standards and guidelines.³⁰

The World Millwork Alliance (WMA) is a wholesale distribution association dedicated to the progression and prosperity of the millwork industry.³¹ The WMA also develops standards and is accredited by ANSI. In 2009, the WMA developed the WMA 100, a voluntary performance standard for side-hinged exterior doors. The WMA 100:

- Is approved by ANSI;
- Uses the ASTM E330 test method to obtain a full system design pressure rating;
- Defines methods for qualifying door system components for substitution in the rated system; and
- Outlines slab stiffness testing procedures for use in determining component substitution.³²

The ASTM E330 test is designed by the American Society for Testing and Materials International, and is a standard for determining the effects of a wind load on exterior building surface elements.³³ The 5th edition of the Florida Building Code (Residential) requires exterior doors with side hinges to either conform to the AAMA/WDMA/CSA 101/I.S.2/A440 or the ASTM E330.³⁴

²⁸ Section C408 of the 5th edition of the Florida Building Code (Energy Conservation).

²⁹ Section R612.9 of the 5th edition of the Florida Building Code (Residential).

³⁰ ANSI, *About ANSI*, <https://www.ansi.org/about/ansi/overview/overview?menuid=1> (last visited on Apr. 18, 2017).

³¹ WMA, *About*, <http://worldmillworkalliance.com/about/> (last visited on Apr. 18, 2017).

³² WMA, *ANSI/WMA 100*, <http://worldmillworkalliance.com/codes-and-standards/wma-100/> (last visited on Apr. 18, 2017).

³³ ASTM International, *Standard Test Method for Structural Performance of Exterior Windows, Doors, Skylights, and Curtain Walls by Uniform Static Air Pressure Difference*, <https://www.astm.org/Standards/E330.htm> (last visited on Apr. 18, 2017).

³⁴ Section R612.3 and R612.5 of the 5th edition of the Florida Building Code (Residential).

American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard (Bill Sections 6 and 11)

The American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) is a society founded in 1894 that focuses on improving building systems, energy efficiency, indoor air quality, and refrigeration through research publishing, continuing education, and standards.³⁵

The ASHRAE energy conservation standard for buildings that are not low-rise residential buildings is Standard 90.1-2016 (Standard 90). Section 9.4.1.1(g) of Standard 90 provides that the general lighting power in an enclosed area of a building must automatically reduce by 50 percent within 20 minutes of all occupants leaving the area.³⁶

The most current version of the Florida Building Code adopted the 2010 version of Standard 90.³⁷ However, the 2010 version of Standard 90 does not include Section 9.4.1.1(g).³⁸ The draft of the sixth edition of the Florida Building Code (2017) does contain provisions that adopt this requirement.³⁹

Local Ordinances, Building Permits and Sign Requirements (Bill Section 8)

Florida has adopted a uniform building code in accordance with s. 553.72, F.S. Section 553.79, F.S., as part of the Florida Building Codes Act, has provisions relating to permits, applications, issuance, and inspections pertaining to the Florida Building Code. Local jurisdictions ensure compliance with the Florida Building Code.

Local jurisdictions may set requirements for signs, and sign placement for local businesses by local ordinance.

The Florida Department of Agriculture and Consumer Services regulates gasoline service stations in accordance with ch. 526, F.S. There are approximately 9,000 gasoline stations within Florida.

Federal franchise laws give prospective purchasers of franchises material information needed to weigh risks and benefits of such investments. The Federal Trade Commission's regulations, 16 C.F.R. ss. 436.1, et. seq., require franchisors to provide all potential franchisees with a disclosure document containing 23 specific items of information about the offered franchise, its officers, and other franchisees. The Florida Franchise Act, s. 817.416, F.S., provides a private right of action to a civil litigant when a person makes certain misrepresentations related to franchises. Florida does not currently regulate private rights to contract related to franchising. Florida limits

³⁵ ASHRAE, <https://www.ashrae.org/about-ashrae> (last visited on Apr. 18, 2017).

³⁶ ASHRAE, *Standard 90.1-2016: Energy Standards for Buildings Except Low-Rise Residential Buildings*, [https://ashrae.iwrapper.com/ViewOnline/Standard_90.1-2016_\(IP\)](https://ashrae.iwrapper.com/ViewOnline/Standard_90.1-2016_(IP)), (last visited Apr. 18, 2017).

³⁷ Section C405.7 of the 5th edition of the Florida Building Code (Energy Conservation).

³⁸ ASHRAE, *Standard 90.1-2010: Energy Standards for Buildings Except Low-Rise Residential Buildings*, http://www.usailighting.com/stuff/contentmgr/files/1/b90ce247855d0f17438484c003877338/misc/ashrae_90_1_2010.pdf, (last visited April 18, 2017).

³⁹ Department of Business and Professional Regulation, Bill Analysis for HB 1021, (Similar to SB 1312), dated March 28, 2017.

franchise regulation to antifraud, unfair trade practices, and creating rights for violations of federal franchise disclosure laws.

Local Government Fees (Bill Sections 9 and 10)

Section 553.80, F.S., provides that, except for construction regarding correctional and mental health facilities, elevators, storage facilities, educational institutions, and toll collection facilities, each local government and each legally constituted enforcement district with statutory authority shall regulate building construction. Section 553.80(7), F.S., authorizes local governments to provide a schedule of consistent reasonable fees to be used solely for carrying out the local government responsibilities in enforcing the Florida Building Code. The basis for the fee structure must relate to the level of service provided by the local government.

Local governments have created fee schedules to be submitted by contractors at the time of application for a building permit. These fees include inspection fees, plan examination fees, site examination fees, building permit fees (based on square footage of the building), and various administrative fees including re-permitting fees, time extension fees, re-inspection fees, and licensing fees.

Local governments may not require additional fees for:

- Providing proof of licensure pursuant to ch. 489, F.S.;
- Recording or filing a license issued; and
- Providing, recording, or filing evidence of workers' compensation insurance coverage required by ch. 440, F.S.⁴⁰

Fire Prevention and Control (Bill Section 12)

Florida's fire prevention and control law, ch. 633, F.S., designates the Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services, is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire.⁴¹

One of the duties of the State Fire Marshal is to adopt by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C. The State Fire Marshal adopts a new edition of the FFPC every 3 years.⁴²

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the FFPC as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code. These local enforcing authorities may adopt more stringent fire safety standards, subject to certain

⁴⁰ Section 553.80(7), F.S.

⁴¹ Section 633.104, F.S.

⁴² Section 633.202, F.S.

requirements in s. 633.208, F.S., but may not enact fire safety ordinances that conflict with ch. 633, F.S., or any other state law.⁴³

Construction Contracting Exemption for Public Utilities (Bill Section 3)

Construction contractors are licensed and regulated under Part I of ch. 489, F.S., which provides that it is “necessary in the interest of the public health, safety, and welfare to regulate the construction industry.” Construction contracting essentially means building or altering a structure for compensation.

In order to perform construction contracting a person must be licensed as a contractor, an employee of a contractor, or fall under one of the exemptions to licensure. Employees of a public utility are exempt from licensure. Public utilities include special gas districts, telecommunications companies, and natural gas transmission companies, “performing construction, maintenance, or development work, which includes, but is not limited to, work on bridges, roads, streets, highways, railroads, or work incidental to their business.” Current law requires DBPR to create a rule to define “work incidental to their business.”⁴⁴

DBPR defined by rule “incidental to their business” to mean work performed exclusively on the supply side of the end use metering device, and excludes all work on the commercial side, house side, or customer side of the end use metering device except for inspections for leaks and the repair thereof, testing of water quality, ignition of pilot lights, and termination of or activation of natural gas flow.⁴⁵

A municipal gas utility is a natural gas utility owned and/or operated by a municipality engaged in serving residential, commercial, and/or industrial customers, usually within the boundaries of the municipality. There are currently 25 municipal gas districts in Florida.⁴⁶

Pool/Spa Contractors (Bill Section 4)

Three types of pool/spa contractors may be licensed in Florida, including commercial pool/spa contractors, residential pool contractors, and swimming pool/spa servicing contractors.⁴⁷ Each type of contractor may engage in the scope of work specified s. 489.105(3), F.S., as follows:

- For commercial pool/spa contractors, the scope of work involves, but is not limited to, the *construction, repair, and servicing of any swimming pool, or hot tub or spa, whether public, private, or otherwise, regardless of use;*⁴⁸

⁴³ Sections 633.108, 633.208, and 633.214(4), F.S.

⁴⁴ Section 489.103(5), F.S.

⁴⁵ Rule 61G4-12.011(10), F.A.C.

⁴⁶ *Id.*

⁴⁷ See ss. 489.105(3)(j), (k), and (l), F.S.

⁴⁸ The scope of work for commercial pool/spa contractors also includes the installation, repair, or replacement of existing equipment, any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of

- For residential pool/spa contractors, the scope of work involves, but is not limited to, the *construction, repair, and servicing of a residential swimming pool, or hot tub or spa, regardless of use;*⁴⁹ and
- For swimming pool/spa servicing contractors means a contractor whose scope of work involves, but is not limited to, the *repair and servicing of a swimming pool, or hot tub or spa, whether public or private, or otherwise, regardless of use.*⁵⁰

A license is not required for the cleaning of a pool or spa in a way that does not affect the structural integrity of the pool or spa or its associated equipment.

Specialty Swimming Pool Contractors (Bill Section 4)

Specialty swimming pool contractors have limited scopes of work for the construction of pools, spas, hot tub, and decorative or interactive water displays, including:

- Swimming Pool Layout Specialty Contractors are limited to the layout, shaping, steel installation, and rough piping;
- Swimming Pool Structural Specialty Contractors are limited to the shaping and shooting of gunite, shotcrete, concrete, or similar product mix, and installation of fiberglass shells and vinyl liners);
- Swimming Pool Excavation Specialty Contractors are limited to excavation and earthmoving);
- Swimming Pool Trim Specialty Contractors are limited to the installation of tile and coping, and decorative or interactive water displays or areas that use recirculated water, including waterfalls and spray nozzles;
- Swimming Pool Decking Specialty Contractors are limited to the construction and installation of concrete flatwork, pavers and bricks, retaining walls, and footings;

the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. See s. 489.105(3)(j), F.S.

⁴⁹ The scope of work for residential pool/spa contractors also includes the installation, repair, or replacement of existing equipment, any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. See s. 489.105(3)(k), F.S.

⁵⁰ The scope of work includes the repair or replacement of existing equipment, any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior refinishing, the reinstallation or addition of pool heaters, the repair or replacement of all perimeter piping and filter piping, the repair of equipment rooms or housing for pool/spa equipment, and the substantial or complete draining of a swimming pool, or hot tub or spa, for the purpose of repair or renovation. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, substantial or complete disassembly, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure *unless the usage involves construction, modification, substantial or complete disassembly, or replacement of such equipment*. Water treatment that does not require such equipment does not require a license. See s. 489.105(3)(l), F.S.

- Swimming Pool Piping Specialty Contractors are limited to the installation of piping or the installation of circulating, filtering, disinfecting, controlling, or monitoring equipment and devices for pools, spas, hot tubs, and decorative or interactive water displays or areas; and
- Swimming Pool Finishes Specialty Contractors are limited to the coating or plastering of the interior surfaces.⁵¹

III. Effect of Proposed Changes:

Section 1 amends s. 377.705, F.S., to authorize solar systems manufactured or sold in the state to be approved by the Florida Solar Energy Center or by an engineer licensed pursuant to ch. 471, F.S., using the standards contained in the most recent version of the Florida Building Code.

Section 2 amends s. 471.033, F.S., to provide that the Board of Professional Engineers may take disciplinary action under s. 471.033(3), F.S., against a licensee who fails to disclose to a customer before contracting for engineering service whether the licensee maintains professional liability insurance and the policy limits if the licensee does maintain such insurance.

Section 3 amends s. 489.103, F.S., to provide that employees of municipal gas utilities performing construction, maintenance, or development work are exempt from the contractor licensing requirements of Part I of ch. 489, F.S. The bill also removes the requirement that work done by public utility employees must be “incidental to their business” in order to qualify for the licensure exemption and removes DBPR’s rulemaking authority to define the term “incidental to their business.”

Section 4 amends s. 489.113, F.S., to provide that pool/spa contractors are not required to subcontract electrical work for the installation, replacement, disconnection, or reconnection of power wiring on the load side of the dedicated existing electrical disconnecting work. Current law requires that unless a contractor holds a state certificate or registration in a trade category, all electrical work must be subcontracted (as must all mechanical, plumbing, roofing, sheet metal, swimming pool, and air-conditioning work). Pool/spa contractors, however, would continue to be required to subcontract all electrical work that requires the installation, removal, replacement, or upgrading of a circuit breaker. The bill provides that the revised subcontracting requirement for pool/spa contractors does not apply to other contractor classifications or professions.

Section 5 amends s. 553.721, F.S., on the surcharge assessed on building permits at the rate of 1.5 percent of the permit fees. The surcharge is for DBPR’s use in administering and enforcing the Florida Building Code. The bill requires DBPR to fund \$150,000 in the 2017-2018 fiscal year to the University of Florida School of Construction Management for the continuation of the CIWT.

Section 6 amends s. 553.73, F.S., to require the commission to use the International Code Council, the National Electric Code (NFPA), or other nationally adopted model codes and standards for updates to the Florida Building Code. The commission shall adopt an updated Florida Building Code every 3 years through reviews of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing

⁵¹ See Fla. Admin. Code R. 61G4-15.032 (2016).

Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association. At a minimum, the commission must adopt any provision from the I-Codes, the National Electric Code, or any other code that is necessary to maintain eligibility for federal funding from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development. The commission shall also review and adopt updates based substantially on the International Energy Conservation Code; however, the commission must maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction pursuant to s. 553.901, F.S. The commission shall adopt updated codes by rule.

Amendments and modifications, other than local amendments under s. 553.73(4), F.S., to the Florida Building Code, will now remain effective when a new edition of the Florida Building Code is published.

In order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a two-thirds vote of the members present at the meeting. Current law requires a three-fourths vote of the members present at the meeting.

The bill also provides that a technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government is not rendered void when the Florida Building Code is updated if the amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621, F.S. However, any such technical amendment carried forward into the next edition of the Florida Building Code is subject to review or modification.

The bill removes references to Florida-specific amendments because the entire building code will now be Florida-specific. The bill also makes other conforming and clarifying changes in terminology.

The bill prohibits the commission from adopting the 2016 version of the ASHRAE Standard 9.4.1.1(g) or any provision that requires a door located in the opening between a garage and a residence to be equipped with a self-closing device.

Section 7 amends s. 553.76, F.S., to require the commission to adopt the Florida Building Code, and amendments thereto, by a two-thirds vote of the members present.

Section 8 amends s. 553.79, F.S., to prohibit political subdivisions of the state from adopting or enforcing ordinances, or imposing building permits or other development order requirements that:

- Contain any building, construction, or aesthetic requirement or condition that conflicts with or impairs corporate trademarks, service marks, trade dress, logos, color patterns, design scheme insignia, image standards, or other features of corporate branding identity on real property or improvements thereon used in activities conducted under ch. 526, related to the sale of liquid fuels, or in carrying out business franchise activities, as defined by Federal Trade Commission regulations in 16 C.F.R. ss. 436.1, et. seq.; or

- Impose requirements related to the design, construction or location of signage that advertises the retail price of gasoline in accordance with the requirements of ss. 526.111 and 526.121, F.S.

The bill specifies that s. 553.79(20), F.S., doesn't affect design and construction requirements contained in the Florida Building Code. Additionally, the bill specifies that all local ordinances and requirements prohibited by s. 553.79(20), F.S., are preempted and superseded and that s. 553.79(20), F.S., shall apply retroactively.

Section 9 amends s. 553.791, F.S., to provide that it is the intent of the Legislature that owners and contractors not be required to pay extra costs related to building permitting requirements when hiring a private provider for plans reviews and building inspections. A local jurisdiction must calculate the cost savings to the local enforcement agency, based on a fee owner or contractor hiring a private provider to perform plans reviews and building inspections in lieu of the local building official, and reduce the permit fees accordingly.

Section 10 amends s. 553.80, F.S., on building code enforcement to prohibit local enforcement agencies, independent special districts, and special districts from requiring at any time, including at the time of application for a permit, the payment of any additional fees, charges, or expenses associated with:

- Providing proof of licensure pursuant to ch. 489, F.S.;
- Recording or filing a license issued pursuant to ch. 553, F.S.; or
- Providing, recording, or filing evidence of workers' compensation insurance coverage as required by ch. 440, F.S.

Section 11 creates s. 553.9081, F.S., to require the Florida Building Commission to amend the Florida Building Code-Energy Conservation to:

- Eliminate duplicative commissioning reporting requirements for HVAC and electrical systems;
- Authorize commissioning reports to be provided by a licensed design professional, electrical engineer, or mechanical engineer; and
- Prohibit the adoption of American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 9.4.1.1(g).

Section 12 amends s. 633.208, F.S., on minimum firesafety standards. The bill prohibits a county, municipality, special taxing district, public utility, or private utility from:

- Requiring a separate water connection for a fire sprinkler system for a one-family or two-family dwelling if the dwelling's original water connection can meet the needs of the sprinkler system; and
- Charging a water or sewer rate for a larger water meter for a one-family or two-family dwelling because of the installation of a fire sprinkler system above that which is charged to a one-family and two-family dwelling with a base meter. However, if the installation of fire sprinklers in a one-family or two-family dwelling requires the installation of a larger water meter, only the difference in actual cost between the base water meter and the larger water meter may be charged by the water utility provider.

Section 13 prohibits a local government from requiring an owner of a residence to obtain a permit to paint a residence, regardless of whether the residence is owned by a limited liability company.

Section 14 requires the Department of Education, in conjunction with the Department of Economic Opportunity, to develop a plan to implement the recommendations of the Construction Industry Workforce Task Force Report dated January 20, 2017. The Department of Education must provide the plan to the Construction Industry Workforce Task Force on or before July 1, 2018.

Section 15 requires CareerSource Florida, Inc., to develop and submit a plan to the Construction Industry Workforce Task Force on the potential opportunities for training programs to implement the recommendations of the Construction Industry Workforce Task Force Report, using existing federal funds awarded to the corporation and using the previous State Florida ReBuilds program as an implementation model for such programs. CareerSource Florida, Inc., must provide the plan to the Construction Industry Workforce Task Force on or before July 1, 2018.

Section 16 requires the Florida Building Commission to adopt an amendment to the Florida Building Code-Residential, relating to door components, to provide that, relating to substitution of door components, the components must either:

- Be compliant with ANSI/WMA 100; or
- Be evaluated by an approved product evaluation entity, certification agency, testing laboratory, or engineer and may be interchangeable in exterior door assemblies if the components provide equal or greater structural performance as demonstrated by accepted engineering practices.

Section 17 provides that the bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Homeowners may pay less for water meters, and there may be an increase in the purchase of fire sprinkler systems for residential dwellings.

C. Government Sector Impact:

The Department of Education, in conjunction with the Department of Economic Opportunity, is directed to develop a plan to implement the recommendations of the Construction Industry Workforce Task Force. It is anticipated that the plan can be completed within existing resources.

The bill requires CareerSource Florida, Inc., to develop and submit a plan to the Construction Industry Workforce Task Force for training programs to implement the recommendations of the Task Force, using existing federal funds awarded to the corporation.

CareerSource Florida receives \$3 million annually in federal training dollars through the Incumbent Worker Training Program. However, CareerSource Florida's federal funds are currently directed to meet shortfalls in career fields other than construction. Redirecting the federal funds for construction training purpose could leave Florida's current need for training programs in other career fields with deficiencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DBPR noted that their staff were unable to find any duplicative commissioning requirements in the current Florida Building Code, 5th edition (2014), or the draft Florida Building Code, 6th Edition 2017.⁵² Additionally, DBPR noted that the reference in section 4 of the bill to ASHRAE s. 9.4.1.1(g) should more properly be ASHRAE Standard 90.1-2013 s. 9.4.1.1(g).⁵³ Finally, the DBPR noted that Title III of the Energy Conservation and Protection Act requires that all state building codes meet certain energy conservation requirements.⁵⁴ Last year, the Florida Building Commission received certification by the Department of Energy that the commercial provisions of the draft 6th Edition, Florida Building Code (2017), Energy Conservation, met those requirements.⁵⁵ The draft Florida Building Code, 6th Edition (2017), Energy Conservation, may lose federal certification if the provisions incorporating ASHRAE 90.1, Section 9.4.1.1(g), are removed.⁵⁶ If the federal certification is lost, the effective date of the Florida Building Code, 6th Edition (2017), could be delayed by 6 months or more.⁵⁷

⁵² Department of Business and Professional Regulation, Bill Analysis for HB1021, (Similar to SB 1312), at p. 6, dated March 28, 2017.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 377.705, 471.033, 489.103, 489.113, 553.721, 553.73, 553.76, 553.79, 553.791, 553.80, and 633.208.

The bill creates section 553.9081 of the Florida Statutes.

IX. Additional Information:

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

CS by Community Affairs Committee on April 18, 2017:

- Provides that a professional engineer may certify solar energy systems in lieu of the Florida Solar Energy Center;
- Provides that a professional engineer's license may be disciplined for failing to disclose whether the engineer maintains professional liability insurance and policy limits;
- Modifies the construction contracting exemption for public utilities by providing that employees of public utilities, including municipal gas utilities, are exempt from construction contracting licensure requirements;
- Provides that a pool/spa contractor is not required to subcontract electrical work relating to the installation, replacement, disconnection or reconnection of power wiring of the load side of the dedicated existing electrical disconnecting means, but is required to subcontract certain work related to the circuit breaker;
- Prohibits the Florida Building Commission from adopting the 2016 of the ASHRAE Standard 9.4.1.1(g) relating to energy saving with lights that shut off automatically after 20 minutes; and adopting any provision that requires a door located in the opening between a garage and a residence to be equipped with a self-closing device;
- Prohibits a political subdivision from adopting or enforcing ordinances or building permit requirements that conflict with corporate trademarks, service marks, logos, color patterns or other corporate branding on real property in connection with business activities related to the sale of liquid fuels or other franchises; providing for preemption of certain local laws and regulations; and providing for retroactive applicability;
- Clarifies that it is the Legislature's intent that owners and contractors should not be required to pay twice for building plans and inspections when hiring private providers. Local jurisdictions must calculate the cost savings and reduce fees accordingly;
- Prohibits special or independent districts from requiring payment, at any time, of additional fees, charges, or expenses, related to providing proof of licensure and insurance coverage;
- Provides that the Florida Department of Education and the Florida Department of Economic Opportunity must develop a plan to implement the recommendations of the Construction Industry Workforce Taskforce report, and submit the plan to the Taskforce by July 1, 2018;

- Provides that CareerSource Florida, Inc., must develop a plan to implement the recommendations of the Construction Industry Workforce Taskforce using existing federal funds and the Florida ReBuilds implementation model, and submit the plan to the Taskforce by July 1, 2018;
- Provides that residential door components may be substituted in exterior door assemblies if the components are provided by an approved product evaluation entity, certification agency, testing laboratory or engineer, and the door components provide equal or greater structural performance as demonstrated by accepted engineering practices or comply with the ANSI/WMA 100;
- Revises the process by which the Florida Building Code will be adopted such that the commission shall use the I-Codes, the National Electric Code, or other nationally adopted model codes and standards for updates to the Florida Building Code and shall review the most current updates of such codes;
- Requires the commission to adopt any provision from the I-Codes, the National Electrical Code, or any other code necessary to maintain eligibility for federal funding from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development;
- Provides that a technical advisory committee must receive a two-thirds vote, rather than a three-fourths vote, of the members present at the meeting in order to make a favorable recommendation to the commission;
- Provides that a technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government is not rendered void when the Florida Building Code is updated if the amendment is necessary to protect or provide for more efficient use of water resources. However, any carried forward technical amendment is subject to review or modification under certain circumstances; and
- Requires the commission to adopt the Florida Building Code by a two-thirds vote of the members present.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/18/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 377.705, Florida Statutes, is amended to
read:

377.705 Solar Energy Center; development of solar energy
standards.—

(1) SHORT TITLE.—This act shall be known and may be cited
as the Solar Energy Standards Act of 1976.



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(2) LEGISLATIVE ~~FINDINGS AND~~ INTENT.—

~~(a) Because of increases in the cost of conventional fuel, certain applications of solar energy are becoming competitive, particularly when life-cycle costs are considered. It is the intent of the Legislature in formulating a sound and balanced energy policy for the state to encourage the development of an alternative energy capability in the form of incident solar energy.~~

~~(b) Toward this purpose,~~ The Legislature intends to provide incentives for the production and sale of, and to set standards for, solar energy systems. Such standards shall ensure that solar energy systems manufactured or sold within the state are effective and represent a high level of quality of materials, workmanship, and design.

(3) DEFINITIONS.—As used in this section, the term:

(a) "Center" means ~~is defined as~~ the Florida Solar Energy Center of the Board of Governors.

(b) "Solar energy systems" means ~~is defined as~~ equipment which provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications which normally require or would require a conventional source of energy such as petroleum products, natural gas, or electricity and which performs primarily with solar energy. In such other systems in which solar energy is used in a supplemental way, only those components which collect and transfer solar energy shall be included in this definition.

(4) FLORIDA SOLAR ENERGY CENTER TO SET STANDARDS, REQUIRE DISCLOSURE, SET TESTING FEES.—

(a) The center shall develop and adopt ~~promulgate~~ standards



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for solar energy systems manufactured or sold in this state based on the best currently available information and shall consult with scientists, engineers, or persons in research centers who are engaged in the construction of, experimentation with, and research of solar energy systems to properly identify the most reliable designs and types of solar energy systems.

(b) The center shall establish criteria for testing performance of solar energy systems and shall maintain the necessary capability for testing or evaluating performance of solar energy systems. The center may accept results of tests on solar energy systems made by other organizations, companies, or persons if when such tests are conducted according to the criteria established by the center and if when the testing entity does not have a ~~has no~~ vested interest in the manufacture, distribution, or sale of solar energy systems.

(c) The center shall be entitled to receive a testing fee sufficient to cover the costs of such testing. All testing fees shall be transmitted by the center to the Chief Financial Officer to be deposited in the Solar Energy Center Testing Trust Fund, which is ~~hereby~~ created in the State Treasury, and disbursed for the payment of expenses incurred in testing solar energy systems.

(d) All solar energy systems manufactured or sold in the state must meet the standards established by the center and shall display accepted results of approved performance tests in a manner prescribed by the center, unless otherwise certified by an engineer licensed pursuant to chapter 471 using the standards contained in the most recent version of the Florida Building Code.



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Section 2. Paragraph (m) is added to subsection (1) of section 471.033, Florida Statutes, to read:

471.033 Disciplinary proceedings.—

(1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

(m) Failing to disclose to a customer before contracting for engineering service whether the licensee maintains professional liability insurance and the policy limits if the licensee does maintain such insurance.

Section 3. Subsection (5) of section 489.103, Florida Statutes, is amended to read:

489.103 Exemptions.—This part does not apply to:

(5) Public utilities, including municipal gas utilities and special gas districts as defined in chapter 189, telecommunications companies as defined in s. 364.02(13), and natural gas transmission companies as defined in s. 368.103(4), on construction, maintenance, and development work performed by their employees, which work, including, but not limited to, work on bridges, roads, streets, highways, or railroads, is incidental to their business. The board shall define, by rule, the term "incidental to their business" for purposes of this subsection.

Section 4. Paragraph (h) is added to subsection (3) of section 489.113, Florida Statutes, to read:

489.113 Qualifications for practice; restrictions.—

(3) A contractor shall subcontract all electrical, mechanical, plumbing, roofing, sheet metal, swimming pool, and air-conditioning work, unless such contractor holds a state certificate or registration in the respective trade category,



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however:

(h) A pool/spa contractor, as defined in s. 489.105(3)(j), (k), or (l), is not required to subcontract electrical work for the installation, replacement, disconnection, or reconnection of power wiring on the load side of the dedicated existing electrical disconnecting means, but is required to subcontract all electrical work that requires installation, removal, replacement, or upgrading of a circuit breaker. This paragraph does not apply to other contractor classifications or professions.

Section 5. Section 553.721, Florida Statutes, is amended to read:

553.721 Surcharge.—In order for the Department of Business and Professional Regulation to administer and carry out the purposes of this part and related activities, there is created a surcharge, to be assessed at the rate of 1.5 percent of the permit fees associated with enforcement of the Florida Building Code as defined by the uniform account criteria and specifically the uniform account code for building permits adopted for local government financial reporting pursuant to s. 218.32. The minimum amount collected on any permit issued shall be \$2. The unit of government responsible for collecting a permit fee pursuant to s. 125.56(4) or s. 166.201 shall collect the surcharge and electronically remit the funds collected to the department on a quarterly calendar basis for the preceding quarter and continuing each third month thereafter. The unit of government shall retain 10 percent of the surcharge collected to fund the participation of building departments in the national and state building code adoption processes and to provide



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education related to enforcement of the Florida Building Code. All funds remitted to the department pursuant to this section shall be deposited in the Professional Regulation Trust Fund. Funds collected from the surcharge shall be allocated to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program under s. 553.841. Funds allocated to the Florida Building Code Compliance and Mitigation Program shall be \$925,000 each fiscal year. The Florida Building Code Compliance and Mitigation Program shall fund the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup, dated April 8, 2013, from existing resources, not to exceed \$30,000 in the 2016-2017 fiscal year. The department shall provide \$150,000 for the fiscal year 2017-2018 from surcharge funds available to the University of Florida M. E. Rinker, Sr., School of Construction Management for the continuation of the Construction Industry Workforce Task Force. Funds collected from the surcharge shall also be used to fund Florida Fire Prevention Code informal interpretations managed by the State Fire Marshal and shall be limited to \$15,000 each fiscal year. The State Fire Marshal shall adopt rules to address the implementation and expenditure of the funds allocated to fund the Florida Fire Prevention Code informal interpretations under this section. The funds collected from the surcharge may not be used to fund research on techniques for mitigation of radon in existing buildings. Funds used by the department as well as funds to be transferred to the Department of Health and the State Fire Marshal shall be as prescribed in the annual General Appropriations Act. The department shall adopt rules governing the collection and



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remittance of surcharges pursuant to chapter 120.

Section 6. Subsection (20) is added to section 553.73, Florida Statutes, to read:

553.73 Florida Building Code.—

(20) The Florida Building Commission may not:

(a) Adopt the 2016 version of the American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 9.4.1.1(g) .

(b) Adopt any provision that requires a door located in the opening between a garage and a residence to be equipped with a self-closing device.

Section 7. Subsection (20) is added to section 553.79, Florida Statutes, to read:

553.79 Permits; applications; issuance; inspections.—

(20) A political subdivision of this state may not adopt or enforce any ordinance or impose any building permit or other development order requirement that:

(a)1. Contains any building, construction, or aesthetic requirement or condition that conflicts with or impairs corporate trademarks, service marks, trade dress, logos, color patterns, design scheme insignia, image standards, or other features of corporate branding identity on real property or improvements thereon used in activities conducted under chapter 526 or in carrying out business activities defined as a franchise by Federal Trade Commission regulations in 16 C.F.R. ss. 436.1, et. seq.; or

2. Imposes any requirement on the design, construction, or location of signage advertising the retail price of gasoline in accordance with the requirements of ss. 526.111 and 526.121



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which prevents the signage from being clearly visible and legible to drivers of approaching motor vehicles in any lane of traffic in either direction on a roadway abutting the gas station premises and which meets height, width, and spacing standards for Series C, D, or E signs, as applicable, published in the latest edition of Standard Alphabets for Highway Signs and Pavement Markings published by the Federal Highway Administration, Office of Traffic Operations.

(b) This subsection does not affect any requirement for design and construction in the Florida Building Code.

(c) All such ordinances and requirements are hereby preempted and superseded by general law. This subsection shall apply retroactively.

Section 8. Subsection (2) of section 553.791, Florida Statutes, is amended to read:

553.791 Alternative plans review and inspection.—

(2)(a) Notwithstanding any other law or local government ordinance or local policy, the fee owner of a building or structure, or the fee owner's contractor upon written authorization from the fee owner, may choose to use a private provider to provide building code inspection services with regard to such building or structure and may make payment directly to the private provider for the provision of such services. All such services shall be the subject of a written contract between the private provider, or the private provider's firm, and the fee owner or the fee owner's contractor, upon written authorization of the fee owner. The fee owner may elect to use a private provider to provide plans review or required building inspections, or both. However, if the fee owner or the



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fee owner's contractor uses a private provider to provide plans review, the local building official, in his or her discretion and pursuant to duly adopted policies of the local enforcement agency, may require the fee owner or the fee owner's contractor to use a private provider to also provide required building inspections.

(b) It is the intent of the Legislature that owners and contractors not be required to pay extra costs related to building permitting requirements when hiring a private provider for plans reviews and building inspections. A local jurisdiction must calculate the cost savings to the local enforcement agency, based on a fee owner or contractor hiring a private provider to perform plans reviews and building inspections in lieu of the local building official, and reduce the permit fees accordingly.

Section 9. Paragraph (d) of subsection (7) of section 553.80, Florida Statutes, is amended to read:

553.80 Enforcement.—

(7) The governing bodies of local governments may provide a schedule of reasonable fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for enforcing this part. These fees, and any fines or investment earnings related to the fees, shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. When providing a schedule of reasonable fees, the total estimated annual revenue derived from fees, and the fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities. Any unexpended balances shall be carried forward to future years for allowable activities or shall be refunded at the discretion of the local



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government. The basis for a fee structure for allowable activities shall relate to the level of service provided by the local government and shall include consideration for refunding fees due to reduced services based on services provided as prescribed by s. 553.791, but not provided by the local government. Fees charged shall be consistently applied.

(d) The local enforcement agency, independent district, or special district may not require at any time, including at the time of application for a permit, the payment of any additional fees, charges, or expenses associated with:

1. Providing proof of licensure pursuant to chapter 489;
2. Recording or filing a license issued pursuant to this chapter; or
3. Providing, recording, or filing evidence of workers' compensation insurance coverage as required by chapter 440.

Section 10. Section 553.9081, Florida Statutes, is created to read:

553.9081 Florida Building Code; required amendments.—The Florida Building Commission shall amend the Florida Building Code—Energy Conservation to:

(1)(a) Eliminate duplicative commissioning reporting requirements for HVAC and electrical systems; and

(b) Authorize commissioning reports to be provided by a licensed design professional, electrical engineer, or mechanical engineer.

(2) Prohibit the adoption of American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 9.4.1.1(g) .

Section 11. Subsection (8) of section 633.208, Florida



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Statutes, is amended to read:

633.208 Minimum firesafety standards.—

(8)(a) The provisions of the Life Safety Code, as contained in the Florida Fire Prevention Code, do not apply to one-family and two-family dwellings. However, fire sprinkler protection may be permitted by local government in lieu of other fire protection-related development requirements for such structures. While local governments may adopt fire sprinkler requirements for one-family ~~one-~~ and two-family dwellings under this subsection, it is the intent of the Legislature that the economic consequences of the fire sprinkler mandate on home owners be studied before the enactment of such a requirement. After the effective date of this act, any local government that desires to adopt a fire sprinkler requirement on one-family ~~one-~~ or two-family dwellings must prepare an economic cost and benefit report that analyzes the application of fire sprinklers to one-family ~~one-~~ or two-family dwellings or any proposed residential subdivision. The report must consider the tradeoffs and specific cost savings and benefits of fire sprinklers for future owners of property. The report must include an assessment of the cost savings from any reduced or eliminated impact fees if applicable, the reduction in special fire district tax, insurance fees, and other taxes or fees imposed, and the waiver of certain infrastructure requirements including the reduction of roadway widths, the reduction of water line sizes, increased fire hydrant spacing, increased dead-end roadway length, and a reduction in cul-de-sac sizes relative to the costs from fire sprinkling. A failure to prepare an economic report shall result in the invalidation of the fire sprinkler requirement to any



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one-family ~~one~~ or two-family dwelling or any proposed
subdivision. In addition, a local jurisdiction or utility may
not charge any additional fee, above what is charged to a non-
fire sprinklered dwelling, on the basis that a one-family ~~one~~
or two-family dwelling unit is protected by a fire sprinkler
system.

(b)1. A county, municipality, special taxing district,
public utility, or private utility may not require a separate
water connection for a one-family or two-family dwelling fire
sprinkler system if the hydraulic design has proven the existing
connection is capable of supplying the needed hydraulic demand.

2. A county, municipality, special district, public
utility, or private utility may not charge a water or sewer rate
to a one-family or two-family dwelling that requires a larger
water meter solely due to the installation of fire sprinklers
above that which is charged to a one-family and two-family
dwelling with a base meter. If the installation of fire
sprinklers in a one-family or two-family dwelling requires the
installation of a larger water meter, only the difference in
actual cost between the base water meter and the larger water
meter may be charged by the water utility provider.

Section 12. A local government may not require an owner of
a residence to obtain a permit to paint such residence,
regardless of whether the residence is owned by a limited
liability company.

Section 13. The Department of Education, in conjunction
with the Department of Economic Opportunity, shall develop a
plan to implement the recommendations of the Construction
Industry Workforce Task Force Report dated January 20, 2017. The



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Department of Education shall provide the plan to the
Construction Industry Workforce Task Force on or before July 1,
2018.

Section 14. CareerSource Florida, Inc., shall develop and
submit a plan to the Construction Industry Workforce Task Force
on the potential opportunities for training programs to
implement the recommendations of the Construction Industry
Workforce Task Force Report dated January 20, 2017, using
existing federal funds awarded to the corporation and using the
previous statewide Florida ReBuilds program as an implementation
model for such programs. CareerSource Florida, Inc., shall
provide the plan to the Construction Industry Workforce Task
Force on or before July 1, 2018.

Section 15. The Florida Building Commission shall adopt an
amendment to the Florida Building Code-Residential, relating to
door components, to provide that, regarding substitution of door
components, such components must either:

(1) Comply with ANSI/WMA 100; or

(2) Be evaluated by an approved product evaluation entity,
certification agency, testing laboratory, or engineer and may be
interchangeable in exterior door assemblies if the components
provide equal or greater structural performance as demonstrated
by accepted engineering practices.

Section 16. This act shall take effect July 1, 2017.

===== 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:



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A bill to be entitled
An act relating to construction; amending s. 377.705,
F.S.; revising legislative findings and intent;
authorizing solar energy systems manufactured or sold
in the state to be certified by professional
engineers; amending s. 471.033, F.S.; prohibiting
professional engineers from contracting with customers
without disclosing whether they maintain certain
insurance; amending s. 489.103, F.S.; revising an
exemption from construction contracting regulation for
certain public utilities; deleting responsibility of
the Construction Industry Licensing Board to define
the term "incidental to their business" for certain
purposes; amending s. 489.113, F.S.; providing that
specified pool/spa contractors are not required to
subcontract certain work relating to power wiring;
requiring such contractors to subcontract all work
requiring the installation, removal, replacement, or
upgrading of a circuit breaker; providing
applicability; amending s. 553.721, F.S.; requiring
the Department of Business and Professional Regulation
to provide certain funds allocated to the University
of Florida M. E. Rinker, Sr., School of Construction
Management for specified purposes; amending s. 553.73,
F.S.; prohibiting the Florida Building Commission from
adopting certain provisions into the Florida Building
Code; amending s. 553.79, F.S.; prohibiting a
political subdivision from adopting or enforcing
certain building permits or other development order



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requirements; providing construction; providing for
preemption of certain local laws and regulations;
providing for retroactive applicability; amending s.
553.791, F.S.; providing legislative intent; requiring
local jurisdictions to reduce certain permit fees;
amending s. 553.80, F.S.; prohibiting local
enforcement agencies, independent districts, and
special districts from charging certain fees; creating
s. 553.9081, F.S.; requiring the Florida Building
Commission to amend certain provisions of the Florida
Building Code; amending s. 633.208, F.S.; prohibiting
a county, municipality, special taxing district,
public utility, or private utility from requiring a
separate water connection or charging a specified
water or sewage rate under certain conditions;
prohibiting a local government from requiring a permit
for painting a residence; requiring the Department of
Education to develop a plan for specified purposes;
requiring the department to provide the plan to the
Construction Industry Workforce Task Force by a
specified date; requiring CareerSource Florida, Inc.,
to develop a plan for specified purposes; requiring
CareerSource Florida, Inc., to provide the plan to the
Construction Industry Workforce Task Force by a
specified date; requiring the Florida Building
Commission to amend specified provisions of the
Florida Building Code related to door components;
providing an effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/18/2017	.	
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The Committee on Community Affairs (Lee) recommended the following:

Senate Amendment to Amendment (550330) (with title amendment)

Delete lines 157 - 166
and insert:

Section 6. Subsection (3) of section 553.73, Florida Statutes, is amended, paragraph (d) is added to subsection (4) of that section, subsections (7) and (8) and paragraphs (a) and (b) of subsection (9) of that section are amended, and subsection (20) is added to that section, to read:



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553.73 Florida Building Code.—

(3) The commission shall use the ~~International Codes published by the~~ International Code Council, the National Electric Code (NFPA 70), or other nationally adopted model codes and standards for updates to ~~needed to develop the base code in Florida to form the foundation for~~ the Florida Building Code. The ~~Florida Building~~ commission may approve technical amendments to the code as provided in, ~~subject to~~ subsections (8) and (9), ~~after the amendments have been~~ subject to all of the following conditions:

(a) The proposed amendment must have ~~has~~ been published on the commission's website for a minimum of 45 days and all the associated documentation must have ~~has~~ been made available to any interested party before ~~any~~ consideration by a technical advisory committee.†

(b) In order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a two-thirds ~~three-fourths~~ vote of the members present at the ~~technical advisory committee~~ meeting. ~~and~~ At least half of the regular members must be present in order to conduct a meeting.†

(c) After the technical advisory committee has considered and recommended ~~consideration and a recommendation for~~ approval of any proposed amendment, the proposal must be published on the commission's website for at least 45 days before ~~any~~ consideration by the commission.†~~and~~

(d) A proposal may be modified by the commission based on public testimony and evidence from a public hearing held in accordance with chapter 120.



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The commission shall incorporate within ~~sections of~~ the Florida Building Code provisions that ~~which~~ address regional and local concerns and variations. The commission shall make every effort to minimize conflicts between the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code.

(4)

(d) A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government pursuant to this subsection is not rendered void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621. However, any such technical amendment carried forward into the next edition of the code pursuant to this paragraph is subject to review or modification as provided in this part.

~~(7) (a) The commission, by rule adopted pursuant to ss. 120.536(1) and 120.54, shall~~ adopt an updated ~~update the~~ Florida Building Code every 3 years through review of. ~~When updating the Florida Building Code, the commission shall select the most current updates version of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by~~ adopted by the International Code Council, and the National Electrical Code, which is copyrighted and published ~~adopted by~~ the National Fire Protection Association. At a minimum, the commission shall adopt any updates to such codes or any other code necessary to maintain eligibility for federal funding from



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the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development, ~~to form the foundation codes of the updated Florida Building Code, if the version has been adopted by the applicable model code entity.~~ The commission shall also review and adopt updates based substantially on select the most current version of the International Energy Conservation Code (IECC) ~~as a foundation code;~~ however, ~~the IECC shall be modified by the commission shall to~~ maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction adopted and amended pursuant to s. 553.901. The commission shall adopt updated codes by rule.

(b) Codes regarding noise contour lines shall be reviewed annually, and the most current federal guidelines shall be adopted.

(c) The commission may adopt as a technical amendment to the Florida Building Code ~~modify~~ any portion of the ~~foundation codes identified in paragraph (a), but~~ only as needed to accommodate the specific needs of this state. Standards or criteria adopted from these ~~referenced by the~~ codes shall be incorporated by reference to the specific provisions adopted. If a referenced standard or criterion requires amplification or modification to be appropriate for use in this state, only the amplification or modification shall be set forth in the Florida Building Code. The commission may approve technical amendments to the updated Florida Building Code after the amendments have been subject to the conditions set forth in paragraphs (3)(a)-(d). Amendments that ~~to the foundation codes which~~ are adopted in accordance with this subsection shall be clearly marked in



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printed versions of the Florida Building Code so that the fact that the provisions are ~~Florida-specific~~ amendments ~~to the foundation codes~~ is readily apparent.

(d) The commission shall further consider the commission's own interpretations, declaratory statements, appellate decisions, and approved statewide and local technical amendments and shall incorporate such interpretations, statements, decisions, and amendments into the updated Florida Building Code only to the extent that they are needed to ~~modify the foundation codes to~~ accommodate the specific needs of the state. A change made by an institute or standards organization to any standard or criterion that is adopted by reference in the Florida Building Code does not become effective statewide until it has been adopted by the commission. Furthermore, the edition of the Florida Building Code which is in effect on the date of application for any permit authorized by the code governs the permitted work for the life of the permit and any extension granted to the permit.

(e) A rule updating the Florida Building Code in accordance with this subsection shall take effect no sooner than 6 months after publication of the updated code. Any amendment to the Florida Building Code which is adopted upon a finding by the commission that the amendment is necessary to protect the public from immediate threat of harm takes effect immediately.

(f) Provisions of the Florida Building Code ~~foundation codes~~, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be modified to diminish those construction requirements; however, the commission may, subject to conditions



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in this subsection, modify the provisions to enhance those construction requirements.

~~(g) Amendments or modifications to the foundation code pursuant to this subsection shall remain effective only until the effective date of a new edition of the Florida Building Code every third year. Amendments or modifications related to state agency regulations which are adopted and integrated into an edition of the Florida Building Code shall be carried forward into the next edition of the code, subject to modification as provided in this part. Amendments or modifications related to the wind-resistance design of buildings and structures within the high-velocity hurricane zone of Miami-Dade and Broward Counties which are adopted to an edition of the Florida Building Code do not expire and shall be carried forward into the next edition of the code, subject to review or modification as provided in this part. If amendments that expire pursuant to this paragraph are resubmitted through the Florida Building commission code adoption process, the amendments must specifically address whether:~~

~~1. The provisions contained in the proposed amendment are addressed in the applicable international code.~~

~~2. The amendment demonstrates by evidence or data that the geographical jurisdiction of Florida exhibits a need to strengthen the foundation code beyond the needs or regional variations addressed by the foundation code, and why the proposed amendment applies to this state.~~

~~3. The proposed amendment was submitted or attempted to be included in the foundation codes to avoid resubmission to the Florida Building Code amendment process.~~



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~~If the proposed amendment has been addressed in the international code in a substantially equivalent manner, the Florida Building commission may not include the proposed amendment in the foundation Code.~~

(8) Notwithstanding ~~the provisions of~~ subsection (3) or subsection (7), the commission may address issues identified in this subsection by amending the code pursuant ~~only~~ to the rule adoption procedures ~~contained~~ in chapter 120. ~~Provisions of The Florida Building Code, including provisions those~~ contained in referenced standards and criteria which relate, ~~relating~~ to wind resistance or the prevention of water intrusion, may not be amended pursuant to this subsection to diminish those standards construction requirements; however, the commission may, ~~subject to conditions in this subsection,~~ amend the Florida Building Code the provisions to enhance such standards ~~those construction requirements~~. Following the approval of any amendments to the Florida Building Code by the commission and publication of the amendments on the commission's website, authorities having jurisdiction to enforce the Florida Building Code may enforce the amendments. The commission may approve amendments that are needed to address:

(a) Conflicts within the updated code;

(b) Conflicts between the updated code and the Florida Fire Prevention Code adopted pursuant to chapter 633;

(c) Unintended results from the integration of previously adopted ~~Florida-specific~~ amendments with the model code;

(d) Equivalency of standards;

(e) Changes to or inconsistencies with federal or state



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law; or

(f) Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

(9)(a) The commission may approve technical amendments to the Florida Building Code once each year for statewide or regional application upon a finding that the amendment:

1. Is needed in order to accommodate the specific needs of this state.

2. Has a reasonable and substantial connection with the health, safety, and welfare of the general public.

3. Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction.

4. Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities.

5. Does not degrade the effectiveness of the Florida Building Code.

The Florida Building Commission may approve technical amendments to the code once each year to incorporate into the Florida Building Code its own interpretations of the code which are embodied in its opinions, final orders, declaratory statements, and interpretations of hearing officer panels under s. 553.775(3)(c), but only to the extent that the incorporation of



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interpretations is needed to modify the code ~~foundation codes~~ to accommodate the specific needs of this state. Amendments approved under this paragraph shall be adopted by rule after the amendments have been subjected to subsection (3).

(b) A proposed amendment must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall be established by rule by the commission and shall include the impact to local government relative to enforcement, the impact to property and building owners, and the impact to industry, relative to the cost of compliance. The amendment must demonstrate by evidence or data that the state's geographical jurisdiction exhibits a need to strengthen the ~~foundation~~ code beyond the needs or regional variations addressed by the ~~foundation~~ code and why the proposed amendment applies to this state.

(20) The Florida Building Commission may not:

(a) Adopt the 2016 version of the American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 9.4.1.1(g) .

(b) Adopt any provision that requires a door located in the opening between a garage and a residence to be equipped with a self-closing device.

Section 7. Subsection (2) of section 553.76, Florida Statutes, is amended to read:

553.76 General powers of the commission.—The commission is authorized to:

(2) Issue memoranda of procedure for its internal management and control. The commission may adopt rules related



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to its consensus-based decisionmaking process, including, but not limited to, super majority voting requirements ~~for~~
~~commission actions relating to the adoption of the Florida Building Code or amendments to the code.~~ However, the commission must adopt the Florida Building Code, and amendments thereto, by at least a two-thirds vote of the members present at a meeting.

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

And the title is amended as follows:

Delete lines 383 - 385

and insert:

F.S.; requiring the Florida Building Commission to use certain entities and codes for updates to the Florida Building Code; revising voting requirements for a technical advisory committee to make a favorable recommendation to the commission; providing that certain technical amendments to the Florida Building Code which are adopted by a local government are not rendered void when the code is updated; specifying that such amendments are subject to review or modification if carried forward into the next edition of the code; requiring the commission to update the Florida Building Code through a review of the most current updates of specified codes; requiring the commission to adopt specified provisions from certain codes; deleting provisions limiting how long an amendment or modification is effective; deleting a provision requiring certain amendments or modifications to be carried forward into the next



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272 edition of the code, subject to certain conditions;
273 deleting certain requirements for the resubmission of
274 expired amendments; deleting a provision prohibiting a
275 proposed amendment from being included in the code if
276 it has been addressed in the international code;
277 conforming provisions to changes made by the act;
278 prohibiting the commission from adopting certain
279 provisions into the Florida Building Code; amending s.
280 553.76, F.S.; requiring the commission to adopt the
281 Florida Building Code, and amendments thereto, by a
282 minimum percentage of votes; amending s. 553.79, F.S.;
283 prohibiting a



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/18/2017	.	
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The Committee on Community Affairs (Rodriguez) recommended the following:

Senate Amendment to Amendment (550330) (with title amendment)

Delete lines 167 - 197.

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

And the title is amended as follows:

Delete lines 385 - 390

and insert:

Code; amending s.

By Senator Perry

8-01582A-17

20171312__

A bill to be entitled

An act relating to construction; amending s. 377.705, F.S.; revising legislative findings and intent; defining the term "recognized certifying entity"; providing applicability of certain standards and criteria for solar energy systems manufactured or sold in the state; providing for solar energy systems manufactured or sold in the state to be certified pursuant to National Renewable Energy Laboratory standards; amending s. 553.721, F.S.; requiring the Department of Business and Professional Regulation to provide certain funds allocated to the University of Florida M. E. Rinker, Sr., School of Construction Management for specified purposes; amending s. 553.80, F.S.; prohibiting local enforcement agencies from charging certain fees; creating s. 553.9081, F.S.; requiring the Florida Building Commission to amend certain provisions of the Florida Building Code; amending s. 633.208, F.S.; prohibiting a county, municipality, special taxing district, public utility, or private utility from requiring a separate water connection or charging a specified water or sewage rate under certain conditions; prohibiting a local government from requiring a permit for painting a residence; requiring the Department of Education in conjunction with the Department of Economic Opportunity to create a study for specified purposes; requiring the Department of Education to submit the study to the Governor and the Legislature by a

8-01582A-17

20171312__

specified date; requiring CareerSource Florida, Inc.,
to fund certain construction training programs;
providing program requirements; providing an effective
date.

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

Section 1. Section 377.705, Florida Statutes, is amended to
read:

377.705 Solar Energy Center; development of solar energy
standards.—

(1) SHORT TITLE.—This act shall be known and may be cited
as the Solar Energy Standards Act of 1976.

(2) LEGISLATIVE ~~FINDINGS AND~~ INTENT.—

~~(a) Because of increases in the cost of conventional fuel,
certain applications of solar energy are becoming competitive,
particularly when life-cycle costs are considered. It is the
intent of the Legislature in formulating a sound and balanced
energy policy for the state to encourage the development of an
alternative energy capability in the form of incident solar
energy.~~

~~(b) Toward this purpose, The Legislature intends to provide
incentives for the production and sale of, and to set standards
for, solar energy systems. Such standards shall ensure that
solar energy systems manufactured or sold within the state are
effective and represent a high level of quality of materials,
workmanship, and design.~~

(3) DEFINITIONS.—As used in this section, the term:

(a) "Center" means ~~is defined as~~ the Florida Solar Energy

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Center of the Board of Governors.

(b) "Recognized certifying entity" means any entity that certifies equipment that collects and uses incident solar energy pursuant to standards established by the National Renewable Energy Laboratory.

(c) ~~(b)~~ "Solar energy systems" means ~~is defined as~~ equipment which provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications which normally require or would require a conventional source of energy such as petroleum products, natural gas, or electricity and which performs primarily with solar energy. In such other systems in which solar energy is used in a supplemental way, only those components which collect and transfer solar energy shall be included in this definition.

(4) FLORIDA SOLAR ENERGY CENTER TO SET STANDARDS, REQUIRE DISCLOSURE, SET TESTING FEES.—

(a) The center shall develop and adopt ~~promulgate~~ standards for solar energy systems manufactured or sold in this state based on the best currently available information and shall consult with scientists, engineers, or persons in research centers who are engaged in the construction of, experimentation with, and research of solar energy systems to properly identify the most reliable designs and types of solar energy systems. This paragraph does not apply to solar energy systems certified pursuant to National Renewable Energy Laboratory standards.

(b) The center shall establish criteria for testing performance of solar energy systems and shall maintain the necessary capability for testing or evaluating performance of solar energy systems. The center may accept results of tests on

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88 solar energy systems made by other organizations, companies, or
89 persons if ~~when~~ such tests are conducted according to the
90 criteria established by the center and if ~~when~~ the testing
91 entity does not have a ~~has no~~ vested interest in the
92 manufacture, distribution, or sale of solar energy systems. This
93 paragraph does not apply to solar energy systems certified
94 pursuant to National Renewable Energy Laboratory standards.

95 (c) The center shall be entitled to receive a testing fee
96 sufficient to cover the costs of such testing. All testing fees
97 shall be transmitted by the center to the Chief Financial
98 Officer to be deposited in the Solar Energy Center Testing Trust
99 Fund, which is ~~hereby~~ created in the State Treasury, and
100 disbursed for the payment of expenses incurred in testing solar
101 energy systems.

102 (d) All solar energy systems manufactured or sold in the
103 state must meet the standards established by the center or by a
104 recognized certifying entity ~~and shall display accepted results~~
105 ~~of approved performance tests in a manner prescribed by the~~
106 ~~center.~~

107 Section 2. Section 553.721, Florida Statutes, is amended to
108 read:

109 553.721 Surcharge.—In order for the Department of Business
110 and Professional Regulation to administer and carry out the
111 purposes of this part and related activities, there is created a
112 surcharge, to be assessed at the rate of 1.5 percent of the
113 permit fees associated with enforcement of the Florida Building
114 Code as defined by the uniform account criteria and specifically
115 the uniform account code for building permits adopted for local
116 government financial reporting pursuant to s. 218.32. The

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117 minimum amount collected on any permit issued shall be \$2. The
118 unit of government responsible for collecting a permit fee
119 pursuant to s. 125.56(4) or s. 166.201 shall collect the
120 surcharge and electronically remit the funds collected to the
121 department on a quarterly calendar basis for the preceding
122 quarter and continuing each third month thereafter. The unit of
123 government shall retain 10 percent of the surcharge collected to
124 fund the participation of building departments in the national
125 and state building code adoption processes and to provide
126 education related to enforcement of the Florida Building Code.
127 All funds remitted to the department pursuant to this section
128 shall be deposited in the Professional Regulation Trust Fund.
129 Funds collected from the surcharge shall be allocated to fund
130 the Florida Building Commission and the Florida Building Code
131 Compliance and Mitigation Program under s. 553.841. Funds
132 allocated to the Florida Building Code Compliance and Mitigation
133 Program shall be \$925,000 each fiscal year. The Florida Building
134 Code Compliance and Mitigation Program shall fund the
135 recommendations made by the Building Code System Uniform
136 Implementation Evaluation Workgroup, dated April 8, 2013, from
137 existing resources, not to exceed \$30,000 in the 2016-2017
138 fiscal year. The department shall provide \$150,000 for the
139 fiscal year 2017-2018 from surcharge funds available to the
140 University of Florida M. E. Rinker, Sr., School of Construction
141 Management for the continuation of the Construction Industry
142 Workforce Task Force. Funds collected from the surcharge shall
143 also be used to fund Florida Fire Prevention Code informal
144 interpretations managed by the State Fire Marshal and shall be
145 limited to \$15,000 each fiscal year. The State Fire Marshal

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shall adopt rules to address the implementation and expenditure of the funds allocated to fund the Florida Fire Prevention Code informal interpretations under this section. The funds collected from the surcharge may not be used to fund research on techniques for mitigation of radon in existing buildings. Funds used by the department as well as funds to be transferred to the Department of Health and the State Fire Marshal shall be as prescribed in the annual General Appropriations Act. The department shall adopt rules governing the collection and remittance of surcharges pursuant to chapter 120.

Section 3. Paragraph (d) of subsection (7) of section 553.80, Florida Statutes, is amended to read:

553.80 Enforcement.—

(7) The governing bodies of local governments may provide a schedule of reasonable fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for enforcing this part. These fees, and any fines or investment earnings related to the fees, shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. When providing a schedule of reasonable fees, the total estimated annual revenue derived from fees, and the fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities. Any unexpended balances shall be carried forward to future years for allowable activities or shall be refunded at the discretion of the local government. The basis for a fee structure for allowable activities shall relate to the level of service provided by the local government and shall include consideration for refunding fees due to reduced services based on services provided as

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prescribed by s. 553.791, but not provided by the local government. Fees charged shall be consistently applied.

(d) The local enforcement agency may not require the payment of any additional fees, charges, or expenses associated with:

1. Providing proof of licensure pursuant to chapter 489;
2. Recording or filing a license issued pursuant to this chapter; ~~or~~
3. Providing, recording, or filing evidence of workers' compensation insurance coverage as required by chapter 440; or
4. Applying for permits, if proof of licensure and insurance is provided and recorded.

Section 4. Section 553.9081, Florida Statutes, is created to read:

553.9081 Florida Building Code; required amendments.—The Florida Building Commission shall amend the Florida Building Code—Energy Conservation to:

- (1) (a) Eliminate duplicative commissioning reporting requirements for HVAC and electrical systems; and
- (b) Authorize commissioning reports to be provided by a licensed design professional, electrical engineer, or mechanical engineer; and
- (2) Prohibit the adoption of American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 90.1-2007 s. 9.4.1.1(g).

Section 5. Subsection (8) of section 633.208, Florida Statutes, is amended to read:

633.208 Minimum firesafety standards.—

- (8) (a) The provisions of the Life Safety Code, as contained

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in the Florida Fire Prevention Code, do not apply to one-family and two-family dwellings. However, fire sprinkler protection may be permitted by local government in lieu of other fire protection-related development requirements for such structures. While local governments may adopt fire sprinkler requirements for one-family ~~one~~ and two-family dwellings under this subsection, it is the intent of the Legislature that the economic consequences of the fire sprinkler mandate on home owners be studied before the enactment of such a requirement. After the effective date of this act, any local government that desires to adopt a fire sprinkler requirement on one-family ~~one~~ or two-family dwellings must prepare an economic cost and benefit report that analyzes the application of fire sprinklers to one-family ~~one~~ or two-family dwellings or any proposed residential subdivision. The report must consider the tradeoffs and specific cost savings and benefits of fire sprinklers for future owners of property. The report must include an assessment of the cost savings from any reduced or eliminated impact fees if applicable, the reduction in special fire district tax, insurance fees, and other taxes or fees imposed, and the waiver of certain infrastructure requirements including the reduction of roadway widths, the reduction of water line sizes, increased fire hydrant spacing, increased dead-end roadway length, and a reduction in cul-de-sac sizes relative to the costs from fire sprinkling. A failure to prepare an economic report shall result in the invalidation of the fire sprinkler requirement to any one-family ~~one~~ or two-family dwelling or any proposed subdivision. In addition, a local jurisdiction or utility may not charge any additional fee, above what is charged to a non-

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233 fire sprinklered dwelling, on the basis that a one-family ~~one-~~
234 or two-family dwelling unit is protected by a fire sprinkler
235 system.

236 (b)1. A county, municipality, special taxing district,
237 public utility, or private utility may not require a separate
238 water connection for a one-family or two-family dwelling fire
239 sprinkler system if the hydraulic design has proven the existing
240 connection is capable of supplying the needed hydraulic demand.

241 2. A county, municipality, special district, public
242 utility, or private utility may not charge a water or sewer rate
243 to a one-family or two-family dwelling that requires a larger
244 water meter solely due to the installation of fire sprinklers
245 above that which is charged to a one-family and two-family
246 dwelling with a base meter. If the installation of fire
247 sprinklers in a one-family or two-family dwelling requires the
248 installation of a larger water meter, only the difference in
249 actual cost between the base water meter and the larger water
250 meter may be charged by the water utility provider.

251 Section 6. A local government may not require an owner of a
252 residence to obtain a permit to paint such residence, regardless
253 of whether the residence is owned by a limited liability
254 company.

255 Section 7. The Department of Education, in conjunction with
256 the Department of Economic Opportunity, shall create a study to
257 implement the recommendations of the Construction Industry
258 Workforce Task Force dated January 20, 2017. The Department of
259 Education shall provide the study to the Governor, the President
260 of the Senate, and the Speaker of the House of Representatives
261 before January 9, 2018. The study shall address recommendations

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for:

(1) Expanding the definition of the term "local educational agency," as used in apprenticeship programs, to include nongovernmental entities, private training organizations, industry trade associations, labor unions, or other community-based organizations.

(2) Determining the appropriateness of transferring apprenticeship programs from the Department of Education to the Department of Economic Opportunity.

(3) Providing clarity regarding how current apprenticeship programs are funded from the state to the local educational agencies and what options such agencies have in how they spend apprenticeship funding.

(4) Requiring the State Board of Education to accept the curriculum developed by the National Center for Construction Education and Research or other comparable national curriculum, as satisfactory courses for high school credit, college credit, or state-supported scholarships.

(5) Providing additional support to K-12 programs to ensure construction-related education programs are offered through existing career and technical education programs.

(6) Authorizing an alternative instructor certification process through the Department of Education which does not require certification through local educational agencies.

Section 8. CareerSource Florida, Inc., shall fund construction training programs using existing federal funds awarded to the corporation for training, and shall use the previous statewide Florida ReBuilds program as a implementation model for such programs.

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291

Section 9. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/17/17

Meeting Date

1312

Bill Number (if applicable)

263772

Amendment Barcode (if applicable)

Topic CONSTRUCTION

Name DAPHNEE SAINVI

Job Title LEGISLATIVE COORDINATOR

Address 115 S. ANDREWS AVE

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FT. LAUDERDALE

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FL

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33301

Zip

Phone 954-253-7320

Email dsainvi@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing BROWARD COUNTY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-17-17

Meeting Date

1312

Bill Number (if applicable)

263772

Amendment Barcode (if applicable)

Topic BUILDING CODES

Name CAM FENTRIS

Job Title LEG. COUNSEL

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Phone 850-222-2772

TALL

City

FL

State

32312

Zip

Email AFENTRIS@AOL.COM

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FUA ROOFING + SHEET METAL CONTRACTORS ASSN
FUA REFRIGERATION + A/C CONTRACTORS ASSN

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-17-17

Meeting Date

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

1312

Bill Number (if applicable)

263772

Amendment Barcode (if applicable)

Topic

Name Dale Calhoun

Job Title

Address 201 S Monroe St Unit A

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850 680 0496

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Natural Gas Association & Florida Propane Gas Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/17/17
Meeting Date

SB 1312
Bill Number (if applicable)

Topic Construction

263772
Amendment Barcode (if applicable)

Name Deborah Lawson

Job Title _____

Address P.O. Box 12277
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Tallah FL 32317
City State Zip

Phone 850-570-0033

Email lawson.deborah.e
@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NACM & Fla Roof Deck Assn.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-17-17

Meeting Date

SB 1312

Bill Number (if applicable)

263772

Amendment Barcode (if applicable)

Topic

Code Process

Name

KARI HEBRANK

Job Title

Address

113 East College Ave. #200

Street

Tallahassee, FL 32301

City

State

Zip

Phone

850-566-7824

Email

khebrank@wilsonmgmt.com

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

FLORIDA HOME BUILDERS ASSOC.

Appearing at request of Chair:

☒

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

4-17-17

Meeting Date

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

1312

Bill Number (if applicable)

550330

Amendment Barcode (if applicable)

Topic _____

Name Dale Calhoun

Job Title _____

Address 201 S Monroe Unit A

Street

Tallahassee

FL

32301

City

State

Zip

Phone 850 681 0496

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Natural Gas Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/17/17
Meeting Date

SB 1312
Bill Number (if applicable)

550330
Amendment Barcode (if applicable)

Topic Construction

Name Bruce Kershner

Job Title _____

Address 231 West Bay Ave
Street
Lengwood 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 United Pool & Spa Assn.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/17/17

Meeting Date

SB 1312

Bill Number (if applicable)

550330

Amendment Barcode (if applicable)

Topic Construction

Name Deborah Lawson

Job Title _____

Address P.O. Box 12277

Street

Tallahassee

City

State

32317

Zip

Phone 850 570 0033

Email Lawson.deborah.ee@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Rat Deck Assn.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/17/14

Meeting Date

1312

Bill Number (if applicable)

550330

Amendment Barcode (if applicable)

Topic Construction

Name Jennifer Hatfield

Job Title _____

Address 411 Lenore Ct.

Street

Rockledge

City

FL

State

32955

Zip

Phone 941-345-3263

Email jen@wilsonngmt.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Swimming Pool Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-17-17

Meeting Date

1312

Bill Number (if applicable)

Topic BUILDING CODES

550330

Amendment Barcode (if applicable)

Name CAM FENTRISS

section 4

Job Title LOBBYIST

start line 91

Address 1400 VILAGE SQ # 30243

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Street

TALL

City

FL

State

32312

Zip

Email AFENTRISS

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FUA, REFRIGERATION & AC CONTRACTORS ASSN

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

APRIL 17, 2017

Meeting Date

1312

Bill Number (if applicable)

550330

Amendment Barcode (if applicable)

Topic _____

Name RICHARD PINSKY

Job Title _____

Address 106 E. College Ave Suite 1200

Street

Tallahassee

City

FL

State

Zip

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA SOLAR ENERGY INDUSTRY 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

4-11-17

Meeting Date

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

SB 1312

Bill Number (if applicable)

550330

Amendment Barcode (if applicable)

Topic

BUILDING CODES

Name

KARI HEBRAUK

Job Title

Address

113 EAST COLLEGE AVE. #200

Street

TALLAHASSEE

State

FL

Zip

32301

Phone

850-566-7524

Email

khebrauk@wilsonmgmt.com

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

FLORIDA HOME BUILDERS ASSOCIATION

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/17/17
Meeting Date

1312
Bill Number (if applicable)

Topic CONSTRUCTION

498318
Amendment Barcode (if applicable)

Name DAPHNEE SAINVIL

Job Title LEGISLATIVE COORDINATOR

Address 115 S. ANDREWS AVE
Street
FT. LAUDERDALE FL 33301
City State Zip

Phone 954-253-7320

Email dsainvil@broward.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing BROWARD COUNTY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/17/12
Meeting Date

1312
Bill Number (if applicable)

Topic Construction

~~999~~ 498318
Amendment Barcode (if applicable)

Name ERIC POOLE

Job Title ASSN. LEG. DIR.

Address 100 Monroe
Street
T-11 FL 32311
City State Zip

Phone 9224300

Email _____

Speaking: ☒ For ☐ Against ☐ Information
Amendment

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

Representing Florida Association Counties

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4.17.17
Meeting Date

1312
Bill Number (if applicable)

498318
Amendment Barcode (if applicable)

Topic CONSTRUCTION

Name MEGAN SIRIANE-SAMPLES

Job Title LEGISLATIVE ADVOCATE

Address P.O. Box 1757
~~Street~~
TALLAHASSEE FL 32302
City State Zip

Phone 850.701.3155

Email MSIRIANESAMP@FLDTIES.COM

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/17/17

Meeting Date

SB1312

Bill Number (if applicable)

Topic SECTION 5 - WATER/SEWER RATES

Amendment Barcode (if applicable)

Name John A. Titkanich, Jr.

Job Title City Manager

Address 65 Stone Street

Phone (321) 433-8660

Street

Cocoa

FL

32922

City

State

Zip

Email jtitkanich@cocoafl.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing CITY OF COCOA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/17

Meeting Date

CS SB1312

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Buddy Dewar

Job Title _____

Address 5501 Touraine DR

Street

Phone 850-566-8733

Tallahassee

FL

32308

City

State

Zip

Email GR8Bud@aol.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Fire Sprinkler Assn

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/17/17
Meeting Date

1312
Bill Number (if applicable)

Topic Relating to Construction

Amendment Barcode (if applicable)

Name KAREN SKYERS

Job Title Attorney

Address 204 S. Monroe St 203

Phone 813-527-3900

Street

City

State

Zip

TRA

FL

32301

Email Kskyers@bplegal.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing City of Cape Coral

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 _____

1312
Bill Number (if applicable)

Topic Construction Bill

Amendment Barcode (if applicable) _____

Name Eric Poole

Job Title Asst. Leg. Dir.

Address 100 Murray

Phone 9224300

Street

Tell FL

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Assoc. 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)

4.17.17

Meeting Date

1312

Bill Number (if applicable)

Topic CONSTRUCTION

Amendment Barcode (if applicable)

Name MEGAN SIRYANE-SAMPLES

Job Title LEGISLATIVE ADVOCATE

Address P.O. Box 1757

Street

Phone 850.701.3455

TALLAHASSEE FL 32302

City

State

Zip

Email MSIRYANESAMPLES@FLCITIES.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLORIDA LEAGUE OF CITIES

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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 Community Affairs

BILL: SB 914

INTRODUCER: Senator Baxley

SUBJECT: Public Meetings

DATE: April 18, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Ulrich	EE	Favorable
2.	Cochran	Yeatman	CA	Favorable
3.			RC	

I. Summary:

SB 914 revises Florida's Government in the Sunshine Law, or Sunshine Law, by codifying judicial interpretation and application of s. 286.011, F.S. Specifically, the bill provides from jurisprudence definitions for the terms: de facto meeting, discussion, meeting, official act, and public business. The bill also provides guidelines for boards to conduct permissible fact-finding exercises or excursions.

Finally, the bill provides in statute that notice is not required when two or more members of a board are gathered if no official acts are taken and no public business is discussed.

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

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."

The Florida Statutes also provide that governmental meetings must be open to the public. Section 286.011, F.S., which is also 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 A failure to abide by open meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.⁸ The minutes of a board or commission meeting also must be made available to the public.⁹ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.¹⁰

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of each house.¹¹ An exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹²

Who is Subject to the Sunshine Law?

Article I, Section 24(b) of the Florida Constitution, in pertinent part, provides that meetings of the following bodies must be open and noticed to the public:

[A]ny collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed.

Furthermore, s. 286.011, F.S., provides, in relevant part, that all meetings of the following entities must be open to the public:¹³

[A]ny board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, ... including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings.

The Sunshine Law applies to “[m]embers-elect of boards, commissions, agencies, etc.” as soon as they are elected, even if they have not yet been sworn into office.¹⁴ Any assemblage of members-elect or elected members of a collegial body who “discuss matters on which

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 *Id.*

⁹ Section 286.011(2), F.S.

¹⁰ Section 286.011(3), F.S.

¹¹ FLA. CONST., art. I, s. 24(c).

¹² *Id.*

¹³ Not all meetings must be noticed to the public according to s. 286.011(1), F.S.; only board or commission meetings must be reasonably noticed.

¹⁴ *Hough v. Stembridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973).

foreseeable action may be taken by that board or commission” constitutes a meeting subject to the Sunshine Law.¹⁵

The Sunshine Law has broad application, even to entities that are not normally considered a government body. Case law provides that a university is subject to the Sunshine Law, even if it is not usually considered a state agency.¹⁶ Therefore, since a university is subject to the Sunshine Law, any committee it delegates its powers to must also hold its meetings publicly.¹⁷

Florida courts have held that the intent behind the Sunshine Law is to provide public access to the entire decision-making process, because it is the how and why public officials decided to act which interests the public, not merely the final decision.¹⁸ Accordingly, if a government collegial body delegates its decision-making powers to another group, then those meetings must be public, even if the group is formed of private citizens.¹⁹

What is a Meeting that Should be Held in the Sunshine?

The Legislature has not defined the term “meeting” within the context of the Sunshine Law. However, the courts have. In *Sarasota Citizens for Responsible Gov't v. City of Sarasota* the Florida Supreme Court stated:

[M]eetings within the meaning of the Sunshine Law include any gathering, formal or informal, of two or more members of the same board or commission where the members deal with some matter on which foreseeable action will be taken by the Board.²⁰

The Court has also interpreted the intent of the Sunshine Law in relation to the types of assemblages that constitute a meeting:

The obvious intent was to cover any gathering of the members where the members deal with some matter on which foreseeable action will be taken by the board.²¹

A meeting, within the meaning of the Sunshine Law, can occur even if the members of a collegial body do not speak to each other about a topic where foreseeable action may take place. Courts have ruled that the **opportunity** to make a decision was sufficient to make a gathering of school officials a public meeting.²² In one case, school board members, two school board candidates, a superintendent and his deputy, and members of the press, toured new school bus routes on a school bus. The school board members sat several rows away from each other as a precaution and none of the members discussed preferences, expressed opinions or voted on the bus trip.²³ Despite taking those precautions, the court opined that the school board “had ultimate decision-making authority,” gathered in a confined space, and had “the opportunity at that time

¹⁵ *Hough v. Stembridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973).

¹⁶ *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983).

¹⁷ *Id.*

¹⁸ *Times Publishing Company v. Williams*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969).

¹⁹ *Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974).

²⁰ *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010).

²¹ *Bd. of Pub. Instruction v. Doran*, 224 So. 2d 693 (Fla. 1969).

²² *Finch v. Seminole County Sch. Bd.*, 995 So. 2d 1068 (Fla. 5th DCA 2008).

²³ *Id.*

to make decisions outside of the public scrutiny.” Therefore, the court held that the bus ride was a meeting that violated the Sunshine Law.²⁴

A sunshine meeting may also occur even if the members of a board do not assemble or share information through an intermediary. In this case, a superintendent met individual school board members in succession to discuss redistricting, but denied acting as a “go-between” or sharing the opinions of one board member with another one.²⁵ Although board members did not exchange information or otherwise congregate, the court in finding a violation of the Sunshine Law, held:

The scheduling of six sessions of secret discussions, repetitive in content, in rapid-fire seriatim and of such obvious official portent, resulted in de facto meetings by two or more members of the board at which official action was taken.²⁶

Any meeting when public officials meet to avoid being seen or heard by the public violates the Sunshine Law, regardless of whether that meeting is formal or informal.²⁷ The judiciary has advised, “[i]f a public official is unable to know whether by convening two or more officials he is violating the law, he should leave the meeting forthwith.”²⁸

Not all meetings of government officials are subject to the Sunshine Law, and the presence of two government officials alone is not sufficient to require a public meeting.²⁹ In addition to the exemptions listed in statute, staff meetings and certain fact-finding meetings are exceptions to the Sunshine Law and there is no requirement that these meetings be open and noticed to the public.³⁰

Officials may also meet alone with their staff or employees for fact-finding purposes in order to execute their duties without violating the Sunshine Law.³¹ In addition, case law states that as long as they do not have decision making authority, fact-finding committees are not subject to the Sunshine Law.³² The Florida Supreme Court ruled that “[w]hen a committee has been established for and conducts only information gathering and reporting, the activities of that committee are not subject to § 286.011, Fla. Stat.”³³

What Happens if a Meeting Violates the Sunshine Law?

Section 286.011(1), F.S., provides that the penalty for violating the Sunshine Law is to undo any business conducted in a meeting that should have been public. Specifically, it states, “no

²⁴ *Id.*

²⁵ *Blackford v. Sch. Bd.*, 375 So. 2d 578, 580 (Fla. 5th DCA 1979).

²⁶ *Id.*

²⁷ *Miami Beach v. Berns*, 245 So. 2d 38, 41 (Fla. 1971).

²⁸ *Id.*

²⁹ *City of Sunrise v. News and Sun-Sentinel Co.*, 542 So. 2d 1354, 1355 (Fla. 4th DCA 1989).

³⁰ Office of the Attorney General, *Government-In-The-Sunshine Manual Volume 38* at 3-5 (2016).

³¹ *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010). See also *Bennett v. Warden*, 333 So. 2d 97 (Fla. Dist. Ct. App. 1976).

³² *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010).

³³ *Id.* at 757.

resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.”

Courts have meted out a wide range of punishments to bodies who have violated the Sunshine Law, the most severe of which is to make a final action void. A violation of the Sunshine Law is “an irreparable public injury” and it does not matter if an entity did not intend to engage in such an act.³⁴ Additionally, courts may also order entities to stop meeting unless they meet in the open.³⁵

However, it is worth noting that some courts have been more lenient and permitted entities to cure the violations. For example, a court may permit a body to cure Sunshine Law violations by requiring that information be made public and that all the subject matter be “reexamined and rediscussed” in an open meeting.³⁶

III. Effect of Proposed Changes:

The bill creates s. 286.011(1)(a), F.S., codifying judicial interpretation and application of the terms: de facto meeting, discussion, meeting, official act, and public business. Those terms are defined as follows:

- “De facto meeting” means the use of board or commission staff or third parties, acting as intermediaries, to facilitate discussion of public business between board or commission members.
- “Discussion” means a conversation between or among board or commission members regardless of whether through oral, written, electronic or any other form of communication.
- “Meeting” means a gathering, whether formal or informal, of two or more members of the same board or commission, even if they have not yet taken office.
- “Official act” means the adoption of a resolution or rule or other formal action being taken by the board or commission.
- “Public business” means any matter before, or foreseeably expected to come before, the board or commission.

The bill also specifies that members of a board may participate in fact-finding exercises or excursion to research public business, and may participate in meetings with a member of the Legislature if:

- The board provides reasonable notice;
- A vote, official act, or an agreement regarding a future action does not occur;
- There is no discussion of public business that occurs; and
- There are appropriate records, minutes, audio recordings, or video recordings made and retained as a public record.

Finally, the bill provides that, if there is a gathering of two or more board members where no official acts are taken and no public business is discussed, then no public notice or access is required.

³⁴ *Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974).

³⁵ *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983).

³⁶ *Blackford v. Sch. Bd.*, 375 So. 2d 578, 581 (Fla. 5th DCA 1979).

The bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, Section 24(c) of the Florida Constitution provides the manner in which exemptions to Florida's Sunshine Laws may be created and requires a two-thirds vote of each house of the Legislature in order for such exemptions to be enacted. Because this bill does not create any new exemptions or codify existing jurisprudentially-created exemptions, neither the substantive requirements nor the two-thirds vote in each house requirement apply to this bill.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Because the bill merely codifies jurisprudence, it is not anticipated that this bill will have a fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 286.011 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 Baxley

12-00162D-17

2017914__

A bill to be entitled
An act relating to public meetings; amending s.
286.011, F.S.; defining terms; specifying conditions
under which members of any board or commission of any
state agency or authority or of any agency or
authority of any county, municipal corporation, or
political subdivision may participate in fact-finding
exercises or excursions; providing for construction;
providing an effective date.

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

Section 1. Subsection (1) of section 286.011, Florida
Statutes, is amended, present subsections (2) through (8) of
that section are renumbered as subsections (3) through (9),
respectively, and a new subsection (2) is added to that section,
to read:

286.011 Public meetings and records; public inspection;
criminal and civil penalties.—

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

1. "De facto meeting" means the use of board or commission
staff or third parties, acting as intermediaries, to facilitate
discussion of public business between board or commission
members.

2. "Discussion" means a conversation between or among board
or commission members regardless of whether through oral,
written, electronic, or any other form of communication.

3. "Meeting" means a gathering, whether formal or informal,
of two or more members of the same board or commission, even if

12-00162D-17

2017914__

they have not yet taken office.

4. "Official act" means the adoption of a resolution or rule or other formal action being taken by the board or commission.

5. "Public business" means any matter before, or foreseeably expected to come before, the board or commission.

(b) Except as otherwise provided in the State Constitution, all meetings or de facto meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision at which official acts are to be taken or public business is to be transacted or discussed, are declared to be public meetings open to the public.~~except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and~~

(c) Members of the same board or commission may participate in fact-finding exercises or excursions to research public business, and may participate in meetings with a member of the Legislature, if:

1. The board or commission provides reasonable notice;

2. A vote, an official act, or an agreement regarding an action at a future meeting does not occur;

3. A discussion of public business, as those terms are defined in paragraph (a), does not occur; and

4. Appropriate records, minutes, audio recordings, or video recordings are made and retained as a public record.

(d) A ~~no~~ resolution, rule, or formal action is not ~~shall be~~

12-00162D-17

2017914__

59 considered binding unless ~~except as~~ taken or made at a public
60 ~~such~~ meeting. The board or commission must provide reasonable
61 notice of all such meetings.

62 (2) So long as no official acts are taken and any public
63 business is not discussed, subsection (1) may not be construed
64 to require public notice of, and access to, any gathering of two
65 or more members of the same board or commission.

66 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)

4/17/17

Meeting Date

914

Bill Number (if applicable)

Topic Public meetings

Amendment Barcode (if applicable)

Name David Cruz

Job Title Assistant General Counsel

Address P.O. Box 1757

Phone 701-3676

Street

Tallahassee FL 32302

City

State

Zip

Email DCruz@FLcities.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-14-17

Meeting Date

SB 914

Bill Number (if applicable)

Topic PUBLIC MEETINGS

Amendment Barcode (if applicable)

Name LAURA YOUNANS

Job Title ASSOCIATE DIR. PUBIC POLICY

Address 100 N. MONROE ST
Street

Phone _____

TAL
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 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)

9/17/17
Meeting Date

SB 914
Bill Number (if applicable)

Topic Public meetings

Amendment Barcode (if applicable)

Name Ben Wilcox

Job Title _____

Address 1719 Old Fort Dr
Street

Phone _____

Tall. 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 Common Cause Florida

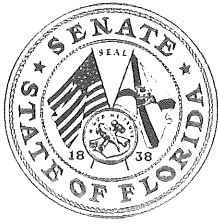
Appearing at request of Chair: ☐ Yes ☒ No

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)



SENATOR DENNIS BAXLEY
12th District

THE FLORIDA SENATE

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Criminal Justice, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Health and
Human Services
Transportation

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

March 8, 2017

The Honorable Senator Tom Lee
418 Senate Office Building
Tallahassee, Florida 32399

Dear Chairman Lee,

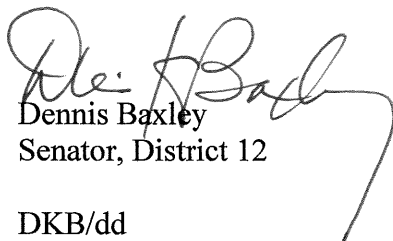
I respectfully request you place Senate Bill 914 Public Meetings on your next available agenda.

This bill allows two or more county commissioners to discuss issues pertaining to business as in fact-finding exercises or excursions to research public business, so long as no official acts are taken and any public business is not discussed, that would require public notice of, and access to, any gathering of two or more members of the same board or commission.

It passed its first committee of reference; Ethics and Elections, unanimously without amendments.

I appreciate your favorable consideration.

Onward & Upward,


Dennis Baxley
Senator, District 12

DKB/dd

cc: Tom Yeatman, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

CourtSmart Tag Report

Room: SB 301 **Case No.:**
Caption: Senate Committee on Community Affairs

Type:
Judge:

Started: 4/17/2017 4:04:30 PM
Ends: 4/17/2017 5:44:35 PM **Length:** 01:40:06

4:04:31 PM	Meeting called to order
4:04:35 PM	Roll call
4:04:40 PM	Quorum present
4:04:59 PM	Tab 8
4:05:18 PM	Senator Farmer on SB 314
4:06:48 PM	Questions?
4:07:04 PM	Debate?
4:07:10 PM	Senator Farmer closes on SB 314
4:07:30 PM	SB 314 reported favorably
4:07:47 PM	Tab 5
4:07:59 PM	Senator Rader on SB 1494
4:08:38 PM	Questions?
4:08:41 PM	Debate?
4:08:51 PM	Senator Rader closes on SB 1494
4:09:17 PM	SB 1494 reported favorably
4:09:46 PM	Tab 6
4:10:00 PM	Senator Thurston on SB 304
4:10:21 PM	Questions?
4:10:35 PM	Amendment barcode 284506
4:10:51 PM	Senator Clemens on amendment
4:11:14 PM	Questions?
4:11:19 PM	Debate?
4:11:23 PM	Amendment adopted
4:11:28 PM	Back on bill as amended
4:11:39 PM	Senator Thurston closes on SB 304
4:11:59 PM	SB 304 is reported favorably
4:12:04 PM	Tab 1
4:12:17 PM	Senator Latvala on SB 1672
4:13:04 PM	Questions?
4:13:14 PM	Amendment barcode 233372
4:13:20 PM	Senator Brandes on the amendment
4:14:23 PM	Questions?
4:14:33 PM	Appearance cards?
4:14:36 PM	Debate?
4:14:40 PM	Amendment adopted
4:14:46 PM	Back on bill as amended
4:15:24 PM	Berry Shevlin, Tampa Bay Partnership
4:17:28 PM	Questions?
4:17:56 PM	Senator Latvala closes on SB 1672
4:19:41 PM	SB 1672 is reported favorably
4:19:55 PM	Tab 4
4:20:22 PM	Senator Rouson on SB 850
4:21:09 PM	Appearance cards?
4:21:09 PM	Mike Rogers, Florida Public Housing Authority Self Insurance Fund
4:21:22 PM	Debate?
4:21:37 PM	Senator Rouson closes on SB 850
4:22:34 PM	Temporary Recess
4:23:15 PM	Recording Paused
4:27:19 PM	Recording Resumed
4:27:25 PM	Temporary Recess
4:27:29 PM	Tab 11
4:27:42 PM	Senator Perry on SB 1372

4:28:54 PM Senator Perry withdraws barcode 504446 and 352768
4:29:10 PM Senator Lee on amendment barcode 587522
4:29:46 PM Questions?
4:29:59 PM Dale Calhoun, Florida National Gas Association and Florida Propane Gas Association
4:30:03 PM Cam Fentress, Florida Refrigeration and AC Contractors Association
4:30:22 PM Kari Hebrank, Florida Home Builders Association
4:30:41 PM Senator Lee closes on the amendment
4:31:19 PM Amendment is adopted
4:31:33 PM Senator Perry closes
4:31:44 PM SB 1372 is reported favorably
4:31:47 PM Tab 12
4:31:56 PM Senator Perry on SB 1312
4:32:44 PM Senator Perry on amendment barcode 550330
4:33:14 PM Questions?
4:33:18 PM Senator Clemens
4:33:54 PM Appearance cards?
4:34:07 PM Dale Calhoun, Florida National Gas Association
4:34:23 PM Bruce Kershner, United Pool and Spa Association
4:34:27 PM Deborah Lawson, Florida Roof Deck Association
4:34:32 PM Jennifer Hatfield, Florida Swimming Pool Association
4:35:09 PM Cam Fentress, Florida Refrigeration and AC Contractors Association
4:35:30 PM Senator Clemens questions
4:35:36 PM Ms.Fentress
4:36:23 PM Richard Pinsky, Florida Solar Energy Industry Association
4:36:41 PM Kari Hebrank, Florida Home Builders Association
4:37:44 PM Senator Brandes
4:37:51 PM Ms. Hebrank
4:40:03 PM Senator Lee on amendment barcode 263772
4:40:20 PM Questions?
4:40:26 PM Appearance cards?
4:40:48 PM Daphanee Sainvil, Broward County
4:40:54 PM Dale Calhoun, Florida National Gas Association
4:41:01 PM Cam Fentress, Florida Refrigeration and AC Contractors Association
4:41:11 PM Kari Hebrank, Florida Home Builders Association
4:41:22 PM Deborah Lawson, Florida Rook Deck Association
4:41:36 PM Senator Lee closes on amendment
4:41:42 PM Amendment is adopted
4:41:55 PM Amendment barcode 498318
4:42:52 PM Senator Rodriguez on the amendment
4:43:22 PM Amendment withdrawn
4:43:31 PM Back on bill as amended
4:43:45 PM Daphanee Sanvil, Broward County
4:44:18 PM Eric Poole, Florida Association of Counties
4:45:13 PM Megan Sigane-Samples, Florida League of Cities
4:46:17 PM Questions?
4:46:32 PM Buddy Dewar, Florida Fire Sprinklers Association
4:47:55 PM Senator Rodriguez
4:48:16 PM Mr. Dewar
4:49:22 PM Senator Lee
4:50:03 PM Mr. Dewar
4:50:27 PM John Titkanich, City of Cocoa
4:50:42 PM Karen Skyers, City of Cape Coral
4:51:26 PM Debate?
4:51:34 PM Senator Clemens
4:53:17 PM Senator Rodriguez
4:53:56 PM Senator Perry closes on SB 1312
4:55:12 PM SB 1312 is reported favorably
4:55:35 PM Tab 7
4:55:45 PM Senator Artilles on SB 14
4:56:28 PM Questions?
4:56:32 PM Debate?
4:56:40 PM Senator Artilles closes on SB 14

4:56:59 PM	SB 14 is reported favorably
4:57:12 PM	Tab 3
4:57:26 PM	Senator Montford on SB 46
4:57:55 PM	Questions?
4:57:57 PM	Debate?
4:58:16 PM	Senator Montford closes on SB 46
4:58:32 PM	SB 46 is reported favorably
4:59:17 PM	Tab 2
4:59:32 PM	Senator Brandes on SB 40
5:00:11 PM	Questions?
5:00:42 PM	Senator Brandes closes on SB 40
5:00:52 PM	SB 40 is reported favorably
5:01:16 PM	Tab 9
5:01:29 PM	Senator Steube on SB 278
5:02:12 PM	Amendment barcode 870392
5:03:09 PM	Amendment to the amendment 788106
5:03:14 PM	Questions?
5:03:18 PM	Appearance cards?
5:03:35 PM	Ed O'Berry, Palm Beach Firefighters
5:04:02 PM	Sebastian Alexsander, Palm Beach Firefighters
5:04:14 PM	Amber Hughes, Florida League of Cities
5:05:00 PM	Questions?
5:05:42 PM	Back on substitute amendment
5:05:48 PM	Senator Steube closes on amendment
5:05:56 PM	Amendment adopted
5:06:25 PM	Andrew Hosek, Americans for Prosperity
5:06:39 PM	Debate?
5:06:43 PM	Senator Clemens
5:07:45 PM	Further debate?
5:07:55 PM	Senator Steube closes on SB 278
5:08:06 PM	SB 278 is reported favorably
5:08:22 PM	Tab 13
5:08:32 PM	Senator Baxley on SB 914
5:09:25 PM	Questions?
5:09:44 PM	Laura Youmans, Florida League of Counties
5:09:48 PM	David Cruz, Florida League of Cities
5:10:00 PM	Ben Wilcox, Common Cause Florida
5:10:04 PM	Debate?
5:10:13 PM	Senator Baxley closes on SB 914
5:10:46 PM	SB 914 reported favorably
5:10:53 PM	Tab 10
5:11:02 PM	Senator Steube on SB 188
5:12:43 PM	Senator Steube withdraws barcodes 703600 and 736436
5:13:10 PM	Reconsider vote on amendment barcode 112524
5:13:29 PM	Amendment reconsidered
5:13:57 PM	Senator Brandes on late filed amendment barcode 530754
5:16:07 PM	Senator Lee
5:16:53 PM	Debate on amendment?
5:16:56 PM	Amendment adopted
5:17:01 PM	Back on bill as amended
5:17:06 PM	Appearance cards?
5:17:29 PM	Richard Turner, Florida Restaurant and Lodging Association
5:19:20 PM	Jessica Fernandez, The Greater Miami and Beaches Hotel Association
5:20:36 PM	Senator Brandes
5:21:54 PM	Ms.Fernandez
5:22:37 PM	Armando Ibarra, Greater Miami and Beaches Hotel Association
5:23:01 PM	Travis Moore, Ocean Hammock Property Owners Association
5:25:45 PM	Andy Gonzalez, Florida Realtors
5:25:48 PM	Jennifer Green, Homeaway
5:26:12 PM	Richard Pinsky, City of Lake Worth
5:26:29 PM	Lori Killinger, Florida Vacation Rental Managers Association
5:26:42 PM	Jess McCarty, Miami-Dade County

5:26:51 PM	Cari Roth, City of Holmes Beach
5:28:03 PM	Sue Mullens, City of Bradenton Beach; Town of Longboat Key
5:28:08 PM	Senator Rodriguez
5:29:03 PM	Senator Brandes
5:30:10 PM	Committee Staff, Miguel Oxamendi
5:30:51 PM	Questions?
5:31:10 PM	Nicole Fogarty, City of Fort Pierce
5:31:26 PM	Nicole Fogarty, St.Lucie County Board of County Commissioners
5:31:40 PM	Rebecca Delarosa, Palm Beach County
5:31:46 PM	Christopher Emmanuel, Florida Chamber of Commerce
5:32:12 PM	Kerri McNulty, City of Miami
5:35:00 PM	Edgar G. Fernandez, Indian River County
5:35:15 PM	Devon West, Martin County Board of County Commissioners
5:35:32 PM	Eric Poole, Florida Association of Counties
5:35:51 PM	Troy Flannigan, American Hotel and Lodging Association
5:36:55 PM	Al Hadeed, Flagler County Board of County Commissioners
5:37:48 PM	Andrew Hosek, Americans for Prosperity
5:37:59 PM	Casey Cook, Florida League of Cities
5:38:26 PM	Senator Bean
5:39:08 PM	Debate on the bill as amended
5:39:12 PM	Senator Clemens
5:40:06 PM	Senator Rodriguez
5:40:47 PM	Senator Bean
5:41:24 PM	Senator Lee
5:42:44 PM	Senator Steube closes on SB 188
5:43:16 PM	Roll call on SB 188
5:43:43 PM	SB 188 is reported favorably
5:43:54 PM	Senator Lee
5:44:25 PM	Senator Clemens move we adjourn
5:44:30 PM	Meeting Adjourned