

Tab 1 SB 102 by Steube (CO-INTRODUCERS) Farmer; (Similar to CS/H 00579) Payment of Health Care Claims						
321438	D	S	RCS	RC, Steube	Delete everything after	04/19 07:47 PM
~~301794~~	AA	S	WD	RC, Flores	Delete L.29:	04/19 07:47 PM
~~916996~~	A	S	WD	RC, Flores	Delete L.32:	04/19 07:47 PM

Tab 2 CS/CS/SB 182 by HP, BI, Mayfield (CO-INTRODUCERS) Artiles, Broxson, Rouson; (Similar to CS/H 00095) Consumer Protection from Nonmedical Changes to Prescription Drug Formularies						
~~220914~~	A	S	WD	RC, Lee	Delete L.20 - 165:	04/19 07:47 PM

Tab 3 CS/CS/SB 190 by CA, RI, Artiles (CO-INTRODUCERS) Perry; (Similar to CS/CS/H 00241) Low-voltage Electric Fences						

Tab 4 CS/CS/SB 414 by CF, HP, Grimsley; (Similar to CS/1ST ENG/H 00863) Hospice Services						

Tab 5 CS/SB 512 by RI, Young (CO-INTRODUCERS) Rouson, Steube; (Identical to H 00113) Steroid Use in Racing Greyhounds						

Tab 6 CS/CS/SB 596 by GO, CU, Hutson (CO-INTRODUCERS) Young, Broxson; (Similar to CS/H 00687) Utilities						
219028	D	S	RCS	RC, Hutson	Delete everything after	04/19 07:49 PM
320990	AA	S	RCS	RC, Hutson	Delete L.54 - 414:	04/19 07:49 PM
~~567676~~	AA	S	WD	RC, Hutson	Delete L.194 - 203:	04/19 07:49 PM
325560	AA	S	UNFAV	RC, Lee	Delete L.309 - 310:	04/19 07:49 PM
741036	AA	S	RCS	RC, Lee	btw L.467 - 468:	04/19 07:49 PM

Tab 7 CS/CS/SB 660 by JU, BI, Passidomo; (Similar to CS/H 00471) Bankruptcy Matters in Foreclosure Proceedings						
675346	A	S	RCS	RC, Passidomo	Delete L.25:	04/19 07:29 PM

Tab 8 CS/SB 730 by BI, Passidomo; (Similar to CS/CS/H 00837) Insurer Insolvency						
176748	A	S	RCS	RC, Passidomo	Delete L.325 - 586:	04/19 07:31 PM

Tab 9 CS/CS/SB 788 by AP, CJ, Clemens; (Compare to CS/CS/H 00807) Marketing Practices for Substance Abuse Services						

Tab 10 SB 898 by Simmons (CO-INTRODUCERS) Artiles; (Identical to H 00065) Civil Remedies for Terrorism						

Tab 11 SB 1238 by Bean; (Similar to CS/H 01043) Utility Investments in Gas Reserves						
265888	A	S		RC, Latvala	btw L.12 - 13:	04/18 03:59 PM
916352	A	S		RC, Latvala	Delete L.27:	04/18 03:58 PM
400188	A	S		RC, Latvala	Delete L.28 - 42:	04/18 03:58 PM
246872	A	S		RC, Latvala	Delete L.30:	04/18 03:59 PM
208122	A	S		RC, Latvala	Delete L.40:	04/18 04:01 PM
383720	A	S		RC, Latvala	btw L.42 - 43:	04/18 04:00 PM
310804	A	S		RC, Latvala	Delete L.42:	04/18 04:00 PM
461616	A	S		RC, Latvala	btw L.49 - 50:	04/18 03:59 PM
440944	A	S		RC, Latvala	btw L.49 - 50:	04/18 04:00 PM
793320	A	S		RC, Latvala	btw L.49 - 50:	04/18 04:00 PM

Tab 12 CS/CS/SB 420 by CA, BI, Brandes; (Similar to CS/CS/H 00813) Flood Insurance						
~~909524~~	A	S	WD	RC, Brandes	Delete L.173 - 186:	04/19 07:37 PM
~~960142~~	SA	S	WD	RC, Brandes	Delete L.173 - 186:	04/19 07:37 PM

Tab 13 CS/SB 926 by ED, Flores (CO-INTRODUCERS) Bradley, Perry, Baxley, Stargel; (Compare to CS/CS/CS/H 00549) Education						
903014	A	S	RCS	RC, Flores	btw L.157 - 158:	04/19 07:43 PM
236592	A	S	RCS	RC, Flores	btw L.246 - 247:	04/19 07:43 PM
~~367714~~	A	S	WD	RC, Brandes	Delete L.690 - 700:	04/19 07:43 PM
662216	A	S	RCS	RC, Flores	Delete L.835 - 839:	04/19 07:43 PM

Tab 14 CS/SB 1582 by AP, Bradley; (Compare to CS/1ST ENG/H 07085) Workers' Compensation Insurance						

Tab 15 SB 7002 by CA; (Identical to H 07113) OGSR/Donor Information/Publicly Owned Performing Arts Center						

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Benacquisto, Chair
Senator Thurston, Vice Chair

MEETING DATE: Wednesday, April 19, 2017

TIME: 4:00—6:00 p.m.

PLACE: Toni Jennings Committee Room, 110 Senate Office Building

MEMBERS: Senator Benacquisto, Chair; Senator Thurston, Vice Chair; Senators Book, Bradley, Brandes, Braynon, Flores, Galvano, Latvala, Lee, Montford, and Simpson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 102 Steube (Similar CS/H 579)	Payment of Health Care Claims; Prohibiting a health insurer from retroactively denying a claim under specified circumstances, etc. BI 02/21/2017 Favorable HP 03/14/2017 Favorable RC 04/19/2017 Fav/CS	Fav/CS Yeas 9 Nays 0
2	CS/CS/SB 182 Health Policy / Banking and Insurance / Mayfield (Similar CS/H 95)	Consumer Protection from Nonmedical Changes to Prescription Drug Formularies; Limiting, under specified circumstances, changes to a health insurance policy prescription drug formulary during a policy year; requiring small employer carriers to limit changes to prescription drug formularies under certain circumstances; limiting, under specified circumstances, changes to a health maintenance contract prescription drug formulary during a contract year, etc. BI 02/07/2017 Fav/CS HP 02/21/2017 Fav/CS AP 04/06/2017 Favorable RC 04/19/2017 Favorable	Favorable Yeas 11 Nays 0
3	CS/CS/SB 190 Community Affairs / Regulated Industries / Artilles (Similar CS/CS/H 241)	Low-voltage Electric Fences; Providing requirements for a low-voltage electric fence to be permitted as a low-voltage alarm system project, etc. RI 02/08/2017 Fav/CS CA 03/14/2017 Fav/CS RC 04/19/2017 Temporarily Postponed	Temporarily Postponed
4	CS/CS/SB 414 Children, Families, and Elder Affairs / Health Policy / Grimsley (Similar CS/H 863)	Hospice Services; Exempting certain hospice services in a not-for-profit retirement community from specified review and application requirements, etc. HP 03/27/2017 Fav/CS CF 04/03/2017 Fav/CS RC 04/19/2017 Favorable	Favorable Yeas 11 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, April 19, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	CS/SB 512 Regulated Industries / Young (Identical H 113, CS/H 743)	Steroid Use in Racing Greyhounds; Providing that a positive test result for anabolic steroids in certain samples taken from a greyhound violates the prohibition on the racing of animals that are impermissibly medicated or determined to have a prohibited substance present, etc. RI 04/06/2017 Fav/CS RC 04/19/2017 Favorable AP	Favorable Yeas 9 Nays 2
6	CS/CS/SB 596 Governmental Oversight and Accountability / Communications, Energy, and Public Utilities / Hutson (Similar CS/H 687)	Utilities; Authorizing the Department of Transportation and certain local governmental entities to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining across, on, or within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdictions any voice or data communications services lines or wireless facilities; creating the "Advanced Wireless Infrastructure Deployment Act"; authorizing an authority to require permit fees only under certain circumstances, etc. CU 03/07/2017 Fav/CS GO 03/27/2017 Fav/CS RC 04/12/2017 Temporarily Postponed RC 04/19/2017 Fav/CS	Fav/CS Yeas 12 Nays 0
7	CS/CS/SB 660 Judiciary / Banking and Insurance / Passidomo (Similar CS/H 471)	Bankruptcy Matters in Foreclosure Proceedings ; Authorizing lienholders to use certain documents as an admission in an action to foreclose a mortgage; requiring a court to take judicial notice of final orders entered in bankruptcy cases, etc. BI 03/06/2017 Fav/CS JU 03/22/2017 Fav/CS RC 04/19/2017 Fav/CS	Fav/CS Yeas 11 Nays 0
8	CS/SB 730 Banking and Insurance / Passidomo (Similar CS/CS/H 837)	Insurer Insolvency; Adding the Insurer Receivership Model Act to a list of acts that extend reciprocity in the treatment of policyholders in receivership if such act is enacted in other states; revising the exclusive jurisdiction of the Circuit Court of Leon County, upon issuance of specified orders, of an insurer's assets or property in a delinquency proceeding; requiring that specified large deductible claims under certain workers' compensation policies must be turned over to the applicable responsible guaranty association for handling, etc. BI 03/06/2017 Fav/CS AGG 03/29/2017 Favorable AP 04/13/2017 Favorable RC 04/19/2017 Fav/CS	Fav/CS Yeas 11 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, April 19, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	CS/CS/SB 788 Appropriations / Criminal Justice / Clemens (Compare CS/CS/H 807)	Marketing Practices for Substance Abuse Services; Authorizing the Office of Statewide Prosecution in the Department of Legal Affairs to investigate and prosecute patient brokering offenses; providing that an application for the disclosure of an individual's records may be filed as part of an active criminal investigation; prohibiting a person from knowingly and willfully making specified false or misleading statements or providing specified false or misleading information under certain circumstances, etc. CJ 03/06/2017 Fav/CS CF 03/21/2017 Favorable AP 04/05/2017 Fav/CS AP 04/06/2017 RC 04/19/2017 Favorable	Favorable Yeas 11 Nays 0
10	SB 898 Simmons (Identical H 65)	Civil Remedies for Terrorism; Creating a cause of action relating to terrorism; specifying a measure of damages; prohibiting claims by specified individuals, etc. JU 03/07/2017 Favorable ACJ 03/22/2017 Favorable RC 04/19/2017 Favorable	Favorable Yeas 11 Nays 0
With subcommittee recommendation - Criminal and Civil Justice			
11	SB 1238 Bean (Similar CS/H 1043)	Utility Investments in Gas Reserves; Revising the jurisdiction of the Public Service Commission over public utilities to include the approval of cost recovery for certain gas reserve investments, etc. CU 03/14/2017 Favorable RC 04/12/2017 Temporarily Postponed RC 04/19/2017 Temporarily Postponed	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, April 19, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	CS/CS/SB 420 Community Affairs / Banking and Insurance / Brandes (Similar CS/H 813)	Flood Insurance; Revising the intervals at which specified standards and guidelines for projecting certain rate filings must be revised by the Florida Commission on Hurricane Loss Projection Methodology; authorizing certain insurers to issue insurance policies, contracts, or endorsements providing certain excess coverage for the peril of flood; specifying a condition for an eligible surplus lines insurer before a surplus lines agent may be excepted from a diligent-effort requirement when exporting flood insurance contracts or endorsements to the insurer; revising a provision relating to a specified notice required before the procurement of a private flood insurance policy for property currently insured under the National Flood Insurance Program, etc. BI 02/21/2017 Fav/CS CA 04/03/2017 Fav/CS RC 04/19/2017 Favorable	Favorable Yeas 10 Nays 0
13	CS/SB 926 Education / Flores (Compare CS/H 773, H 1139, H 1249, S 964, S 1422)	Education; Requiring the Commissioner of Education to contract for an independent study to determine whether a nationally recognized high school assessment may be administered in lieu of the Florida Standards Assessment and the Algebra I end-of-course assessment; authorizing an individual district school board member to visit any district school or charter school in his or her school district; requiring the commissioner to make an alternative, nonelectronic assessment option available for statewide assessments; creating the Committee on Early Childhood Development within the Department of Education, etc. ED 03/21/2017 Workshop-Discussed ED 03/27/2017 Temporarily Postponed ED 04/03/2017 Fav/CS RC 04/19/2017 Fav/CS	Fav/CS Yeas 11 Nays 0
14	CS/SB 1582 Appropriations / Bradley (Compare CS/H 7085)	Workers' Compensation Insurance; Revising a prohibition against receiving certain fees, consideration, or gratuities under certain circumstances; requiring carriers to authorize or deny, rather than respond to, certain requests for authorization within a specified timeframe; providing that specified cancers of firefighters are deemed occupational diseases arising out of work performed in the course and scope of employment; revising conditions under which the Office of the Judges of Compensation Claims must dismiss petitions for benefits, etc. BI 04/03/2017 Favorable AP 04/13/2017 Fav/CS RC 04/19/2017 Favorable	Favorable Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, April 19, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	SB 7002 Community Affairs (Identical H 7113)	OGSR/Donor Information/Publicly Owned Performing Arts Center; Amending provisions which provide an exemption from public records requirements for information that identifies a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center if the donor desires to remain anonymous; removing the scheduled repeal of the exemption, etc. GO 03/22/2017 Favorable RC 04/19/2017 Favorable	Favorable Yeas 9 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 102

INTRODUCER: Rules Committee and Senator Steube

SUBJECT: Payment of Health Care Claims

DATE: April 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Favorable
2.	Lloyd	Stovall	HP	Favorable
3.	Johnson	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 102 prohibits health insurers and health maintenance organizations (HMOs) from retroactively denying a claim, if at any time, the insurer or HMO verified the eligibility of an insured or subscriber at the time of treatment and provided an authorization number. The provisions of the bill apply to policies or contracts issued or renewed on or after January 1, 2018. Medicaid managed care plans are exempt from the provisions of the bill. Currently, a health insurer or HMO may retroactively deny a claim because of an insured's ineligibility up to 1 year after the payment of the claim. Under existing law, the patient is responsible for those claims, which potentially exposes the physician to financial risk if the patient does not pay the claims.

II. Present Situation:

Denial of Claims

According to the American Medical Association (AMA), health care providers lose a significant amount of administrative time and revenue due to denied claims. In 2013, the AMA estimated that more than \$43 billion in savings could have been realized since 2010 if commercial insurers had consistently paid claims correctly.¹

¹ Amednews.com, *Claims Analysis Shows Doctors the Way to Fight Insurer Denials* (July 15, 2013) (on file with the Senate Committee on Banking and Insurance).

Coverage for medical services can be denied before or after the service has been provided, through denial of preauthorization requests, through denial of claims for payment, or a retroactive denial of payment. As a condition for coverage of some services, providers or insureds are required to request authorization prior to providing or receiving the service. The full claim or certain lines of the claim may be denied, such as a surgery with charges for multiple procedures and supplies.

There are many possible reasons for claim denials. Claims may be denied due to an incorrect diagnosis code, incomplete claim submission, or the submission of a duplicate claim. Eligibility issues can cause claims to be denied. For example, a claim may be submitted for a service provided prior to an individual's effective date of coverage or after it has been terminated. Finally, claim denials can occur when a determination is made that the service provided was not covered or it was not medically necessary. Under state and federal laws, denied claims may be appealed.

After an insurer or HMO pays a claim, the insurer or HMO may conduct a claims audit to verify claims were paid appropriately and accurately. Such an audit can be triggered by a variety of reasons. Some of these situations include new billing guidelines have been established by regulators; the provider has made significant changes to the original bill, such as the diagnosis of the patient; the plan is notified that the enrollee's coverage is terminated due to non-payment of premiums; or the plan is notified that the enrollee has other health insurance coverage. After the audit, an insurer or HMO may retrospectively deny a claim for a preauthorized service and try to recoup the payment from the provider. Reasons for the retroactive denial may include fraud, submission of incomplete or inaccurate information; nonpayment of premiums; exhaustion of benefits; coordination of benefits; or if the individual was not enrolled or eligible for coverage at the time services were rendered. As a result, an insurer or HMO may try to recoup payment from a provider by retroactively denying a previously paid claim.

Group Health Plans Retroactive Termination of Coverage

Retroactive termination of insurance coverage to an earlier date due to an employee's discharge is an increasing problem for some providers and consumers. Some plans may allow an employer to cancel coverage of an employee retroactively more than 90 days post termination. Other plans will accept retroactive terminations for up to the preceding 3 months, if the plan has not paid any claims for the enrollee during that period. If claims have been paid within the previous 60 days, the coverage termination date may be established as of the end of the month in which services were rendered.

When a provider is notified of a retroactive termination, the provider may have already verified that the patient was covered, rendered services in reliance and expectation of payment, and even received payment. Retroactive terminations often result in the provider or the consumer bearing the loss, despite the verified eligibility.

Federal Subsidized Individual Policies or Contracts and Grace Periods

The federal Patient Protection and Affordable Care Act (PPACA)² guarantees access to coverage and mandates certain essential health benefits and other requirements. To address affordability issues, federal premium tax credits and cost-sharing subsidies are available to assist eligible low and moderate-income individuals to purchase qualified health plans (QHPs) on a state or federal exchange.³ In Florida, 1,588,628 individuals (or 91 percent of the total individuals) enrolled through the federal exchange received premium tax credits for plan year 2016.⁴

Under PPACA, insurers and HMOs must provide a grace period⁵ of at least three consecutive months⁶ before cancelling the policy or contract of a federally subsidized enrollee who is delinquent if the enrollee previously paid 1-month's premium. During the grace period, the insurer must pay all appropriate claims for services provided during the first month of the grace period. For the second and third months, an insurer may pend claims. Issuers must notify providers that may be affected that an enrollee has lapsed in his or her payment of premiums and there is a possibility the issuer may deny the payment of claims incurred during the second and third months.⁷

If the enrollee resolves all outstanding premium payments by the end of the grace period, then the pended claims would be paid as appropriate. If not, the claims for the second and third month would be denied. If coverage is terminated, the termination date is the last day of the first month of the grace period and the insurer may not recoup any payment for claims made during the first month of the grace period. At the end of grace period, the provider may seek payment for the medical services the insurer denied for months two and three. Providers note that it will be extremely difficult to obtain direct payment from patients receiving federal subsidies given their low or moderate income.⁸ According to a 2014 survey, 48 percent of the providers not

² The Patient Protection and Affordable Care Act (Pub. Law No. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. Law No. 111–152), which amended several provisions of the PPACA, was enacted on March 30, 2010.

³ In general, individuals and families may be eligible for the premium tax credit if their household income for the year is at least 100 percent but no more than 400 percent of the federal poverty line for their family size. For residents of one of the 48 contiguous states or Washington, D.C., the following illustrates when household income would be at least 100 percent but no more than 400 percent of the federal poverty line in computing your premium tax credit for 2015:

\$11,880 (100%) up to \$46,680 (400%) for one individual; \$16,020 (100%) up to \$62,920 (400%) for a family of two; and \$20,160 (100%) up to \$95,400 (400%) for a family of four. ASPE Research Brief, *Health Plan Choice and Premiums in the 2017 Health Insurance Marketplace*, (Oct. 24, 2016) available at <https://www.irs.gov/affordable-care-act/individuals-and-families/questions-and-answers-on-the-premium-tax-credit> (last viewed Mar. 9, 2017).

⁴ U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Health Insurance Marketplace Premiums After Shopping, Switching, and Premium Tax Credits, 2015-2016* (Apr. 12, 2016), available at <https://aspe.hhs.gov/pdf-report/marketplace-premiums-after-shopping-switching-and-premium-tax-credits-2015-2016> (last viewed Mar. 9, 2017).

⁵ Example of grace period: Premium is not paid in May. Premium payments are made in June and July. Grace period would end July 31. Coverage would be cancelled retroactively to the last day of May. See <https://www.healthcare.gov/apply-and-enroll/health-insurance-grace-period/> (last viewed Mar. 9, 2017).

⁶ 45 C.F.R. s. 155.430.

⁷ 45 C.F.R. s. 156.270.

⁸ American Hospital Association, *et al*, Letter to Ms. Tavenner, Centers for Medicare and Medicaid Services (Aug. 15, 2013) (on file with the Senate Committee on Banking and Insurance).

participating with any PPACA exchange products cited concerns about assuming financial liability during the grace period as a reason for their decision.⁹

Regulation of Insurance in Florida

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, HMOs, and other risk-bearing entities.¹⁰ The Agency for Health Care Administration (AHCA) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from AHCA.¹¹

Florida's Prompt Payment Laws

Florida's prompt payment laws govern payment of provider claims submitted to insurers and HMOs, including Medicaid managed care plans in accordance with ss. 627.6131 and 641.3155, F.S., respectively.¹² These provisions delineate the rights and responsibilities of insurers, HMOs, and providers for the payment of claims. An insurer or HMO has 12 months after payment is made to a provider to make a claim for overpayment against the provider, if the provider is licensed under ch. 458, F.S., (physicians), ch. 459, F.S., (osteopaths), ch. 460, F.S., (chiropractors), ch. 461, F.S., (podiatrists), or ch. 466, F.S., (dentists). For all other types of providers, an insurer or HMO has up to 30 months after such payment to make a claim for overpayment.¹³ The law provides a process and timeline for providers to pay, deny, or contest the claim. Further, the law prohibits an insurer or HMO from retroactively denying a claim because of the ineligibility of an insured or subscriber more than one year after the date the claim is paid.

Grace Periods

The federal regulation governing grace periods for federally subsidized policies or contracts does not affect policies or contracts of individuals who are not enrolled in an exchange QHP or who are enrolled in an exchange QHP and do not receive a subsidy. The grace period for these individual policies or contracts remain at the length required under Florida law,¹⁴ which varies by the duration of the premium payment interval. During the grace period, the policy or contract stays in force. The policy is in force during the grace period, thus the insurer or HMO must

⁹ Tracy Gnadinger, Health Policy Brief: The Ninety-Day Grace Period, (Oct. 16, 2014) *available at* <http://healthaffairs.org/blog/2014/10/17/health-policy-brief-the-ninety-day-grace-period/> (last viewed Mar. 9, 2017).

¹⁰ Section 20.121(3), F.S.

¹¹ Section 641.21(1), F.S.

¹² The prompt pay provisions apply to HMO contracts and major medical policies offered by individual and group insurers licensed under ch. 624, F.S., including preferred provider policies and an exclusive provider organization, and individual and group contracts that only provide direct payments to dentists.

¹³ Section 627.6131, F.S., and 641.3155, F.S., provide exceptions to this time limit in cases relating to fraud.

¹⁴ Sections 627.608 and 641.31(15), F.S. The grace period of an individual policy must be a minimum of 7 days for weekly premium; 10 days for a monthly premium; and 31 days for all other periods. The grace period of a HMO contract must be at least 10 days. For group policies, if cancellation is due to nonpayment of premium, the insurer may not retroactively cancel the policy to a date prior to the date that notice of cancellation was provided to the policyholder unless the insurer mails notice of cancellation to the policyholder prior to 45 days after the date the premium was due. Such notice must be mailed to the policyholder's last address as shown by the records of the insurer and may provide for a retroactive date of cancellation no earlier than midnight of the date that the premium was due. [Section 627.6645, F.S.]. See 45 C.F.R. s. 155.735 for provisions relating to the termination of Small Business Health Options Program (SHOP) enrollment or coverage obtained through an exchange.

affirm that an individual is insured, even when the payment is late and remains unpaid during the grace period. If the insurer or HMO does not receive the full payment of the premium by the end of the grace period, coverage terminates as of the grace period start date and the insurer or HMO may retroactively deny any claims incurred during the grace period.

Division of State Group Insurance

Under the authority of s. 110.123, F.S., the Department of Management Services (DMS), through the Division of State Group Insurance, administers the state group health insurance program under a cafeteria plan consistent with section 125, Internal Revenue Code. To administer the state group health insurance program, DMS contracts with third party administrators for self-insured health plans and insured health maintenance organizations (HMOs), as well as a pharmacy benefits manager for the state employees' self-insured prescription drug program pursuant to s. 110.12315, F.S.

Florida's Statewide Medicaid Managed Care Program

The Florida Medicaid program is a partnership between the federal and state governments. In Florida, the Agency for Health Care Administration (AHCA) oversees the Medicaid program. The Department of Children and Families (DCF) conducts Medicaid eligibility determinations.¹⁵ The Statewide Medicaid Managed Care (SMMC) program¹⁶ has two components: the Managed Medical Assistance (MMA) program and the Long-term Care (LTC) program. The AHCA contracts with managed care plans to provide services to eligible recipients. The MMA program covers medical and acute care services for plan enrollees. Most Florida Medicaid recipients who are eligible for the full array of Florida Medicaid benefits are enrolled in an MMA plan. The LTC program covers nursing facility and home and community-based services to eligible adults.

Medicaid managed care plans are responsible for paying claims in accordance with federal and state law and contractual requirements. Florida Medicaid managed care plans are required to comply with s. 641.3155, F.S.,¹⁷ which allows HMOs to deny a claim retroactively because of an insured or subscriber ineligibility up to one year after the date of payment of the claim. After paying claims pursuant with the deadlines in s. 641.3155, F.S., an HMO may audit claims to verify payment was appropriate and accurate. As a result, an HMO may try to recoup payment from a provider for claims paid in error. It may do this by reducing payments currently owed the provider, withholding future payments, or otherwise requiring a refund from the provider.

III. Effect of Proposed Changes:

Sections 1 and 2 of the bill amend ss. 627.6131 and 641.3155, F.S., respectively, to prohibit a health insurer or an HMO from retroactively denying a claim because of an insured's ineligibility at any time if the health insurer or HMO had previously verified the eligibility of an insured at the time of treatment and provided an authorization for payment. The provisions of Sections 1

¹⁵ See <http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/medicaid>. [The Social Security Administration makes determination for recipients of Supplemental Security Income](#). (last viewed Feb. 17, 2017).

¹⁶ Part IV of ch. 409, F.S.

¹⁷ Section 409.967(2)(j), F.S.

and 2 apply to policies or contracts issued or renewed on or after January 1, 2018. Section 2 provides that the provisions of the bill do not apply to Medicaid managed care plans.

Currently, ss. 627.608, F.S., and 641.31(15), F.S., require individual health insurance policies and all health maintenance contracts, excluding federally subsidized policies or contracts, to have a grace period of not less than 7 days and up to 31 days. If any required premium is not paid on or before the due date, it may be paid during the following grace period. During the grace period, the contract stays in force. If full payment of the premium is not received by the end of the grace period, coverage terminates as of the grace period start date, and the insurer or HMO will retroactively deny any claims incurred during the grace period. For a group policy, if cancellation is due to nonpayment of premium, the insurer may not retroactively cancel the policy to a date prior to the date that notice of cancellation was provided to the policyholder unless the insurer mails notice of cancellation to the policyholder prior to 45 days after the date the premium was due. Such notice must be mailed to the policyholder's last address as shown by the records of the insurer and may provide for a retroactive date of cancellation no earlier than midnight of the date that the premium was due.¹⁸

The bill requires HMOs and insurers to pay claims incurred during the grace period and any other time for policies or contracts that were not eligible for the federal premium tax credit, if the provider verified the insured as eligible at the time of treatment and was provided an authorization number by the insurer or HMO. Currently ss. 627.6131, F.S., and 641.3155, F.S., limit the ability of a HMO or insurer to deny a claim retroactively because of insured ineligibility to one year after the date of payment of the claim.

Section 3 provides this act 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.

¹⁸ Section 627.6645, F.S.

B. Private Sector Impact:

Eliminating the ability of a health insurer or HMO to recoup the payment of a claim for an authorized treatment for an individual previously deemed eligible will prevent unanticipated additional financial obligations to a patient and potential unexpected loss of revenues to a provider. This will simultaneously impose additional financial liability on a health insurer or HMO that provides authorization for an individual who is later deemed ineligible for coverage.

Federal regulations govern the grace period and payment of claims of individuals receiving federally subsidized products on the exchange. This bill would not apply to such claims.

The provisions of the bill would not apply to ERISA (Federal Employee Retirement Income Security Act of 1974)¹⁹ self-insured plans. ERISA preempts the regulation of such plans by the state.

C. Government Sector Impact:

Division of State Group Insurance. According to DMS, the two fully insured plans (Capital Health Plan and Florida Health Care Plans), would be impacted by the bill. The initial estimated impact ranges from seven cents (+.07) per member, per month, to a yearly impact of up to \$1.4 million. The financial impact of the bill may be shifted to the state by way of a rate adjustment to offset associated losses.²⁰

Florida's Medicaid Program. None. Medicaid managed care plans are exempt from the provisions of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Internally, an insurer may understand an authorization to be a pre-service approval for certain benefits or services, a voluntary pre-certification request, or a pre-admission certification. Not all benefits or procedures require prior authorization. A plan may offer a reference number for the call. An insured, member, or provider may consider this their authorization number.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.6131 and 641.3155.

¹⁹ 29 U.S.C. 1001 et seq. (1974).

²⁰ Department of Management Services, *Senate Bill 102 Fiscal Analysis* (Dec. 28, 2016) (on file with the Senate Committee on Banking and Insurance).

IX. Additional Information:

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

CS by Rules on April 19, 2017:

The CS exempts Medicaid managed care plans from the provisions of the bill and provides that the provisions of the bill apply to policies and contracts issued on or after January 1, 2018.

- B. **Amendments:**

None.

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



321438

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
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	.	

The Committee on Rules (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (11) of section 627.6131, Florida
Statutes, is amended to read:

627.6131 Payment of claims.—

(11) A health insurer may not retroactively deny a claim
because of insured ineligibility:

(a) At any time, if the health insurer verified the
eligibility of an insured at the time of treatment and provided



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an authorization number. This paragraph applies to policies entered into or renewed on or after January 1, 2018.

(b) More than 1 year after the date of payment of the claim.

Section 2. Subsection (10) of section 641.3155, Florida Statutes, is amended to read:

641.3155 Prompt payment of claims.—

(10) A health maintenance organization may not retroactively deny a claim because of subscriber ineligibility:

(a) At any time, if the health maintenance organization verified the eligibility of a subscriber at the time of treatment and provided an authorization number. This paragraph applies to contracts entered into or renewed on or after January 1, 2018. This paragraph does not apply to Medicaid managed care plans pursuant to part IV of chapter 409.

(b) More than 1 year after the date of payment of the claim.

Section 3. 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 payment of health care claims;
amending s. 627.6131, F.S.; prohibiting a health insurer from retroactively denying a claim under specified circumstances; providing applicability; amending s. 641.3155, F.S.; prohibiting a health



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41 maintenance organization from retroactively denying a
42 claim under specified circumstances; providing
43 applicability; exempting certain Medicaid managed care
44 plans; providing an effective date.



301794

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/19/2017	.	
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The Committee on Rules (Flores) recommended the following:

Senate Amendment to Amendment (321438) (with title amendment)

Delete line 29

and insert:

Section 3. Subsection (1) of section 626.88, Florida Statutes, is amended to read:

626.88 Definitions.—For the purposes of this part, the term:

(1) "Administrator" is any person who directly or indirectly solicits or effects coverage of, collects charges or



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12 premiums from, or adjusts or settles claims on residents of this
13 state in connection with authorized commercial self-insurance
14 funds or with insured or self-insured programs which provide
15 life or health insurance coverage or coverage of any other
16 expenses described in s. 624.33(1); ~~or~~ any person who, through a
17 health care risk contract as defined in s. 641.234 with an
18 insurer or health maintenance organization, provides billing and
19 collection services to health insurers and health maintenance
20 organizations on behalf of health care providers; or a pharmacy
21 benefits manager as defined in s. 465.1862(1). The term does not
22 include the following persons, ~~other than any of the following~~
23 ~~persons:~~

24 (a) An employer or wholly owned direct or indirect
25 subsidiary of an employer, on behalf of such employer's
26 employees or the employees of one or more subsidiary or
27 affiliated corporations of such employer.

28 (b) A union on behalf of its members.

29 (c) An insurance company which is either authorized to
30 transact insurance in this state or is acting as an insurer with
31 respect to a policy lawfully issued and delivered by such
32 company in and pursuant to the laws of a state in which the
33 insurer was authorized to transact an insurance business.

34 (d) A health care services plan, health maintenance
35 organization, professional service plan corporation, or person
36 in the business of providing continuing care, possessing a valid
37 certificate of authority issued by the office, and the sales
38 representatives thereof, if the activities of such entity are
39 limited to the activities permitted under the certificate of
40 authority.



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(e) An entity that is affiliated with an insurer and that only performs the contractual duties, between the administrator and the insurer, of an administrator for the direct and assumed insurance business of the affiliated insurer. The insurer is responsible for the acts of the administrator and is responsible for providing all of the administrator's books and records to the insurance commissioner, upon a request from the insurance commissioner. For purposes of this paragraph, the term "insurer" means a licensed insurance company, health maintenance organization, prepaid limited health service organization, or prepaid health clinic.

(f) A nonresident entity licensed in its state of domicile as an administrator if its duties in this state are limited to the administration of a group policy or plan of insurance and no more than a total of 100 lives for all plans reside in this state.

(g) An insurance agent licensed in this state whose activities are limited exclusively to the sale of insurance.

(h) A person licensed as a managing general agent in this state, whose activities are limited exclusively to the scope of activities conveyed under such license.

(i) An adjuster licensed in this state whose activities are limited to the adjustment of claims.

(j) A creditor on behalf of such creditor's debtors with respect to insurance covering a debt between the creditor and its debtors.

(k) A trust and its trustees, agents, and employees acting pursuant to such trust established in conformity with 29 U.S.C. s. 186.



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(l) A trust exempt from taxation under s. 501(a) of the Internal Revenue Code, a trust satisfying the requirements of ss. 624.438 and 624.439, or any governmental trust as defined in s. 624.33(3), and the trustees and employees acting pursuant to such trust, or a custodian and its agents and employees, including individuals representing the trustees in overseeing the activities of a service company or administrator, acting pursuant to a custodial account which meets the requirements of s. 401(f) of the Internal Revenue Code.

(m) A financial institution which is subject to supervision or examination by federal or state authorities or a mortgage lender licensed under chapter 494 who collects and remits premiums to licensed insurance agents or authorized insurers concurrently or in connection with mortgage loan payments.

(n) A credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized such collection if such company does not adjust or settle claims.

(o) A person who adjusts or settles claims in the normal course of such person's practice or employment as an attorney at law and who does not collect charges or premiums in connection with life or health insurance coverage.

(p) A person approved by the department who administers only self-insured workers' compensation plans.

(q) A service company or service agent and its employees, authorized in accordance with ss. 626.895-626.899, serving only a single employer plan, multiple-employer welfare arrangements, or a combination thereof.

(r) Any provider or group practice, as defined in s.



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456.053, providing services under the scope of the license of the provider or the member of the group practice.

(s) Any hospital providing billing, claims, and collection services solely on its own and its physicians' behalf and providing services under the scope of its license.

(t) A corporation not for profit whose membership consists entirely of local governmental units authorized to enter into risk management consortiums under s. 112.08.

A person who provides billing and collection services to health insurers and health maintenance organizations on behalf of health care providers shall comply with ~~the provisions of~~ ss. 627.6131, 641.3155, and 641.51(4).

Section 4. Present subsection (6) of section 626.8805, Florida Statutes, is redesignated as subsection (7), and a new subsection (6) is added to that section, to read:

626.8805 Certificate of authority to act as administrator.—

(6) The office shall conduct quarterly audits of each pharmacy benefits manager who holds a certificate of authority to act as an administrator under this part for the purpose of determining whether the pharmacy benefits manager violated any provision of s. 465.1862 or failed to perform as required under that section.

Section 5. Subsection (2) of section 626.891, Florida Statutes, is amended to read:

626.891 Grounds for suspension or revocation of certificate of authority.—

(2) The office may, in its discretion, suspend or revoke the certificate of authority of an administrator if it finds



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that the administrator:

(a) Has violated any lawful rule or order of the commission or office, or any provision of this chapter, s. 465.1862, or s. 465.1885;

(b) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to such examination, when required by the office;

(c) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, compelled insured persons to accept less than the amount due them or to employ attorneys or bring suit against the administrator to secure full payment or settlement of such claims;

(d) Is or was affiliated with and under the same general management or interlocking directorate or ownership as another administrator which transacts business in this state without having a certificate of authority;

(e) At any time fails to meet any qualification for which issuance of the certificate could have been refused had such failure then existed and been known to the office;

(f) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony relating to the business of insurance or insurance administration in this state or in any other state without regard to whether adjudication was withheld; or

(g) Is under suspension or revocation in another state.

Section 6. Subsection (3) of section 626.894, Florida



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Statutes, is amended to read:

626.894 Administrative fine in lieu of suspension or
revocation.—

(3) With respect to any knowing and willful violation of a
lawful order or rule of the office or commission, ~~or~~ a provision
of this part, s. 465.1862, or s. 465.1885, the office may impose
a fine upon the administrator in an amount not to exceed \$5,000
for each such violation. In no event may such fine exceed an
aggregate amount of \$25,000 for all knowing and willful
violations arising out of the same action. In addition to such
fine, the administrator shall make restitution when due in
accordance with the provisions of subsection (2).

Section 7. Until December 31, 2017, the Office of Insurance
Regulation may not penalize a pharmacy benefits manager, as
defined in s. 465.1862(1), Florida Statutes, for operating as an
administrator if the pharmacy benefits manager applies for a
certificate of authority by October 1, 2017, and is issued such
certificate of authority by December 31, 2017.

Section 8. 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 lines 36 - 44

and insert:

An act relating to health care; amending s. 627.6131,
F.S.; prohibiting a health insurer from retroactively
denying a claim under specified circumstances;
providing applicability; amending s. 641.3155, F.S.;
prohibiting a health maintenance organization from



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186 retroactively denying a claim under specified
187 circumstances; providing applicability; exempting
188 certain Medicaid managed care plans; amending s.
189 626.88, F.S.; redefining the term "administrator" to
190 include a pharmacy benefits manager; amending s.
191 626.8805, F.S.; requiring the Office of Insurance
192 Regulation to conduct quarterly audits, for a certain
193 purpose, of pharmacy benefits managers that hold
194 certificates of authority to act as administrators;
195 amending ss. 626.891 and 626.894, F.S.; adding
196 violations of certain provisions of the Florida
197 Pharmacy Act as grounds for the office's suspension or
198 revocation of an administrator's certificate of
199 authority or imposition of a fine, respectively;
200 prohibiting the office, until a specified date, from
201 penalizing a pharmacy benefits manager for operating
202 as an administrator if the pharmacy benefits manager
203 meets certain conditions; providing an effective date.



916996

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/19/2017	.	
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The Committee on Rules (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete line 32

and insert:

Section 3. Subsection (1) of section 626.88, Florida
Statutes, is amended to read:

626.88 Definitions.—For the purposes of this part, the
term:

(1) "Administrator" is any person who directly or
indirectly solicits or effects coverage of, collects charges or
premiums from, or adjusts or settles claims on residents of this



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state in connection with authorized commercial self-insurance funds or with insured or self-insured programs which provide life or health insurance coverage or coverage of any other expenses described in s. 624.33(1); ~~or any person who, through a health care risk contract as defined in s. 641.234 with an insurer or health maintenance organization, provides billing and collection services to health insurers and health maintenance organizations on behalf of health care providers; or a pharmacy~~ benefits manager as defined in s. 465.1862(1). The term does not include the following persons, ~~other than any of the following persons:~~

(a) An employer or wholly owned direct or indirect subsidiary of an employer, on behalf of such employer's employees or the employees of one or more subsidiary or affiliated corporations of such employer.

(b) A union on behalf of its members.

(c) An insurance company which is either authorized to transact insurance in this state or is acting as an insurer with respect to a policy lawfully issued and delivered by such company in and pursuant to the laws of a state in which the insurer was authorized to transact an insurance business.

(d) A health care services plan, health maintenance organization, professional service plan corporation, or person in the business of providing continuing care, possessing a valid certificate of authority issued by the office, and the sales representatives thereof, if the activities of such entity are limited to the activities permitted under the certificate of authority.

(e) An entity that is affiliated with an insurer and that



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only performs the contractual duties, between the administrator and the insurer, of an administrator for the direct and assumed insurance business of the affiliated insurer. The insurer is responsible for the acts of the administrator and is responsible for providing all of the administrator's books and records to the insurance commissioner, upon a request from the insurance commissioner. For purposes of this paragraph, the term "insurer" means a licensed insurance company, health maintenance organization, prepaid limited health service organization, or prepaid health clinic.

(f) A nonresident entity licensed in its state of domicile as an administrator if its duties in this state are limited to the administration of a group policy or plan of insurance and no more than a total of 100 lives for all plans reside in this state.

(g) An insurance agent licensed in this state whose activities are limited exclusively to the sale of insurance.

(h) A person licensed as a managing general agent in this state, whose activities are limited exclusively to the scope of activities conveyed under such license.

(i) An adjuster licensed in this state whose activities are limited to the adjustment of claims.

(j) A creditor on behalf of such creditor's debtors with respect to insurance covering a debt between the creditor and its debtors.

(k) A trust and its trustees, agents, and employees acting pursuant to such trust established in conformity with 29 U.S.C. s. 186.

(l) A trust exempt from taxation under s. 501(a) of the



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Internal Revenue Code, a trust satisfying the requirements of ss. 624.438 and 624.439, or any governmental trust as defined in s. 624.33(3), and the trustees and employees acting pursuant to such trust, or a custodian and its agents and employees, including individuals representing the trustees in overseeing the activities of a service company or administrator, acting pursuant to a custodial account which meets the requirements of s. 401(f) of the Internal Revenue Code.

(m) A financial institution which is subject to supervision or examination by federal or state authorities or a mortgage lender licensed under chapter 494 who collects and remits premiums to licensed insurance agents or authorized insurers concurrently or in connection with mortgage loan payments.

(n) A credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized such collection if such company does not adjust or settle claims.

(o) A person who adjusts or settles claims in the normal course of such person's practice or employment as an attorney at law and who does not collect charges or premiums in connection with life or health insurance coverage.

(p) A person approved by the department who administers only self-insured workers' compensation plans.

(q) A service company or service agent and its employees, authorized in accordance with ss. 626.895-626.899, serving only a single employer plan, multiple-employer welfare arrangements, or a combination thereof.

(r) Any provider or group practice, as defined in s. 456.053, providing services under the scope of the license of



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the provider or the member of the group practice.

(s) Any hospital providing billing, claims, and collection services solely on its own and its physicians' behalf and providing services under the scope of its license.

(t) A corporation not for profit whose membership consists entirely of local governmental units authorized to enter into risk management consortiums under s. 112.08.

A person who provides billing and collection services to health insurers and health maintenance organizations on behalf of health care providers shall comply with ~~the provisions of~~ ss. 627.6131, 641.3155, and 641.51(4).

Section 4. Present subsection (6) of section 626.8805, Florida Statutes, is redesignated as subsection (7), and a new subsection (6) is added to that section, to read:

626.8805 Certificate of authority to act as administrator.—

(6) The office shall conduct quarterly audits of each pharmacy benefits manager who holds a certificate of authority to act as an administrator under this part for the purpose of determining whether the pharmacy benefits manager violated any provision of s. 465.1862 or failed to perform as required under that section.

Section 5. Subsection (2) of section 626.891, Florida Statutes, is amended to read:

626.891 Grounds for suspension or revocation of certificate of authority.—

(2) The office may, in its discretion, suspend or revoke the certificate of authority of an administrator if it finds that the administrator:



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(a) Has violated any lawful rule or order of the commission or office, or any provision of this chapter, s. 465.1862, or s. 465.1885;

(b) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to such examination, when required by the office;

(c) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, compelled insured persons to accept less than the amount due them or to employ attorneys or bring suit against the administrator to secure full payment or settlement of such claims;

(d) Is or was affiliated with and under the same general management or interlocking directorate or ownership as another administrator which transacts business in this state without having a certificate of authority;

(e) At any time fails to meet any qualification for which issuance of the certificate could have been refused had such failure then existed and been known to the office;

(f) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony relating to the business of insurance or insurance administration in this state or in any other state without regard to whether adjudication was withheld; or

(g) Is under suspension or revocation in another state.

Section 6. Subsection (3) of section 626.894, Florida Statutes, is amended to read:



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626.894 Administrative fine in lieu of suspension or
revocation.—

(3) With respect to any knowing and willful violation of a
lawful order or rule of the office or commission, ~~or~~ a provision
of this part, s. 465.1862, or s. 465.1885, the office may impose
a fine upon the administrator in an amount not to exceed \$5,000
for each such violation. In no event may such fine exceed an
aggregate amount of \$25,000 for all knowing and willful
violations arising out of the same action. In addition to such
fine, the administrator shall make restitution when due in
accordance with the provisions of subsection (2).

Section 7. Until December 31, 2017, the Office of Insurance
Regulation may not penalize a pharmacy benefits manager, as
defined in s. 465.1862(1), Florida Statutes, for operating as an
administrator if the pharmacy benefits manager applies for a
certificate of authority by October 1, 2017, and is issued such
certificate of authority by December 1, 2017.

Section 8. 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 lines 2 - 8

and insert:

An act relating to health care; amending s. 627.6131,
F.S.; prohibiting a health insurer from retroactively
denying a claim under specified circumstances;
amending s. 641.3155, F.S.; prohibiting a health
maintenance organization from retroactively denying a
claim under specified circumstances; amending s.



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626.88, F.S.; redefining the term "administrator" to include a pharmacy benefits manager; amending s. 626.8805, F.S.; requiring the Office of Insurance Regulation to conduct quarterly audits, for a certain purpose, of pharmacy benefits managers that hold certificates of authority to act as administrators; amending ss. 626.891 and 626.894, F.S.; adding violations of certain provisions of the Florida Pharmacy Act as grounds for the office's suspension or revocation of an administrator's certificate of authority or imposition of a fine, respectively; prohibiting the office, within a specified timeframe, from penalizing a pharmacy benefits manager for operating as an administrator if the pharmacy benefits manager meets certain conditions; providing an effective date.

By Senator Steube

23-00267-17

2017102__

A bill to be entitled

An act relating to the payment of health care claims;
amending s. 627.6131, F.S.; prohibiting a health
insurer from retroactively denying a claim under
specified circumstances; amending s. 641.3155, F.S.;
prohibiting a health maintenance organization from
retroactively denying a claim under specified
circumstances; providing an effective date.

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

Section 1. Subsection (11) of section 627.6131, Florida
Statutes, is amended to read:

627.6131 Payment of claims.—

(11) A health insurer may not retroactively deny a claim
because of insured ineligibility:

(a) At any time, if the health insurer verified the
eligibility of an insured at the time of treatment and provided
an authorization number.

(b) More than 1 year after the date of payment of the
claim.

Section 2. Subsection (10) of section 641.3155, Florida
Statutes, is amended to read:

641.3155 Prompt payment of claims.—

(10) A health maintenance organization may not
retroactively deny a claim because of subscriber ineligibility:

(a) At any time, if the health maintenance organization
verified the eligibility of an insured at the time of treatment
and provided an authorization number.

(b) More than 1 year after the date of payment of the
claim.

Section 3. This act shall take effect July 1, 2017.



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 14, 2017

The Honorable Lizbeth Benacquisto
Florida Senate
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Benacquisto,

I am writing this letter because my bill, SB 102 – Payment of Health Care Claims, has been referred to the Senate Rules Committee. This bill passed the Senate Banking and Insurance Committee on February 21, and the Senate Health Policy Committee today. This bill is in the third and final committee of reference. 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 dark ink, appearing to read "W. Gregory Steube". The signature is stylized with a large, looping "W" and a distinct "S" at the end.

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
APPEARANCE RECORD

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

4/19/17

Meeting Date

102

Bill Number (if applicable)

Topic Payment of Health Care Claims

Amendment Barcode (if applicable)

Name Stephen Winn

Job Title Executive Director

Address 2544 Blairstone Pines Dr.

Phone 878-7364

Street

Tallahassee

FL

32301

City

State

Zip

Email winnsvr@earthlink.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Osteopathic Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/19/17
Meeting Date

SB 102
Bill Number (if applicable)

Topic Payment of Health Care Claims

Amendment Barcode (if applicable)

Name Dorene Barker

Job Title Associate State Director

Address 200 West College Ave, Ste 304
Street

Phone 850-228-6387

Jal FL 32303
City State Zip

Email dobarker@aarpp.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing AARP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

102

Bill Number (if applicable)

Topic Payment of Health Care Claims

Amendment Barcode (if applicable)

Name Mary Thomas

Job Title _____

Address 1430 Piedmont Dr E

Street

Phone 850 224 6496

TLH FL 32308

City

State

Zip

Email MThomas@flmedical.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20

Meeting Date

102

Bill Number (if applicable)

Topic Steube Bill 102 Health Payments

Amendment Barcode (if applicable)

Name Chris Hansen

Job Title Bellard Partners

Address _____

Street

Phone 577-0444

1allahassee FL 32312

City

State

Zip

Email Chansen@bellardfl.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Podiatric Medical Assoc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/19/17

Meeting Date

SB 102

Bill Number (if applicable)

Topic Payment of Health Care Claims

Amendment Barcode (if applicable)

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Dental Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 182

INTRODUCER: Health Policy Committee; Banking and Insurance Committee; and Senators Mayfield and others

SUBJECT: Consumer Protection from Nonmedical Changes to Prescription Drug Formularies

DATE: April 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.	Lloyd	Stovall	HP	Fav/CS
3.	Davis/McVaney	Hansen	AP	Favorable
4.	Johnson	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 182 amends the Insurance Code to provide additional consumer protections by prohibiting an individual or group insurance policy or an individual or group contract, which provides major medical coverage and is issued in this state by a health insurer or a health maintenance organization (HMO), respectively, from removing a covered prescription drug from its formulary except during coverage renewal with some limited exceptions. The bill also prohibits an insurer or HMO from reclassifying a drug to a more restrictive tier, increasing the out-of-pocket costs (e.g., copayment, coinsurance, or deductible) of an insured, or reclassifying a drug to higher-cost sharing tier during the policy year. Under current law, only HMOs offering group contracts are prohibited from increasing the copayment for any benefit or removing, amending or limiting any of the contract benefits except at renewal time with some exceptions.

Often, insureds with chronic, disabling conditions select a health insurance policy or contract based on the availability of certain drugs on the formulary at a preferred cost. Typically, health insurers and pharmacy benefit managers (PBMs) may change their prescription drug formularies during the year in response to the availability of new drugs or changes in prices by drug manufacturers. As a result, certain prescription drugs may become more costly or unavailable, thereby restricting the insureds access to these drugs during a plan year. The insured is unable to switch to a different health insurance plan until the next open enrollment.

The Division of State Group Insurance (DSGI) of the Department of Management Services indicates that the bill will have an indeterminate, negative fiscal impact. The PBM for DSGI estimates the annual loss of rebates from drug manufacturers to the state is \$1 million and the annual additional costs of drugs to the DSGI is \$50,000.

The bill has no fiscal impact on the Florida Medicaid program, as it does not amend ch. 409, F.S., which governs the Florida Medicaid program, nor does it require Medicaid to amend existing policies or procedures.

II. Present Situation:

Access to affordable health care can be a significant issue for anyone with an illness, but it is particularly critical for individuals who have conditions with the potential to cause death, disability, or serious discomfort unless treated with the most appropriate medical care. In recent years, many innovative treatments for diseases that affect large populations, such as cancer, hepatitis C, diabetes, and multiple sclerosis have been approved. Some of the benefits of these innovative drugs include fewer side effects, convenience (oral solids instead of injectables), and greater efficacy.¹ However, the financial burden from out-of-pocket drug costs can lead patients with chronic illnesses to forgo prescribed drugs, ultimately affecting their health.

Prescription Drug Cost Containment

In 2014, spending on retail prescription drugs in the United States. was approximately \$298 billion.² In 2015, total retail prescription drug spending increased by nine percent, reaching \$325 billion. The significant growth in 2015 was attributed to certain cost drivers, such as, spending on new drugs, price growth for existing brand-name drugs, increased spending on generics, and a decrease in the number of expensive drugs whose patents have expired.³

Due to increasing health care expenditures, public and private employers and insurers continue to look for cost containment methods, including the reduction of prescription drug costs. Many employer-sponsored health plans and insurers contract with pharmacy benefit managers (PBMs). The PBMs negotiate drug prices with pharmacies and drug manufacturers on behalf of health plans and, in addition to other administrative, clinical, and cost containment services, process drug claims for the health plans. The PBM generally manages the list of preferred drug products (formulary) for each of its plan sponsors. Insurers and self-insured employers provide insureds with financial incentives, such as lower copayments, to use formulary drugs.

Non-medical switching or substitution of prescription drugs occurs when there may be multiple options available within a treatment class and a less expensive or patient-preferred medicine is substituted, often for cost containment reasons. Non-medical switching may be as simple as the substitution of a brand name drug for its generic equivalent. Generic drugs are copies of brand-name drugs and are the same in dosage form, safety, strength, route of administration,

¹ See HEALTH AFFAIRS 35, No. 9 (2016): 1595-1603.

² See HEALTH AFFAIRS 36, No. 1 (2017):166-176.

³ *Id.*

performance characteristics, and intended use.⁴ A generic drug must pass the same safety standards as a brand-name drug. The second method of switching or substitution involves dispensing drugs that are therapeutically equivalent to but chemically different from the originally prescribed drug.⁵

Research notes that the biologic therapy medications of some patients are being switched for nonclinical reasons, despite the lack of data to support this practice and an abundance of data demonstrating clinically meaningful differences among biologics.⁶ For example, one study reviewing the reason for adjusting anti-tumor necrosis (TNF) agents involving patients primarily with rheumatoid arthritis, psoriasis, psoriatic arthritis, ankylosing spondylitis, Crohn's disease, or ulcerative colitis found that non-medical switching of anti-TNF agents was associated with an increase in side effects and lack of efficacy that also led to an increase in health care utilization.⁷

Federal Patient Protection and Affordable Care Act

Health Insurance Reforms

The federal Patient Protection and Affordable Care Act (PPACA) was signed into law on March 23, 2010.⁸ The PPACA requires health insurers and HMOs to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. The PPACA also mandates that issuers (insurers and HMOs) offer 10 essential health benefits;⁹ meet cost-sharing limits; comply with rating and underwriting standards and other requirements in order for their plans to be certified as qualified health plans by the Centers for Medicare and Medicaid Services and offered on the federally-facilitated marketplace or exchange. The federal deadline for insurers and HMOs to submit 2018 rates and forms to the Centers for Medicare and Medicaid Services and the Florida Office of Insurance Regulation is May 13, 2017.^{10,11}

⁴ Federal Food and Drug Administration, *Understanding Generic Drugs* available at <http://www.fda.gov/drugs/resourcesforyou/consumers/buyingusingmedicinesafely/understandinggenericdrugs/default.htm> (last visited Feb. 13, 2017).

⁵ Rachel Chu, et al, *Patient Safety and Comfort - The Challenges of Switching Medicines* (2010) available at http://www.patients-rights.org/uploadimages/Patient_Safety_and_Comfort_The_Challenges_of_Switching.pdf (last viewed Feb. 13, 2017).

⁶ See Alan Reynolds, et al, *When is switching warranted among biologic therapies in rheumatoid arthritis?* Medscape.com, http://www.medscape.com/viewarticle/768031_5 (last viewed Feb. 13, 2017).

⁷ D.T. Rubin, et al, *Analysis of outcomes after non-medical switching of anti-tumor necrosis factor agents*, European Crohn's and Colitis Organisation (2015) available at https://www.ecco-ibd.eu/index.php/publications/congress-abstract-s/abstracts-2015/item/p354-analysis-of-outcomes-after-non-medical-switching-of-anti-tumor-necrosis-factor-agents.html?category_id=430 (last viewed Feb. 13, 2017).

⁸ The Patient Protection and Affordable Care Act (Pub. Law No. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. Law No. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010.

⁹ 42 U.S.C. s.18022.

¹⁰ Center for Consumer Information and Insurance Oversight (CCIIO), Centers for Medicare & Medicaid Services (CMS), *2018 Letter to Issuers in the Federally-facilitated Marketplaces* (Dec. 16, 2016), p. 7, available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-2018-Letter-to-Issuers-in-the-Federally-facilitated-Marketplaces.pdf>. (last viewed Feb. 13, 2017).

¹¹ President Trump, Executive Order 13765, *Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal*, <https://www.whitehouse.gov/the-press-office/2017/01/2/executive-order-minimizing-economic-burden-patient-protection-and> (Jan. 20, 2017). President Trump issued an executive order indicating that it is the intent of his administration to seek the prompt repeal of PPACA. (last viewed: Feb. 13, 2017).

Prescription Drug Coverage

For purposes of complying with PPACA's EHBs for prescription drugs, issuers must include in their formulary drug list the greater of one drug for each U.S. Pharmacopeia (USP) category and class; or the same number of drugs in each USP category and class as the state's EHB benchmark plan. Issuers must have a Pharmacy and Therapeutics Committee to design formularies using scientific evidence that will include consideration of safety and efficacy, cover a range of drugs in a broad distribution of therapeutic categories and classes, and provide access to drugs that are included in broadly accepted treatment guidelines. Plans providing EHBs must have procedures in place that allow an enrollee to request and gain access to clinically appropriate drugs not included on the plan's formulary drug list. Such procedures must include a process to request an expedited review.¹²

An issuer's plan does not meet the EHB benchmark if its benefit design discriminates based on an individual's age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions.¹³ Issuers of QHPs may not employ marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with significant health needs in QHPs.¹⁴

Changes in Medicare Part D Formularies

Medicare Part D¹⁵ plans may alter their formularies from year to year, and in limited circumstances, to make changes to their formularies within a plan year.¹⁶ Plans may not change therapeutic categories and classes of drugs within a plan year, except to account for new therapeutic uses or to add newly approved Part D drugs. If Part D plans remove drugs from their formularies during a plan year (or change cost-sharing or access requirements), they must provide timely notice to the Centers for Medicare and Medicaid Services (CMS), affected enrollees, physicians, pharmacies, and pharmacists.

Formulary changes are allowed in limited circumstances. Plans may immediately remove drugs from their formularies that are deemed unsafe by the FDA or are pulled from the market by their manufacturers. Plans may make formulary maintenance changes after March 1, such as replacing a brand-name drug with a new generic drug or modifying formularies because of new information on safety or effectiveness. These changes require CMS approval and 60 days' notice to appropriate parties.

¹² 45 C.F.R. s. 156.122.

¹³ 45 C.F.R. s. 156.125.

¹⁴ 45 C.F.R. s. 156.225.

¹⁵ The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA, P.L. 108-173) established a voluntary, outpatient prescription drug benefit under Medicare Part D, effective January 1, 2006. Medicare Part D provides coverage through private prescription drug plans (PDPs) that offer only drug coverage, or through Medicare Advantage (MA) prescription drug plans (MA-PDs) that offer coverage as part of broader, managed care plans.

¹⁶ Centers for Medicare and Medicaid, *Medicare Prescription Drug Benefit Manual*, Chapter 6, (Jan. 15, 2016) available at <https://www.cms.gov/Medicare/Prescription-Drug-Coverage/PrescriptionDrugCovContra/Downloads/Part-D-Benefits-Manual-Chapter-6.pdf>. (last viewed Feb. 13, 2017).

The CMS will generally give positive consideration to formulary maintenance changes such as expanding formularies by adding drugs, moving a drug to a lower tier (thereby reducing copayments or coinsurance), or eliminating utilization management requirements. Plans may only remove drugs from a formulary, move covered drugs to a less-preferred tier status, or add utilization management requirements in accordance with approved procedures and after 60 days' notice to appropriate parties. Plans may make such changes only if enrollees currently taking the affected drugs are exempt from the formulary change for the remainder of the plan year.

Regulation of Insurers and Health Maintenance Organizations in Florida

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, HMOs, and other risk-bearing entities.¹⁷ The Agency for Health Care Administration (AHCA) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the AHCA.¹⁸

Currently, under the Insurance Code, an HMO may increase the copayment for any benefit, or delete, amend, or limit any of the benefits under a group contract only upon written notice to the contract holder at least 45 days in advance of the time of coverage renewal. The HMO may amend the contract with the contract holder, with such amendment to be effective immediately at the time of coverage renewal. The written notice to the contract holder must specifically identify any deletions, amendments, or limitations to any of the benefits provided in the group contract during the current contract period, which will be included in the group contract upon renewal. This provision does not apply to any increases in benefits. The notice requirements do not apply if benefits are amended, deleted, or limited, pursuant to a request of the contract holder.¹⁹

Florida's State Group Insurance Program

Under the authority of s. 110.123, F.S., the DMS, through the DGSI, administers the state group health insurance program under a cafeteria plan consistent with section 125, Internal Revenue Code. To administer the state group health insurance program, the DMS contracts with third party administrators for self-insured health plans, insured HMOs, and a pharmacy benefit manager (PBM) for the state employees' self-insured prescription drug program pursuant to s. 110.12315, F.S.

The state employees' self-insured prescription drug program has three cost-share categories for members: generic drugs, preferred brand name drugs (those brand name drugs on the preferred drug list), and non-preferred brand name drugs (those brand name drugs not on the preferred drug list). Contractually, the PBM for the state employees' self-insured prescription drug program updates the preferred drug list quarterly as brand drugs enter the market and as the PBM negotiates pricing, including rebates with manufacturers.

Generic drugs are the least expensive and have the lowest member cost share, preferred brand name drugs have the middle cost share, and non-preferred brand name drugs are the most

¹⁷ Section 20.121(3), F.S.

¹⁸ Section 641.21(1), F.S.

¹⁹ Section 641.31(36), F.S.

expensive and have the highest member cost share. Generally, prescriptions written for a brand name drug, preferred or non-preferred, will be substituted with a generic drug when available. If the prescribing provider states on the prescription that the brand name drug is “medically necessary” over the generic equivalent, the member will pay only the brand name (preferred or non-preferred) cost share. If the member requests the brand name drug over the generic equivalent then the member will pay the brand name, (preferred or non-preferred) cost share plus the difference between the cost of the generic drug and the brand name drug.

The program covers all federal legend drugs (open formulary) for covered medical conditions, and employs very limited utilization review and clinical review for traditional or specialty prescription drugs. Specialty drugs are high-cost prescription medications used to treat complex, chronic conditions such as cancer, rheumatoid arthritis and multiple sclerosis. Specialty drugs often require special handling (e.g., refrigeration during shipping) and administration (such as injection or infusion).

The federal out-of-pocket limit applies to members of the state group self-insured health plans and insured HMOs, all of which include prescription drug coverage. Copayments (and coinsurance for high deductible plans) for each drug tier are the same for all members, as follows:

Drug Tier	Retail – Up to 30-Day Supply	Retail and Mail – Up to 90-Day Supply and Specialty Medications
Generic	\$7	\$14
Preferred Brand	\$30	\$60
Non-Preferred Brand	\$50	\$100

The program typically makes benefits changes on a plan year basis, which is January 1 through December 31.²⁰

Health Insurance Mandate Report

Section 624.215, F.S., requires that a report assessing the social and financial impact of any proposal for legislation that mandates health benefit coverage or mandates offering requirements must be submitted to AHCA and the legislative committee having jurisdictions.

According to a report provided by advocates of the bill, the bill will not increase coverage of drug benefits or the total cost of health care.²¹ The bill creates transparency for consumers to know that the coverage benefit they sign up for is the coverage benefit they will receive for the plan year. The bill addresses the practice of some insurers and HMOs marketing certain pharmacy benefits to consumers at open enrollment, only to change the benefits during the plan year when insureds are generally unable to change plans. According to the report, there is no indication that the bill will have an impact on the cost of coverage. Advocates cite studies that

²⁰ Department of Management Services, *Senate Bill 182 Analysis* (Jan. 19, 2017) (on file with the Senate Committee on Banking and Insurance).

²¹ *Non-Medical Switching, Health Insurance Mandate Report* (Jan. 2017) (on file with the Senate Committee on Banking and Insurance).

document that some nonclinical drug substitutions may increase overall health care costs and result in adverse outcomes.

Regulation of Prescription Drug Formularies Changes in Other States

Staff conducted a limited survey of some states that had enacted legislation addressing formulary benefit changes or cost-sharing limits. In Louisiana, the formulary change must occur at the time of coverage renewal and prior notice is required to each affected covered employer and enrollee, or individual.²² California prohibits changes in cost sharing designs during the plan or policy year, except when such change is required by state or federal law.²³ Nevada generally prohibits a health insurer that offers individual coverage from removing prescription drugs from a formulary or moving a drug to a higher cost-sharing tier during the plan year with some exceptions.²⁴ New Mexico generally limits when health insurance policies may change prescription drug coverage, with exceptions, and requires prior notification of all affected enrollees.²⁵ Virginia requires insurers to establish a process for insureds to obtain continued access to drugs that they have been receiving for at least six months prior to a formulary change at a cost-sharing level that is no higher than the level imposed on formulary drugs.²⁶ Texas prohibits insurers and HMOs from making mid-year formulary benefit and cost-sharing changes.²⁷

III. Effect of Proposed Changes:

Section 1 creates s. 627.42393, F.S., and **Sections 2 and 3** amend s. 627.6699, F.S., and s. 641.31, F.S., respectively.

The bill amends the Insurance Code to provide additional consumer protections by prohibiting a health insurer or HMO from removing a covered drug from its formulary during the policy year except during coverage renewal with some limited exceptions. These provisions would apply to individual and group policies and contracts. An insurer or HMO may remove a prescription drug from its list of covered drugs during the policy year if:

- The U.S. Food and Drug Administration has issued a statement about the drug which calls into question the clinical safety of the drug; or
- The manufacturer of the drug has notified the U.S. Food and Drug Administration of a manufacturing discontinuance or potential discontinuance of the drug as required by s. 506C of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s. 356c.

The bill also prohibits an insurer or HMO from reclassifying a drug to a more restrictive drug tier; increasing the amount that an insured must pay out-of-pocket for a copayment, coinsurance, or deductible for prescription drugs, or reclassifying a drug to a higher cost-sharing tier during the policy year.

The bill also:

²² La Admin. Code title 37, pt. XIII, ss. 14111, 14115, and 14117.

²³ CAL. INS. Code, §10199.449; Effective Jan. 1, 2017; Approved by the Governor August 25, 2016.

²⁴ Nevada Division of Insurance, *Adopted Regulation R074-14* (uncodified).

²⁵ N.M. Stat. ss. 59A-22-49.4, 59A-23-7.13, 59A-46-50.4, and 59A-47-45.4.

²⁶ See Va. Code Ann. s. 38.2-3407.9.01.

²⁷ Tex. Ins. Code ss. 1369.0541 and 1501.108.

- Does not prohibit the addition of prescription drugs to the list of drugs covered under the policy during the policy year.
- Does not alter or amend s. 465.025, F.S., which provides conditions under which a pharmacist may substitute a generically equivalent drug product for a brand name drug product.
- Does not alter or amend s. 465.0252, F.S., which provides conditions under which a pharmacist may dispense a substitute biological product for the prescribed biological product.

The provisions of the bill do not apply to grandfathered health plans, as defined in s. 627.402, F.S., or to benefits set forth in s. 627.6513(1)-(14), F.S.

Section 4 provides that this act fulfills an important state interest.

Section 5 provides the bill is effective January 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Article VII, section 18 of the Florida Constitution may apply if the bill requires local governments to spend funds. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest, and one of the following relevant exceptions must apply:

- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

Since this bill requires all public sector health plans to limit drug changes in the formulary and insureds' cost sharing, it appears the bill applies to all persons similarly situated (state, counties, and municipalities).

The bill includes a finding that the act fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By limiting changes to the prescription drug formulary, the bill would allow insureds to receive their brand drugs at a preferred cost for the policy year. Currently, the Insurance Code only prohibits HMO group contracts from increasing a member's copayment for any benefit or reducing a benefit during a plan year with some exceptions.

The prohibition on mid-policy year changes to drug formularies may increase the claim costs for health insurers and HMOs providing prescription drug benefits. Any increased costs would likely be passed along to insureds. The provisions of the bill would not apply to ERISA (Employee Retirement Income Security Act of 1974)²⁸ self-insured plans, which represent approximately 50 percent of the insureds in Florida. ERISA preempts the regulation of such plans by the states.

C. Government Sector Impact:**Division of State Group Insurance**

The bill provides limitations on changes in formularies by allowing insureds to continue to obtain specified brand drugs at a "preferred" cost share throughout a calendar year. As a result, the bill prohibits the State Employees' Prescription Drug Plan from obtaining lower costs, even when the PBM negotiates better pricing and rebates for equally clinically effective brand and generic drugs.

The PBM states for the three quarterly formulary updates in 2016, approximately 1,100 of 139,000 drug plan users were impacted.

The DSGI indicates that the bill will have an indeterminate and substantial negative fiscal impact.²⁹ The severity of the impact would be contingent on the number of brand drugs that are required to remain on the preferred drug list when other, less expensive, interchangeable and clinically appropriate brand and generic drugs are available. The DSGI notes, that not only would the cost of the medication be higher for the prescription drug program, but also the rebates from manufacturers to the program would be reduced significantly. The PBM provided the following estimates regarding the recurring impact on the DSGI:

- An additional cost of drugs to the State of Florida of \$50,000.
- Loss of manufacturers' rebates to the State of Florida of \$1 million.

²⁸ 29 U.S.C. 1001 et seq. (1974).

²⁹ Department of Management Services, *Senate Bill 182 Analysis* (Jan. 19, 2017) (on file with the Senate Committee on Banking and Insurance).

Florida Medicaid Program

According to the Agency for Healthcare Administration, the bill has no fiscal impact on the Florida Medicaid program since it does not amend ch. 409, F.S., governing Florida Medicaid, nor does it require Medicaid to amend existing policies or procedures.³⁰

The Florida Healthy Kids Corporation also confirmed that the bill would have no fiscal impact on its contracts with managed care plans. The Florida Healthy Kids Corporation's benefits, policies, and procedures are separately prescribed in statute under ch. 409, F.S., as part of the Florida KidCare Program and under s. 624.91, F.S.³¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.6699 and 641.31.

This bill creates section 627.42393 of the Florida Statutes.

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

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

CS/CS by Health Policy on February 21, 2017:

The CS/CS by Health Policy clarifies which policies are covered, modifies that changes may only be at the time of coverage renewal to be consistent with other state and federal provisions, and adds that the act fulfills an important state interest.

CS by Banking and Insurance on February 7, 2017:

The CS corrects a scrivener's error.

B. Amendments:

None.

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

³⁰ E-mail from Tony Guzzo, Agency for Healthcare Administration (Feb. 1, 2017) (on file with the Senate Committee on Banking and Insurance).

³¹ E-mail from Steve Malono, Florida Healthy Kids Corporation (Feb. 13, 2017) (on file with the Senate Committee on Health Policy).



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/19/2017	.	
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The Committee on Rules (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete lines 20 - 165
and insert:

Section 1. Effective January 1, 2018, section 627.42393,
Florida Statutes, is created to read:

627.42393 Insurance policies; limiting changes to
prescription drug formularies.-

(1) Other than at the time of coverage renewal, an
individual or group insurance policy that is delivered, issued
for delivery, renewed, amended, or continued in this state and



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that provides medical, major medical, or similar comprehensive coverage may not:

(a) Remove a covered prescription drug from its list of covered drugs during the policy year unless the United States Food and Drug Administration has issued a statement about the drug which calls into question the clinical safety of the drug, or the manufacturer of the drug has notified the United States Food and Drug Administration of a manufacturing discontinuance or potential discontinuance of the drug as required by s. 506C of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s. 356c.

(b) Reclassify a drug to a more restrictive drug tier or increase the amount that an insured must pay for a copayment, coinsurance, or deductible for prescription drug benefits, or reclassify a drug to a higher cost-sharing tier during the policy year.

(2) This section does not prohibit the addition of prescription drugs to the list of drugs covered under the policy during the policy year.

(3) This section does not apply to a grandfathered health plan as defined in s. 627.402 or to benefits set forth in s. 627.6513(1)-(14).

(4) This section does not alter or amend s. 465.025, which provides conditions under which a pharmacist may substitute a generically equivalent drug product for a brand name drug product.

(5) This section does not alter or amend s. 465.0252, which provides conditions under which a pharmacist may dispense a substitute biological product for the prescribed biological product.



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Section 2. Effective January 1, 2018, paragraph (e) of subsection (5) of section 627.6699, Florida Statutes, is amended to read:

627.6699 Employee Health Care Access Act.—

(5) AVAILABILITY OF COVERAGE.—

(e) All health benefit plans issued under this section must comply with the following conditions:

1. For employers who have fewer than two employees, a late enrollee may be excluded from coverage for no longer than 24 months if he or she was not covered by creditable coverage continually to a date not more than 63 days before the effective date of his or her new coverage.

2. Any requirement used by a small employer carrier in determining whether to provide coverage to a small employer group, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employer groups having the same number of eligible employees applying for coverage or receiving coverage from the small employer carrier, except that a small employer carrier that participates in, administers, or issues health benefits pursuant to s. 381.0406 which do not include a preexisting condition exclusion may require as a condition of offering such benefits that the employer has had no health insurance coverage for its employees for a period of at least 6 months. A small employer carrier may vary application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

3. In applying minimum participation requirements with



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respect to a small employer, a small employer carrier shall not consider as an eligible employee employees or dependents who have qualifying existing coverage in an employer-based group insurance plan or an ERISA qualified self-insurance plan in determining whether the applicable percentage of participation is met. However, a small employer carrier may count eligible employees and dependents who have coverage under another health plan that is sponsored by that employer.

4. A small employer carrier shall not increase any requirement for minimum employee participation or any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage, unless the employer size has changed, in which case the small employer carrier may apply the requirements that are applicable to the new group size.

5. If a small employer carrier offers coverage to a small employer, it must offer coverage to all the small employer's eligible employees and their dependents. A small employer carrier may not offer coverage limited to certain persons in a group or to part of a group, except with respect to late enrollees.

6. A small employer carrier may not modify any health benefit plan issued to a small employer with respect to a small employer or any eligible employee or dependent through riders, endorsements, or otherwise to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

7. An initial enrollment period of at least 30 days must be provided. An annual 30-day open enrollment period must be



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offered to each small employer's eligible employees and their dependents. A small employer carrier must provide special enrollment periods as required by s. 627.65615.

8. A small employer carrier must limit changes to prescription drug formularies as required by s. 627.42393.

Section 3. Effective January 1, 2018, subsection (36) of section 641.31, Florida Statutes, is amended to read:

641.31 Health maintenance contracts.—

(36) A health maintenance organization may increase the copayment for any benefit, or delete, amend, or limit any of the benefits to which a subscriber is entitled under the group contract only, upon written notice to the contract holder at least 45 days in advance of the time of coverage renewal. The health maintenance organization may amend the contract with the contract holder, with such amendment to be effective immediately at the time of coverage renewal. The written notice to the contract holder must ~~shall~~ specifically identify any deletions, amendments, or limitations to any of the benefits provided in the group contract during the current contract period which will be included in the group contract upon renewal. This subsection does not apply to any increases in benefits. The 45-day notice requirement does ~~shall~~ not apply if benefits are amended, deleted, or limited at the request of the contract holder.

(a) Other than at the time of coverage renewal, a health maintenance organization that provides medical, major medical, or similar comprehensive coverage may not:

1. Remove a covered prescription drug from its list of covered drugs during the contract year unless the United States Food and Drug Administration has issued a statement about the



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drug which calls into question the clinical safety of the drug,
or the manufacturer of the drug has notified the United States
Food and Drug Administration of a manufacturing discontinuance
or potential discontinuance of the drug as required by s. 506C
of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s. 356c.

2. Reclassify a drug to a more restrictive drug tier or
increase the amount that an insured must pay for a copayment,
coinsurance, or deductible for prescription drug benefits, or
reclassify a drug to a higher cost-sharing tier during the
contract year.

(b) This subsection does not:

1. Prohibit the addition of prescription drugs to the list
of drugs covered during the contract year.

2. Apply to a grandfathered health plan as defined in s.
627.402 or to benefits set forth in s. 627.6513(1)-(14).

3. Alter or amend s. 465.025, which provides conditions
under which a pharmacist may substitute a generically equivalent
drug product for a brand name drug product.

4. Alter or amend s. 465.0252, which provides conditions
under which a pharmacist may dispense a substitute biological
product for the prescribed biological product.

Section 4. The Legislature finds that the creation of
section 627.42393, Florida Statutes, and the amendments made by
this act to sections 627.6699 and 641.31, Florida Statutes,
fulfill an important state interest.

Section 5. Subsection (4) of section 409.977, Florida
Statutes, is amended to read:

409.977 Enrollment.—

(4) The agency shall:



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157 (a) Develop a process to enable a recipient with access to
158 employer-sponsored health care coverage to opt out of all
159 managed care plans and to use Medicaid financial assistance to
160 pay for the recipient's share of the cost in such employer-
161 sponsored coverage.

162 (b) Contingent upon federal approval, ~~the agency shall also~~
163 enable recipients with access to other insurance or related
164 products providing access to health care services created
165 pursuant to state law, including any product available under the
166 Florida Health Choices Program, or any health exchange, to opt
167 out.

168 (c) Provide ~~The amount of~~ financial assistance ~~provided~~ for
169 each recipient in an amount ~~may not to~~ exceed the amount of the
170 Medicaid premium which ~~that~~ would have been paid to a managed
171 care plan for that recipient opting to receive services under
172 this subsection.

173 (d) ~~The agency shall~~ Seek federal approval to require
174 Medicaid recipients with access to employer-sponsored health
175 care coverage to enroll in that coverage and use Medicaid
176 financial assistance to pay for the recipient's share of the
177 cost for such coverage. The amount of financial assistance
178 provided for each recipient may not exceed the amount of the
179 Medicaid premium that would have been paid to a managed care
180 plan for that recipient.

181 (e) By January 1, 2018, resubmit an appropriate federal
182 waiver or waiver amendment to the Centers for Medicare and
183 Medicaid Services, the United States Department of Health and
184 Human Services, or any other designated federal entity to
185 incorporate the election by a recipient for a direct primary



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care agreement, as defined in s. 456.0625, within the Statewide Medicaid Managed Care program.

Section 6. Section 456.0625, Florida Statutes, is created to read:

456.0625 Direct primary care agreements.—

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

(a) "Direct primary care agreement" means a contract between a primary care provider and a patient, the patient's legal representative, or an employer which meets the requirements specified under subsection (3) and which does not indemnify for services provided by a third party.

(b) "Primary care provider" means a health care practitioner licensed under chapter 458, chapter 459, chapter 460, or chapter 464 or a primary care group practice that provides medical services to patients which are commonly provided without referral from another health care provider.

(c) "Primary care service" means the screening, assessment, diagnosis, and treatment of a patient for the purpose of promoting health or detecting and managing disease or injury within the competency and training of the primary care provider.

(2) A primary care provider or an agent of the primary care provider may enter into a direct primary care agreement for providing primary care services. Section 624.27 applies to a direct primary care agreement.

(3) A direct primary care agreement must:

(a) Be in writing.

(b) Be signed by the primary care provider or an agent of the primary care provider and the patient, the patient's legal representative, or an employer.



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(c) Allow a party to terminate the agreement by giving the other party at least 30 days' advance written notice. The agreement may provide for immediate termination due to a violation of the physician-patient relationship or a breach of the terms of the agreement.

(d) Describe the scope of primary care services that are covered by the monthly fee.

(e) Specify the monthly fee and any fees for primary care services not covered by the monthly fee.

(f) Specify the duration of the agreement and any automatic renewal provisions.

(g) Offer a refund to the patient of monthly fees paid in advance if the primary care provider ceases to offer primary care services for any reason.

(h) Contain, in contrasting color and in not less than 12-point type, the following statements on the same page as the applicant's signature:

1. This agreement is not health insurance, and the primary care provider will not file any claims against the patient's health insurance policy or plan for reimbursement of any primary care services covered by this agreement.

2. This agreement does not qualify as minimum essential coverage to satisfy the individual shared responsibility provision of the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148.

3. This agreement is not workers' compensation insurance and may not replace the employer's obligations under chapter 440, Florida Statutes.

Section 7. Section 624.27, Florida Statutes, is created to



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read:

624.27 Application of code as to direct primary care agreements.-

(1) A direct primary care agreement, as defined in s. 456.0625, does not constitute insurance and is not subject to any chapter of the Florida Insurance Code. The act of entering into a direct primary care agreement does not constitute the business of insurance and is not subject to any chapter of the Florida Insurance Code.

(2) A primary care provider or an agent of a primary care provider is not required to obtain a certificate of authority or license under any chapter of the Florida Insurance Code to market, sell, or offer to sell a direct primary care agreement pursuant to s. 456.0625.

Section 8. Except as otherwise expressly provided in this act, 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 lines 2 - 16

and insert:

An act relating to health care; creating s. 627.42393, F.S.; limiting, under specified circumstances, changes to a health insurance policy prescription drug formulary during a policy year; providing construction and applicability; amending s. 627.6699, F.S.; requiring small employer carriers to limit changes to prescription drug formularies under certain circumstances; amending s. 641.31, F.S.; limiting,



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under specified circumstances, changes to a health maintenance contract prescription drug formulary during a contract year; providing construction and applicability; providing a declaration of important state interest; amending s. 409.977, F.S.; requiring the Agency for Health Care Administration to provide specified financial assistance to certain Medicaid recipients; requiring the agency to resubmit, by a specified date, certain federal waivers or waiver amendments to specified federal entities to incorporate recipient elections of certain direct primary care agreements; creating s. 456.0625, F.S.; defining terms; authorizing primary care providers or their agents to enter into direct primary care agreements for providing primary care services; providing applicability; specifying requirements for direct primary care agreements; creating s. 624.27, F.S.; providing construction and applicability of the Florida Insurance Code as to direct primary care agreements; providing an exception for primary care providers or their agents from certain requirements under the code under certain circumstances; providing effective dates.

By the Committees on Health Policy; and Banking and Insurance;
and Senator Mayfield

588-01933-17

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A bill to be entitled

An act relating to consumer protection from nonmedical changes to prescription drug formularies; creating s. 627.42393, F.S.; limiting, under specified circumstances, changes to a health insurance policy prescription drug formulary during a policy year; providing construction and applicability; amending s. 627.6699, F.S.; requiring small employer carriers to limit changes to prescription drug formularies under certain circumstances; amending s. 641.31, F.S.; limiting, under specified circumstances, changes to a health maintenance contract prescription drug formulary during a contract year; providing construction and applicability; providing a declaration of important state interest; providing an effective date.

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

Section 1. Section 627.42393, Florida Statutes, is created to read:

627.42393 Insurance policies; limiting changes to prescription drug formularies.-

(1) Other than at the time of coverage renewal, an individual or group insurance policy that is delivered, issued for delivery, renewed, amended, or continued in this state and that provides medical, major medical, or similar comprehensive coverage may not:

(a) Remove a covered prescription drug from its list of

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

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covered drugs during the policy year unless the United States Food and Drug Administration has issued a statement about the drug which calls into question the clinical safety of the drug, or the manufacturer of the drug has notified the United States Food and Drug Administration of a manufacturing discontinuance or potential discontinuance of the drug as required by s. 506C of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s. 356c.

(b) Reclassify a drug to a more restrictive drug tier or increase the amount that an insured must pay for a copayment, coinsurance, or deductible for prescription drug benefits, or reclassify a drug to a higher cost-sharing tier during the policy year.

(2) This section does not prohibit the addition of prescription drugs to the list of drugs covered under the policy during the policy year.

(3) This section does not apply to a grandfathered health plan as defined in s. 627.402 or to benefits set forth in s. 627.6513(1)-(14).

(4) This section does not alter or amend s. 465.025, which provides conditions under which a pharmacist may substitute a generically equivalent drug product for a brand name drug product.

(5) This section does not alter or amend s. 465.0252, which provides conditions under which a pharmacist may dispense a substitute biological product for the prescribed biological product.

Section 2. Paragraph (e) of subsection (5) of section 627.6699, Florida Statutes, is amended to read:

627.6699 Employee Health Care Access Act.-

Page 2 of 6

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

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(5) AVAILABILITY OF COVERAGE.—

(e) All health benefit plans issued under this section must comply with the following conditions:

1. For employers who have fewer than two employees, a late enrollee may be excluded from coverage for no longer than 24 months if he or she was not covered by creditable coverage continually to a date not more than 63 days before the effective date of his or her new coverage.

2. Any requirement used by a small employer carrier in determining whether to provide coverage to a small employer group, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employer groups having the same number of eligible employees applying for coverage or receiving coverage from the small employer carrier, except that a small employer carrier that participates in, administers, or issues health benefits pursuant to s. 381.0406 which do not include a preexisting condition exclusion may require as a condition of offering such benefits that the employer has had no health insurance coverage for its employees for a period of at least 6 months. A small employer carrier may vary application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

3. In applying minimum participation requirements with respect to a small employer, a small employer carrier shall not consider as an eligible employee employees or dependents who have qualifying existing coverage in an employer-based group insurance plan or an ERISA qualified self-insurance plan in

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determining whether the applicable percentage of participation is met. However, a small employer carrier may count eligible employees and dependents who have coverage under another health plan that is sponsored by that employer.

4. A small employer carrier shall not increase any requirement for minimum employee participation or any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage, unless the employer size has changed, in which case the small employer carrier may apply the requirements that are applicable to the new group size.

5. If a small employer carrier offers coverage to a small employer, it must offer coverage to all the small employer's eligible employees and their dependents. A small employer carrier may not offer coverage limited to certain persons in a group or to part of a group, except with respect to late enrollees.

6. A small employer carrier may not modify any health benefit plan issued to a small employer with respect to a small employer or any eligible employee or dependent through riders, endorsements, or otherwise to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

7. An initial enrollment period of at least 30 days must be provided. An annual 30-day open enrollment period must be offered to each small employer's eligible employees and their dependents. A small employer carrier must provide special enrollment periods as required by s. 627.65615.

8. A small employer carrier must limit changes to

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prescription drug formularies as required by s. 627.42393.

Section 3. Subsection (36) of section 641.31, Florida Statutes, is amended to read:

641.31 Health maintenance contracts.—

(36) A health maintenance organization may increase the copayment for any benefit, or delete, amend, or limit any of the benefits to which a subscriber is entitled under the group contract only, upon written notice to the contract holder at least 45 days in advance of the time of coverage renewal. The health maintenance organization may amend the contract with the contract holder, with such amendment to be effective immediately at the time of coverage renewal. The written notice to the contract holder must ~~shall~~ specifically identify any deletions, amendments, or limitations to any of the benefits provided in the group contract during the current contract period which will be included in the group contract upon renewal. This subsection does not apply to any increases in benefits. The 45-day notice requirement does ~~shall~~ not apply if benefits are amended, deleted, or limited at the request of the contract holder.

(a) Other than at the time of coverage renewal, a health maintenance organization that provides medical, major medical, or similar comprehensive coverage may not:

1. Remove a covered prescription drug from its list of covered drugs during the contract year unless the United States Food and Drug Administration has issued a statement about the drug which calls into question the clinical safety of the drug, or the manufacturer of the drug has notified the United States Food and Drug Administration of a manufacturing discontinuance or potential discontinuance of the drug as required by s. 506C

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of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s. 356c.

2. Reclassify a drug to a more restrictive drug tier or increase the amount that an insured must pay for a copayment, coinsurance, or deductible for prescription drug benefits, or reclassify a drug to a higher cost-sharing tier during the contract year.

(b) This subsection does not:

1. Prohibit the addition of prescription drugs to the list of drugs covered during the contract year.

2. Apply to a grandfathered health plan as defined in s. 627.402 or to benefits set forth in s. 627.6513(1)-(14).

3. Alter or amend s. 465.025, which provides conditions under which a pharmacist may substitute a generically equivalent drug product for a brand name drug product.

4. Alter or amend s. 465.0252, which provides conditions under which a pharmacist may dispense a substitute biological product for the prescribed biological product.

Section 4. The Legislature finds that this act fulfills an important state interest.

Section 5. This act shall take effect January 1, 2018.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Education, *Vice Chair*
Appropriations Subcommittee on the Environment
and Natural Resources
Appropriations Subcommittee on General
Government
Banking and Insurance
Judiciary

JOINT COMMITTEE:

Joint Legislative Auditing Committee,
Alternating Chair

SENATOR DEBBIE MAYFIELD
17th District

April 6, 2017

Chair Lizbeth Benacquisto
Rules Committee
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: SB 182

Dear Chair Benacquisto,

I am respectfully requesting Senate Bill 182, a bill relating to Consumer Protection from Nonmedical Changes to Prescription Drug Formularies, be placed on the agenda for your committee on Rules.

I appreciate your consideration of this bill and I look forward to working with you and the Rules committee. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017.

Thank you,

Senator Debbie Mayfield
District 17



Cc: John B. Phelps, Cynthia Futch, Dane Bennett, Matthew Hunter, Lily Tysinger

REPLY TO:

- ☐ 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025
- ☐ 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
- ☐ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/19/17

Meeting Date

182

Bill Number (if applicable)

Topic Non Medical Changes

Amendment Barcode (if applicable)

Name Mary Thomas

Job Title _____

Address 1430 Piedmont Dr E

Street

Phone 850 224 6496

TLH FL 32308

City

State

Zip

Email MThomas@fomedical.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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4/19/17

Meeting Date

182

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Stephen Winn

Job Title Executive Director

Address 2544 Blairstone Pines Dr.

Street

Phone 878-7364

Tallahassee

City

FL

State

32301

Zip

Email winnsr@earthlink.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Osteopathic Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/12

Meeting Date

182

Bill Number (if applicable)

Topic Prescription Drugs

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 W Adams St

Phone 224-7173

City

City

State

State

Zip

Zip

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 190

INTRODUCER: Community Affairs Committee; Regulated Industries Committee; and Senator Artiles

SUBJECT: Low-voltage Electric Fences

DATE: April 18, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	Fav/CS
2.	Cochran	Yeatman	CA	Fav/CS
3.	Kraemer	Phelps	RC	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 190 revises s. 553.793, F.S., concerning streamlined low-voltage alarm system installation permitting, to include a new or existing low-voltage electric fence as a “low-voltage alarm system project.” A low-voltage electric fence is composed of an alarm system (a device used to detect a burglary, fire, robbery, or medical emergency) consisting of a fence structure and an energizer powered by a commercial storage battery not exceeding 12 volts that produces an electric charge upon contact with the fence structure. The ancillary components or equipment that may be attached to an alarm system or low-voltage electric fence are revised to include closed-circuit television systems, access controls, and battery-charging devices.

A low-voltage electric fence: 1) must produce a limited electric charge; 2) must be completely enclosed by a nonelectric fence or wall; 3) may be up to 2 feet higher than the perimeter nonelectric fence or wall; 4) must be identified with attached warning signs not more than 60 feet apart; 5) may not be installed in areas zoned exclusively for single-family or multifamily residential use; and 6) may not enclose portions of a property which are used for residential purposes. No further permit may be required for a low-voltage alarm system project that is composed of a low-voltage electric fence that meets all of the above requirements.

Under current law, a municipality, county, district, or other entity of local government (local government) may not adopt or maintain in effect any ordinance or rule regarding a “low-voltage alarm system project” that is inconsistent with s. 553.793, F.S., as revised in the bill. The classification of low-voltage electric fences as a “low-voltage alarm system project” will

eliminate the authority of a local government to adopt new ordinances or rules, or maintain existing ordinances or rules, concerning low-voltage electric fences.

II. Present Situation:

Part II of ch. 489, F.S., dealing with electrical and alarm system contracting, sets forth requirements for qualified persons to be licensed if they have sufficient technical expertise in the applicable trade, and have been tested on technical and business matters.¹ The Electrical Contractors' Licensing Board (board) in the Department of Business and Professional Regulation (DBPR) implements Part II of ch. 489, F.S.² 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.”³ An alarm system includes home-automation equipment, thermostats, and video cameras.⁴

Section 489.505, F.S., specifies the types of contractors that 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.⁵ The term also includes any person, firm, or corporation that engages in the business of alarm contracting under an expressed or implied contract or that undertakes, offers to undertake, or submits a bid to engage in the business of alarm contracting.⁶ 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.⁷

The DBPR may also issue geographically unlimited certificates of competency to an alarm system contractor (certificateholder).⁸ The scope of certification is limited to specific alarm circuits and equipment.⁹ No mandatory licensure requirement is created by the availability of a certification.¹⁰

¹ See s. 489.501, F.S.

² See ss. 489.507 through 489.517, F.S., concerning the powers and duties of the board.

³ See s. 489.505(1), F.S.

⁴ See s. 553.793(1)(b), F.S.

⁵ See s. 489.505(2), F.S.

⁶ *Id.*

⁷ *Id.*

⁸ See ss. 489.505(4), 489.505(5), and 489.515(1), F.S.

⁹ 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 March 8, 2017).

¹⁰ *Id.*

Part IV of ch. 553, F.S., constitutes the Florida Building Codes Act (act). The act provides a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of the Florida Building Code, consisting of a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities, and to the enforcement of such requirements.¹¹ The Florida Building Code is adopted, modified, updated, interpreted, and maintained by the Florida Building Commission.¹²

Pursuant to s. 553.88, F.S., the current edition of the following standards are in effect to establish minimum electrical and alarm standards in Florida:

- National Electrical Code, NFPA¹³ No. 70;
- Underwriters' Laboratories, Inc. (UL), Standards for Safety, Electrical Lighting Fixtures, and Portable Lamps, UL 57 and UL 153;
- Underwriters' Laboratories, Inc., Standard for Electric Signs, UL 48;
- The provisions of the following which prescribe minimum electrical and alarm standards:
 - NFPA No. 56A, Inhalation Anesthetics;
 - NFPA No. 56B, Respiratory Therapy;
 - NFPA No. 56C, Laboratories in Health-related Institutions;
 - NFPA No. 56D, Hyperbaric Facilities;
 - NFPA No. 56F, Nonflammable Medical Gas Systems;
 - NFPA No. 72, National Fire Alarm Code; and
 - NFPA No. 76A, Essential Electrical Systems for Health Care Facilities;
- The rules and regulations of the Department of Health, entitled "Nursing Homes and Related Facilities Licensure"; and
- The minimum standards for grounding of portable electric equipment in Florida Administrative Code Rule Chapter 8C-27, as recommended by the Division of Workers' Compensation in the Department of Financial Services.

Section 553.71(5), F.S., provides that a local enforcement agency¹⁴ is an agency with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities. A local enforcement agency must make uniform permit labels available for purchase by a contractor for the installation or replacement of a new or existing alarm system for not more than \$40 per label per project per unit, and may not require the

¹¹ See s. 553.72(1), F.S., which also indicates that effective and reasonable protection for public safety, health, and general welfare at the most reasonable cost to the consumer is also intended.

¹² See s. 553.72(3), F.S.

¹³ NFPA is the acronym for the National Fire Protection Association, which is an international nonprofit organization established in 1896. Its mission is to reduce the worldwide burden of fire and other hazards on the quality of life by providing and advocating consensus codes, standards, research, training and education. The NFPA develops, publishes, and disseminates more than 300 consensus codes and standards intended to minimize the possibility and effects of fire and other risks. See <http://www.nfpa.org/about-nfpa> (last visited March 8, 2017).

¹⁴ Section 553.71(5), F.S., of the Florida Building Codes Act defines local enforcement agency as an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities.

payment of any additional fees, charges, or expenses associated with the installation or replacement of an alarm system.¹⁵

A municipality, county, district, or other entity of local government may not adopt or maintain in effect any ordinance or rule regarding a low-voltage alarm system project that is inconsistent with s. 553.793, F.S.¹⁶

III. Effect of Proposed Changes:

The bill revises s. 553.793, F.S., dealing with streamlined low-voltage alarm system installation permitting, to include a new or existing low-voltage electric fence within the definition of a low-voltage alarm system project.

A low-voltage electric fence is composed of an alarm system as defined in s. 489.505, F.S.,¹⁷ that operates in conjunction with a fence structure and an energizer powered by a commercial storage battery not exceeding 12 volts which produces an electric charge upon contact with the fence structure.

A low-voltage electric fence:

- Must produce an electric charge upon contact that may not exceed certain energizer characteristics that are set forth in International Electrotechnical Commission Standard No. 60335-2-76;¹⁸
- Must be completely enclosed by a nonelectric fence or wall;
- May be up to 2 feet higher than the perimeter nonelectric fence or wall;
- Must be identified with attached warning signs at least 60 feet apart;
- May not be installed in areas zoned exclusively for single-family or multifamily residential use; and
- May not enclose portions of a property which are used for residential purposes.

A low-voltage electric fence must meet all of the above requirements to be permitted as a low-voltage alarm system project, and no further permit shall be required for such low-voltage alarm system project other than as provided in this section.

Section 553.793(9), F.S., prohibits a municipality, county, district, or other entity of local government from adopting or maintaining in effect any ordinance or rule regarding a “low-voltage alarm system project” inconsistent with s. 553.793, F.S.; therefore the classification of low-voltage electric fences as “low-voltage alarm system projects” will eliminate the authority of

¹⁵ See s. 553.793(4), F.S.

¹⁶ See s. 553.793(9), F.S.

¹⁷ Section 489.505, F.S., defines an alarm system as “any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency.”

¹⁸ The limits on energizer characteristics are those set forth in paragraph 22.108 and depicted in Figure 102 of International Electrotechnical Commission (IEC) Standard No. 60335-2-76, Current Edition (the Energizer Standard); however, the Energizer Standard does not appear to be incorporated as a reference in the Florida Administrative Code, and use of the Energizer Standard document is subject to copyright protection. See <https://webstore.iec.ch/publication/1736> (last visited March 8, 2017). The Energizer Standard is not published on the Internet and must be purchased from the IEC.

a local government to adopt new ordinances or rules, or to maintain existing ordinances or rules, concerning low-voltage electric fences.

The bill amends s. 553.793, F.S., to conform cross-references.

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:

By including low-voltage electrical fences in s. 553.793, F.S., the bill requires local enforcement agencies, when permitting is required by the applicable local government entity, to charge not more than a \$40 permitting fee for the installation or replacement of a new or existing low-voltage electrical fence.

B. Private Sector Impact:

The DBPR states that the classification of a low-voltage electric fence as a low-voltage alarm system project will have no fiscal impact to the private sector.¹⁹ Representatives of a security fence company that has been in operation in the United States for more than 20 years indicate that standardization of the requirements for installation of low-voltage electric fences will assist property owners and their tenants by:

- Qualifying many property owners and tenants to receive discounts on their property insurance premiums; and
- Reducing delay and expense to property owners and tenants associated with the differing requirements for the installation of low-voltage electric fences that exist in more than 240 jurisdictions in Florida.²⁰

¹⁹ See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SB 190, dated January 17, 2017 (on file with Senate Committee on Regulated Industries) at page 4.

²⁰ Conversation with R. LaFace and S. Ross with staff of the Committee on Regulated Industries in Tallahassee, Fla. (Jan. 31, 2017).

Persons who attempt to breach a low-voltage electric fence are shocked by electrical current that provides an electric charge of approximately 7,000 volts that pulses every 1.3 seconds, for a duration ranging from one ten-thousandth (0.0001) of a second to four ten-thousandths (0.0004) of a second.²¹

C. Government Sector Impact:

The DBPR states that the bill as filed will have no fiscal impact to state government, and no federal impact (i.e., no federal compliance issues, federal funding issues, or federal agency involvement).²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Division of Professions in the DBPR commented that the installation of low-voltage electric fences may be beyond “the scope of [a] licensed alarm contractor”²³ and may cause confusion among local building departments about the type of license or certification required to install low-voltage electric fences.²⁴

The DBPR reports that the head electrical inspector in the Miami-Dade County Building Department has contacted the office of the board with concerns that plans reviewed for the types of systems used for low-voltage electrical fences “exceed the scope of work” for alarm system contractors “based on the secondary voltage.”²⁵ The DBPR indicates that portions of these systems will utilize voltages in excess of 98 volts.²⁶

Counsel for the Florida Building Commission indicates that the revisions to s. 553.793 F.S., must be incorporated into the Florida Building Code through standard rulemaking processes, and counsel for the board states that ch. 489, F.S., relating to electrical and alarm system contracting, may require an amendment to allow alarm system contractors to perform installations of low-voltage electric fences.²⁷

VIII. Statutes Affected:

This bill substantially amends section 553.793 of the Florida Statutes.

²¹ *Id.*

²² See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SB 190, dated January 17, 2017 (on file with Senate Committee on Regulated Industries) at pp. 4-5.

²³ *Id.* at 5.

²⁴ *Id.*

²⁵ *Id.* at 3.

²⁶ *Id.* at 2.

²⁷ *Id.* at 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 on March 14, 2017:**

- Removes the word “primarily,” making it so that a low-voltage electric fence may not be installed in an area zoned exclusively for single-family or multi-family residential use in order to be permitted as a low-voltage alarm system project.
- Adds the requirement that the low-voltage electric fence may not enclose portions of a property which are used for residential purposes in order to be permitted as a low-voltage alarm system project.

CS by Regulated Industries on February 8, 2017:

- Includes the term “fence structure” in the definition of “low-voltage electric fence.”
- Revises the additional ancillary components that may be attached to an alarm system or “low-voltage electric fence” to include closed-circuit television systems, access controls; and battery-charging devices;
- Clarifies and expands the requirements for a low-voltage electric fence to:
 - Require that a nonelectric fence or wall “completely enclose” the low-voltage electric fence or wall;
 - Allow the low-voltage electric fence to be up to 2 feet higher than the perimeter nonelectric fence or wall; and
 - Prohibit, as to a low-voltage alarm system project composed of a low-voltage electric fence that meets all requirements in s. 553.793(3), F.S., created in the bill, any further permit being required for such project.

B. Amendments:

None.

By the Committees on Community Affairs; and Regulated Industries; and Senator Artiles

578-02409-17

2017190c2

A bill to be entitled

An act relating to low-voltage electric fences; amending s. 553.793, F.S.; redefining the term "low-voltage alarm system project" to include low-voltage electric fences; defining the term "low-voltage electric fence"; providing requirements for a low-voltage electric fence to be permitted as a low-voltage alarm system project; conforming a cross-reference; providing an effective date.

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

Section 1. Present subsections (3) through (10) of section 553.793, Florida Statutes, are redesignated as subsections (4) through (11), respectively, subsection (1) and present subsection (6) of that section are amended, and a new subsection (3) is added to that section, to read:

553.793 Streamlined low-voltage alarm system installation permitting.—

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

(a) "Contractor" means a person who is qualified to engage in the business of electrical or alarm system contracting pursuant to a certificate or registration issued by the department under part II of chapter 489.

(b) "Low-voltage alarm system project" means a project related to the installation, maintenance, inspection, replacement, or service of a new or existing alarm system, as defined in s. 489.505, which ~~that~~ is hardwired and operating at low voltage, as defined in the National Electrical Code Standard

578-02409-17

2017190c2

70, Current Edition, or a new or existing low-voltage electric fence, and ancillary components or equipment attached to such a system or fence, including, but not limited to, home-automation equipment, thermostats, closed-circuit television systems, access controls, battery-charging devices, and video cameras.

(c) "Low-voltage electric fence" means an alarm system, as defined in s. 489.505, consisting of a fence structure and an energizer powered by a commercial storage battery not exceeding 12 volts which produces an electric charge upon contact with the fence structure.

(d) "Wireless alarm system" means a burglar alarm system or smoke detector that is not hardwired.

(3) A low-voltage electric fence must meet all of the following requirements to be permitted as a low-voltage alarm system project, and no further permit shall be required for such low-voltage alarm system project other than as provided in this section:

(a) The electric charge produced by the low-voltage electric fence upon contact does not exceed energizer characteristics set forth in paragraph 22.108 and depicted in Figure 102 of International Electrotechnical Commission Standard No. 60335-2-76, Current Edition.

(b) A nonelectric fence or wall must completely enclose the low-voltage electric fence. The low-voltage electric fence may be up to 2 feet higher than the perimeter nonelectric fence or wall.

(c) The low-voltage electric fence must be identified using warning signs attached to the fence at intervals of not more than 60 feet.

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59 (d) The low-voltage electric fence may not be installed in
60 an area zoned exclusively for single-family or multi-family
61 residential use.

62 (e) The low-voltage electric fence may not enclose portions
63 of a property which are used for residential purposes.

64 ~~(7)~~ ~~(6)~~ A contractor is not required to notify the local
65 enforcement agency before commencing work on a low-voltage alarm
66 system project. However, a contractor must submit a Uniform
67 Notice of a Low-Voltage Alarm System Project as provided under
68 subsection ~~(8)~~ ~~(7)~~ to the local enforcement agency within 14
69 days after completing the project. A local enforcement agency
70 may take disciplinary action against a contractor who fails to
71 timely submit a Uniform Notice of a Low-Voltage Alarm System
72 Project.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 414

INTRODUCER: Childen, Families, and Elder Affairs and Health Policy Committee and Senator Grimsley

SUBJECT: Hospice Services

DATE: April 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stoval	HP	Fav/CS
2.	Hendon	Hendon	CF	Fav/CS
3.	Looke	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 414 creates a new exemption from the certificate of need process for the establishment of a hospice program that shares a controlling interest¹ with a not-for-profit retirement community that offers independent living, assisted living, and nursing home services at a teaching nursing home that has been designated as a teaching nursing home² for at least five years. The bill specifies that only one hospice program may be established per teaching nursing home under the exemption.

The bill would have an insignificant fiscal impact to the state and has an effective date of July 1, 2017.

¹ Section. 408.803(7), F.S., defines “controlling interest” to mean the applicant or licensee; a person or entity that serves as an officer of, is on the board of directors of, or has a 5 percent or greater ownership interest in the applicant or licensee; or a person or entity that serves as an officer of, is on the board of directors of, or has a 5 percent or greater ownership interest in the management company or other entity, related or unrelated, with which the applicant or licensee contracts to manage the provider. The term does not include a voluntary board member.

² Section 430.80, F.S., defines “teaching nursing home” to mean a nursing home facility licensed under ch. 400, F.S., which contains a minimum of 170 licensed nursing home beds; has access to a resident senior population of sufficient size to support education, training, and research relating to geriatric care; and has a contractual relationship with a federally funded accredited geriatric research center in this state or operates in its own right a geriatric research center.

II. Present Situation:

Florida's Certificate of Need (CON) Program

Overview

In Florida, a CON is a written statement issued by the Agency for Health Care Administration (AHCA) evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility or health service, including hospices. The Florida CON program has three levels of review: full, expedited and exempt.³ Unless a project is exempt from the CON program, it must undergo a full comparative review. Expedited review is primarily targeted towards nursing home projects.

Full CON Review Process

Currently, prior to establishing a hospice or a hospice inpatient facility, an applicant is required to follow AHCA requirements for a full CON review.⁴

Full CON review is a lengthy process that starts with the AHCA determining need for a specific facility type or service. Upon determining that a need exists, AHCA accepts applications for CON based on batching cycles. At least 30 days prior to the application deadline for a batch cycle, an applicant must file a letter of intent with AHCA.⁵ A letter of intent must describe the proposal, specify the number of beds sought, if applicable, and identify the services to be provided and the location of the project.⁶ Applications for CON review must be submitted by the specified deadline for the particular batch cycle.⁷ The AHCA must review the application within 15 days of the filing deadline and, if necessary, request additional information for an incomplete application.⁸ The applicant then has 21 days to complete the application or it is deemed withdrawn from consideration.⁹

Within 60 days of receipt of the completed applications for that batch, the AHCA must issue a State Agency Action Report and Notice of Intent to grant a CON for a project in its entirety, to grant a CON for identifiable portions of a project, or to deny a CON for a project.¹⁰ The AHCA must then publish the decision, within 14 days, in the Florida Administrative Register.¹¹ If no administrative hearing is requested within 21 days of the publication, the State Agency Action Report and the Notice of Intent become a final order of the AHCA.¹²

³ Section 408.036, F.S.

⁴ Section 408.036(1)(d), F.S. However, s. 408.036(3)(a), F.S., establishes an exemption to this process for hospice services in a rural hospital.

⁵ Section 408.039(2)(a), F.S.

⁶ Section 408.039(2)(c), F.S.

⁷ Rule 59C-1.008(1)(g), F.A.C.

⁸ Section 408.039(3)(a), F.S.

⁹ Id.

¹⁰ Section 408.039(4)(b), F.S.

¹¹ Section 408.039(4)(c), F.S.

¹² Section 408.039(4)(d), F.S.

An applicant for CON review must submit a fee to the AHCA at the time of application submission. The minimum CON application filing fee is \$10,000.¹³ In addition to the base fee, an applicant must pay a fee of .15 percent of each dollar of the proposed expenditure; however, the total fee may not exceed \$50,000.¹⁴

Hospice Need Calculations

Need for a new hospice program is part of the applicant's review criteria pursuant to s. 408.035(1)(a), F.S. Need for a new hospice program can be identified through publication of the fixed need pool (pursuant to Rule 59C-1.0355(4), F.A.C.) or in the absence of numeric need the applicant must demonstrate that circumstances exist to justify approval of a new hospice program. Those circumstances must include documentation of a specific terminally ill population that is not being served or that a county/counties within the service area of a licensed hospice program are not being served.¹⁵

Exemptions from CON Review

Section 408.036(3), F.S., provides many exemptions to CON review. Exempted projects must only submit an application for exemption to the AHCA and pay a \$250 fee.

Teaching Nursing Homes

A teaching nursing home is a nursing home facility licensed under chapter 400 which contains a minimum of 170 licensed nursing home beds; has access to a resident senior population of sufficient size to support education, training, and research relating to geriatric care; and has a contractual relationship with a federally funded accredited geriatric research center in this state or operates in its own right a geriatric research center.¹⁶ The AHCA is required to develop a program for the designation of teaching nursing homes and to be designated, a nursing home must:

- Provide a comprehensive program of integrated senior services that include institutional services and community-based services;
- Participate in a nationally recognized accrediting program and hold a valid accreditation, such as the accreditation awarded by the Joint Commission, or, at the time of initial designation, possess a Gold Seal Award as conferred by the state on its licensed nursing home;
- Have been in business in this state for a minimum of 10 consecutive years;
- Demonstrate an active program in multidisciplinary education and research that relates to gerontology;
- Have a formalized contractual relationship with at least one accredited health profession education program located in this state;
- Have senior staff members who hold formal faculty appointments at universities, which must include at least one accredited health profession education program; and

¹³ Section 408.038, F.S.

¹⁴ Id.

¹⁵ AHCA, *Senate Bill 414 Analysis*, (January 23, 2017) (on file with the Senate Committee on Health Policy).

¹⁶ Section 403.80(1), F.S.

- Maintain insurance coverage pursuant to s. 400.141(1)(q), F.S., or proof of financial responsibility in a minimum amount of \$750,000. Such proof of financial responsibility may include:
 - Maintaining an escrow account consisting of cash or assets eligible for deposit; or
 - Obtaining and maintaining an unexpired, irrevocable, nontransferable and nonassignable letter of credit. The letter of credit shall be used to satisfy a final judgment indicating liability and awarding damages or a settlement agreement when such final judgment or settlement is a result of a liability claim against the facility.¹⁷

Additionally, a teaching nursing home must be primarily operated and established to offer, afford, and render a comprehensive multidisciplinary program of geriatric education and research to residents of the state and certify to the AHCA each school year the name, address, and educational history of each trainee approved and accepted for enrollment in the institution.¹⁸

Currently there are two nursing homes in the state designated as teaching nursing homes: Miami Jewish Health Systems (hospice service area 11, Miami-Dade County) and The Joseph L. Morse Health Center (hospice service area 9C, Palm Beach County).¹⁹ Of the two, the controlling interest of the Joseph L. Morse Health Center has an open CON application with the AHCA to provide hospice services. The application was preliminarily denied on February 17, 2017, and the denial was timely appealed on March 10, 2017.²⁰

III. Effect of Proposed Changes:

CS/SB 414 creates a new exemption from the CON process for the establishment of a hospice program that shares a controlling interest²¹ with a not-for-profit retirement community that offers independent living, assisted living, and nursing home services at a teaching nursing home that has been designated as a teaching nursing home²² for at least five years. The bill specifies that only one hospice program may be established per teaching nursing home under the exemption. The hospice program can only serve patients residing in the not-for-profit retirement community.

The bill has an effective date of July 1, 2017.

¹⁷ Section 403.80(3)(a)-(g), F.S.

¹⁸ Section 430.80(6)(a) and (b), F.S.

¹⁹ Supra note 15.

²⁰ Id.

²¹ Section 408.803(7), F.S., defines “controlling interest” to mean the applicant or licensee; a person or entity that serves as an officer of, is on the board of directors of, or has a 5 percent or greater ownership interest in the applicant or licensee; or a person or entity that serves as an officer of, is on the board of directors of, or has a 5 percent or greater ownership interest in the management company or other entity, related or unrelated, with which the applicant or licensee contracts to manage the provider. The term does not include a voluntary board member.

²² Section 430.80, F.S., defines “teaching nursing home” to mean a nursing home facility licensed under ch. 400, F.S., which contains a minimum of 170 licensed nursing home beds; has access to a resident senior population of sufficient size to support education, training, and research relating to geriatric care; and has a contractual relationship with a federally funded accredited geriatric research center in this state or operates in its own right a geriatric research center.

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:

CS/SB 414 may have a positive fiscal impact on a non-profit retirement community that is able to provide hospice services under the new exemption without first obtaining a CON from the AHCA due to eliminating the requirement to pay fees associated with obtaining a CON and due to being able to provide hospice services in an area where the AHCA may or may not have determined a need for such services.

The bill may have a negative fiscal impact on existing hospices in a service area where this exemption is applied due to a loss of patients that begin using the new hospice.

C. Government Sector Impact:

The bill may have a fiscal impact of approximately \$35,000 to the AHCA due to loss of revenues from the CON application fees if both providers applied for the CON exemption.²³

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unclear what entities the bill is referring to with the term “not-for-profit retirement communities.” This term might need further clarification.²⁴

²³ Supra note 15.

²⁴ Supra note 15.

VIII. Statutes Affected:

This bill substantially amends section 408.036 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 Children, Families, and Elder Affairs on April 3, 2017:

The CS limits the hospice services to patients residing in the not-for-profit retirement community.

CS by Health Policy on March 27, 2017:

The CS narrows the applicability of the CON exemption created by the bill by:

- Requiring the not-for-profit retirement community to offer independent living, assisted living, and nursing home services at a teaching nursing home that has been designated as a teaching nursing home for at least 5 years; and
- Specifying that only one hospice program may be offered per teaching nursing home;

The CS also clarifies the language of the bill and makes technical corrections.

- B. **Amendments:**

None.

By the Committees on Children, Families, and Elder Affairs; and Health Policy; and Senator Grimsley

586-03330-17

2017414c2

1 A bill to be entitled
 2 An act relating to hospice services; amending s.
 3 408.036, F.S.; exempting certain hospice services in a
 4 not-for-profit retirement community from specified
 5 review and application requirements; providing an
 6 effective date.
 7
 8 Be It Enacted by the Legislature of the State of Florida:
 9
 10 Section 1. Paragraph (a) of subsection (3) of section
 11 408.036, Florida Statutes, is amended to read:
 12 408.036 Projects subject to review; exemptions.—
 13 (3) EXEMPTIONS.—Upon request, the following projects are
 14 subject to exemption from the provisions of subsection (1):
 15 (a) For hospice services or for swing beds in a rural
 16 hospital, as defined in s. 395.602, in a number that does not
 17 exceed one-half of its licensed beds, or for a hospice program
 18 established by an entity that shares a controlling interest, as
 19 defined in s. 408.803, with a not-for-profit retirement
 20 community that offers all of the following:
 21 1. Independent living.
 22 2. Assisted living.
 23 3. Nursing home services located on the same premises as a
 24 nursing home facility designated by the agency as a teaching
 25 nursing home for a minimum of 5 years in accordance with s.
 26 430.80.
 27
 28 Only one hospice program per teaching nursing home may be
 29 established under the exemption in this paragraph, and such

Page 1 of 2

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

586-03330-17

2017414c2

30 program must be limited to serving patients residing in
 31 communities located within the not-for-profit retirement
 32 community, including home and community-based service providers.
 33 Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 5, 2017

I respectfully request that **CS/CS Senate Bill #414**, relating to Hospice Services, be placed on the:

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

A handwritten signature in cursive script that reads "Denise Grimsley".

Senator Denise Grimsley
Florida Senate, District 26

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.19.17

Meeting Date

414

Bill Number (if applicable)

Topic

Hospice

Amendment Barcode (if applicable)

Name

Sharon Gordon-Girvin

Job Title

CEO, The Girvin Group, Inc

Address

307 W PARK Ave, Suite 211

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State

32301

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Speaking:

☐

For

☐

Against

☒

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

MorseLife

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 512

INTRODUCER: Regulated Industries Committee and Senator Young and others

SUBJECT: Steroid Use in Racing Greyhounds

DATE: April 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	Fav/CS
2.	Kraemer	Phelps	RC	Favorable
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 512 amends s. 550.2415, F.S. to provide that a positive test result for anabolic steroids¹ in a racing greyhound based on samples taken from the greyhound before or after a race is a violation of s. 550.2415, F.S. That statute prohibits racing of an animal that has been impermissibly medicated or determined to have a prohibited substance present in urine or other samples taken from the animal before or immediately after a race. Under current law, testosterone, an anabolic steroid, is permitted to be used for the control of the reproductive cycle in female greyhounds.

CS/SB 512 has an indeterminate fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

The racing of an animal (horse or greyhound) that has been impermissibly medicated or determined to have a prohibited substance present, is a violation of s. 550.2415, F.S. However, the Division of Pari-mutuel Wagering (division) of the Department of Business and Professional

¹ Steroids include drugs used to relieve swelling and inflammation, such as prednisone and cortisone; vitamin D; and some sex hormones, such as testosterone and estradiol. See <http://www.medicinenet.com/script/main/art.asp?articlekey=5556> (last visited Mar. 31, 2017).

Regulation (DBPR), may adopt rules specifying acceptable levels of naturally occurring substances in untreated animals, acceptable levels of environmental contaminants, and trace levels of substances in test samples.²

Classification of a substance in a sample as permissible or impermissible may be dependent upon whether:

- The substance is administered within or outside the allowed time frame before a race is scheduled to begin;
- The racing animal is approved for administration of the substance, or is qualified by gender to receive it;
- The level of the substance exceeds acceptable levels set by administrative rule; and
- The method of administration of the substance is prohibited.³

Certain medications may be administered to racing greyhounds in certain dosages under limited conditions, including the administration of:

- Testosterone or testosterone-like substances, when used for the control of estrus in female racing greyhounds, is permitted, subject to certain conditions;⁴ and
- Sulfa drugs (antibiotics)⁵ under certain conditions.⁶

Certain medications at certain urinary concentrations are not reportable by the state laboratory as violations.⁷

All prescription medication, regardless of method of administration, shall be safeguarded under lock and key when not being actively administered.⁸

Each racetrack permitholder must maintain a detention enclosure for securing urine, blood, or other samples from racing animals.⁹ The trainer of record for each animal is responsible for the

² See s. 550.2415(1)(b), F.S. and Rule 61D-6.007, F.A.C.

³ See Rule 61D-6.007, F.A.C.

⁴ Pursuant to Rule 61D-6.007, F.A.C., track veterinarians may administer injectable testosterone to female racing greyhounds to control their reproductive cycle (estrus control) (limited to administration that occurs on the ground of the pari-mutuel permitholder); kennel owners may use their regular Florida licensed veterinarian or may enter into a collective agreement for the services of a Florida licensed veterinarian to administer injectable testosterone as permitted; the administration of oral testosterone is permitted if it is validly prescribed and properly labeled; and veterinarians that administer injectable or oral testosterone are responsible for maintaining security, inventory, and a retrievable records/log in accordance with the Drug Enforcement Agency (DEA) regulations.

⁵ A “sulfa drug” is an antibiotic used to treat bacterial and some fungal infections. See <http://www.medicinenet.com/script/main/art.asp?articlekey=14498> (last visited Mar. 31, 2017).

⁶ Under Rule 61D-6.007(2), F.A.C., the racing greyhound must be under the care of a Florida licensed veterinarian who also holds an occupational license pursuant to s. 550.105(2)(a), F.S.; the sulfa drugs must be prescribed by a Florida licensed veterinarian who also holds an occupational license pursuant to s. 550.105(2)(a), F.S.; and the sulfa drug is/are not administered within 24 hours prior to the officially scheduled post time of the race.

⁷ These include the detection of (i) caffeine at a urinary concentration less than or equal to 200 nanograms per milliliter; (ii) theophylline and theobromine at a urinary concentration less than or equal to 400 nanograms per milliliter; (iii) procaine at a urinary concentration less than or equal to 2 micrograms per milliliter; and (iv) flunixin at a urinary concentration less than or equal to 250 nanograms per milliliter.

⁸ *Id.*

⁹ Rule 61D-6.002(2), F.A.C.

condition of the animals he or she enters to race,¹⁰ and for securing all prescribed medications, over-the-counter medicines, and natural or synthetic medicinal compounds.¹¹

Samples of blood, urine, saliva, or any other bodily fluid may be collected from a race animal immediately before and immediately after it has raced.¹² If racing officials find, through reasonably reliable evidence, that substances other than permissible substances have been administered, or that otherwise permissible substances have been administered during prohibited periods before the time of a race, evidence of illegal or impermissible substances may be confiscated and the racing animal may be prohibited from racing in the race (scratched).¹³

The winner of every race is sent to the detention enclosure for examination by an authorized representative of the division and the taking of samples to monitor and detect both permissible and impermissible substances.¹⁴ Any other animals that participated in the race may be designated for examination and testing by the stewards, judges, racetrack veterinarian, or a division representative.¹⁵

All samples are collected by staff of the Office of Operations of the division and sent to the University of Florida College of Medicine Racing Laboratory (state laboratory) for analysis.¹⁶ Blood specimens must be collected from racing animals by veterinarians employed by the division or any licensed veterinarian hired or retained by the division, and the collection must be witnessed by the animal's trainer, owner, or designee.¹⁷

The division, in its 85th Annual Report, noted that during Fiscal Year 2015-2016, the state laboratory processed 76,219 samples and performed 313,600 analyses:¹⁸

Sample Type	Horse Urine/Blood	Greyhound Urine	Investigative
Samples Received	16,945	58,274	2
Samples Analyzed	17,001	39,031	2
Number of Analyses	77,268	236,332	2
Positive Results	343	18	n/a

If a prohibited substance is found in a race-day specimen, it is evidence that the substance was administered to, and was in the racing animal while racing.¹⁹ Test results are confidential and exempt from public records for 10 days after the testing of all samples collected on a particular day have been completed and the positive results have been reported to the director of the

¹⁰ Rule 61D-6.002(1), F.A.C.

¹¹ Rule 61D-6.003, F.A.C. Prescription drugs must be prescribed by a licensed veterinarian who has a current veterinarian-patient relationship, and all substances must have a proper label.

¹² Section 550.2415(1)(a), F.S.

¹³ See s. 550.2415(7) and (8), F.S., and Rule 61D-6.005, F.A.C.

¹⁴ Rule 61D-6.005(1), F.A.C.

¹⁵ *Id.*

¹⁶ See *85th Annual Report, Fiscal Year 2015-2016*, (85th Annual Report) at page 31, at <http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2015-2016--85th--20170125.pdf> last visited Mar. 31, 2017). The division annually contracts with the state laboratory for these services.

¹⁷ Rule 61D-6.005, F.A.C.

¹⁸ See *85th Annual Report*, *supra* note 14, at page 31.

¹⁹ Section 550.2415(1)(c), F.S.

division.²⁰ A prosecution by the division against a licensee for a violation must begin within ninety days after the violation.²¹

The division must notify the owner or trainer, the stewards, and the appropriate horsemen's association of all drug test results.²² At the request of either the affected owner or trainer, the division must send the sample to an independent laboratory for analysis.

If the positive result found by the state laboratory is not confirmed by the analysis made by the independent laboratory, no further administrative or disciplinary action may be pursued by the division.²³ If the positive result is confirmed, or if the volume of the secondary sample is insufficient to do so, then administrative action may proceed.²⁴ There must be a good faith attempt by the division to obtain a sufficient quantity of fluid specimens to allow both a primary test to be made by the state laboratory and a secondary test to be made by an independent laboratory.²⁵

The mere presence of a prohibited substance in a racing animal is evidence of the violation.²⁶ The fine for violations may be up to \$10,000 or the race winnings (purse or sweepstakes amount), whichever is greater.²⁷ Prosecutions must be started within 90 days of the race date.

The penalty schedule for violations incorporates the Uniform Classification Guidelines for Foreign Substances, Version 8.0, revised December 2014 (Uniform Classification Guidelines), by ARCI.²⁸ Pursuant to Florida Administrative Code Rule 61D-6.012, relating to penalty guidelines for drug violations in greyhounds, penalties are imposed when the division finds certain substances have been identified by the state laboratory in a urine sample or blood sample collected from a greyhound participating in a pari-mutuel event, which substances include any drug or medication (unapproved drugs or medications) that:

- Is not approved for veterinary use in the United States by the Food and Drug Administration;
- Cannot be detected by the state laboratory in a urine or blood sample unless the medication was administered within 24 hours of the race; or
- Is detected in urine or blood concentrations that indicate a dosage level that would constitute a threat to the health and safety of the greyhound.²⁹

A first violation may result in a fine between \$1,000 and \$2,500, and a license suspension up to one year or a license revocation. Any subsequent violation may result in a fine between \$2,500 and \$5,000 and a license revocation.³⁰

²⁰ See ss. 550.2415(1)(a), F.S.

²¹ See s. 550.2415(4), F.S.

²² Section 550.2415(5)(a), F.S.

²³ Section 550.2415(5)(b), F.S.

²⁴ Section 550.2415(5)(c), F.S.

²⁵ *Id.*

²⁶ See s. 550.2415(1)(c), F.S.

²⁷ See s. 550.2415(d)(a), F.S.

²⁸ See s. 550.2415(7)(c), F.S.

²⁹ See Rule 61D-6.012(1)(a), F.A.C..

³⁰ *Id.*

Penalties for the presence of other medications or drugs, other than unapproved drugs or medications described above, are based upon the classification of the medication or drug found in the Uniform Classification Guidelines.³¹

III. Effect of Proposed Changes:

CS/SB 512 amends s. 550.2415, F.S., to provide that a positive test result for anabolic steroids³² in a racing greyhound before or after a race is a violation of s. 550.2415, F.S. That statute prohibits racing of an animal that has been impermissibly medicated or determined to have a prohibited substance present in urine or other samples taken from the animal before or immediately after a race. Anabolic steroids (testosterone) are drugs whose uses include the control of the reproductive cycle in female greyhounds.³³

The administration of testosterone or testosterone-like substances for the control of estrus in female racing greyhounds, is permitted by rule of the division, subject to certain conditions.³⁴ Under the bill, no such use of those substances will be permissible.

The bill does not modify the existing procedures for determining violations. Any affected licensee would have the same due process rights, including the opportunity for a hearing, which law currently affords for alleged violations under s. 550.2415, F.S.

The bill provides 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.

³¹ See Rule 61D-6.012(2), F.A.C.

³² Steroids include drugs used to relieve swelling and inflammation, such as prednisone and cortisone; vitamin D; and some sex hormones, such as testosterone and estradiol. See <http://www.medicinenet.com/script/main/art.asp?articlekey=5556> (last visited Mar. 31, 2017).

³³ See Rule 61D-6.007, F.A.C.

³⁴ *Id.*

B. Private Sector Impact:

CS/SB 512 will have an indeterminate impact on greyhound tracks, and the owners and trainers of greyhounds. The impact will depend on the frequency that anabolic steroids are found to be present in greyhounds engaged in racing in Florida as a result of testing of samples taken from greyhounds before or immediately after a race.

C. Government Sector Impact:

The DBPR estimates the fiscal impact to state government to be minimal but indeterminate. The fiscal impact will depend upon the extent that violations and associated fines occur as a result of a greyhounds testing positive for the presence of anabolic steroids.³⁵

The DBPR reports that additional expenditures may be needed for the necessary testing. At present, the division contracts with the University of Florida, College of Medicine Racing Laboratory (state laboratory) to provide testing services. The current appropriation for that testing is \$2,266,000.³⁶ The state laboratory has indicated to the division that its testing procedures must be amended to include detection of anabolic steroids, it must purchase a liquid chromatography-mass spectrometer to test approximately 40,000 greyhound racing samples annually (a cost of approximately \$300,000 - \$350,000), and it may need to amend the existing contract to cover that cost.³⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

CS/SB 512 provides that s. 550.2415, F.S., is violated if a sample from a greyhound reflects the presence of anabolic steroids, resulting in a positive test. The term “greyhound” used in the bill is more expansive than the term “racing greyhounds,” defined in s. 550.002(29), F.S., to mean greyhounds used, or bred, raised, or trained to be used, in racing at a pari-mutuel facility and registered with the National Greyhound Association.

The testing of samples from male greyhounds may also result in positive tests if levels of naturally occurring testosterone are not considered and addressed.

VIII. Statutes Affected:

This bill substantially amends section 550.2415 of the Florida Statutes.

³⁵ See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SB 512, dated Feb. 27, 2017 (on file with Senate Committee on Regulated Industries) at page 4.

³⁶ *Id.* at pages 4 -5.

³⁷ *Id.* at page 6.

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 Regulated Industries Committee on April 6, 2017:

The committee substitute revises the title of the bill to “Steroid Use in Racing Greyhounds” from “Greyhound Dogs.”

- B. **Amendments:**

None.

By the Committee on Regulated Industries; and Senators Young,
Rouson, and Steube

580-03525-17

2017512c1

A bill to be entitled

An act relating to steroid use in racing greyhounds;
amending s. 550.2415, F.S.; providing that a positive
test result for anabolic steroids in certain samples
taken from a greyhound violates the prohibition on the
racing of animals that are impermissibly medicated or
determined to have a prohibited substance present;
providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section
550.2415, Florida Statutes, is amended to read:

550.2415 Racing of animals under certain conditions
prohibited; penalties; exceptions.—

(1) (a) The racing of an animal that has been impermissibly
medicated or determined to have a prohibited substance present
is prohibited. It is a violation of this section for a person to
impermissibly medicate an animal or for an animal to have a
prohibited substance present resulting in a positive test for
such medications or substances based on samples taken from the
animal before or immediately after the racing of that animal. It
is a violation of this section for a greyhound to have anabolic
steroids present resulting in a positive test for such steroids
based on samples taken from the greyhound before or immediately
after the racing of that greyhound. Test results and the
identities of the animals being tested and of their trainers and
owners of record are confidential and exempt from s. 119.07(1)
and from s. 24(a), Art. I of the State Constitution for 10 days

Page 1 of 2

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

580-03525-17

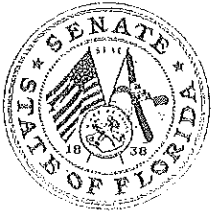
2017512c1

after testing of all samples collected on a particular day has
been completed and any positive test results derived from such
samples have been reported to the director of the division or
administrative action has been commenced.

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

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

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

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG
18th District

April 6, 2017

Senator Lizbeth Benacquisto, Chair
Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chairman Benacquisto,

My Senate Bill 512, Greyhound Dogracing has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

Thank you for your consideration of this request. If I need to provide you with more information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Dana Young".

Dana Young
State Senator – 18th District

cc: John Phelps, Staff Director – Committee on Rules

REPLY TO:

- ☐ 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- ☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/17

Meeting Date

512

Bill Number (if applicable)

Topic

GREYHOUND STEROIDS

Amendment Barcode (if applicable)

Name

DON GOLDSTEIN

Job Title

Address

12321 BRANFIELD DR

Phone

813-361-7146

Street

RIVerview

FL

33578

City

State

Zip

Email

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

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

Representing

GREYHOUND RESCUE & ADOPTIONS OF TAMPA BAY

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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 512

Bill Number (if applicable)

Topic Steroids in racing greyhounds

Amendment Barcode (if applicable)

Name Carey M. Theil

Job Title executive director

Address 7 Central St. Suite 210

Phone 617-501-6276

Street

Arlington, MA 02476

Email Carey@grey2kusa.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/17

Meeting Date

512

Bill Number (if applicable)

Topic Greyhound Steroids

Amendment Barcode (if applicable)

Name Katie MacFall

Job Title State Director

Address 1624 Metropolitan Circle

Phone 860 808-1001

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 Humane Society of the United States

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

4/19/17

Meeting Date

SB 512

Bill Number (if applicable)

Topic Grayhound Steroids

Amendment Barcode (if applicable)

Name Jennifer Leon

Job Title _____

Address 5602 N. Branch Ave.
Street

Phone _____

Tampa
City

FL
State

33604
Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/17

Meeting Date

512

Bill Number (if applicable)

Topic GREYHOUND RACING - STEROIDS

Amendment Barcode (if applicable)

Name ~~STATE~~ JENNIFER HOBGOOD

Job Title STATE LEGISLATIVE DIRECTOR

Address P O BOX 20554

Phone 445 5245

Street

TALLAHASSEE

City

FL

State

32316

Zip

Email jen.hobgood@aspc.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing ASPCA - AMERICAN SOCIETY for the PREVENTION of CRUELTY TO ANIMALS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

521
Bill Number (if applicable)

Topic Greyhound Birth Control

Amendment Barcode (if applicable)

Name Ramon MAURY

Job Title _____

Address PO Box 10245
Street

Phone 850 222 1568

TALL, FL 32302
City State Zip

Email MAURY@GCAOL

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FL. Greyhound 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)

4/19/2017
Meeting Date

512
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/CS/SB 596

INTRODUCER: Rules Committee; Governmental Oversight and Accountability Committee; Communications, Energy, and Public Utilities Committee; and Senator Hutson and others

SUBJECT: Utilities

DATE: April 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Fav/CS
2.	Peacock	Ferrin	GO	Fav/CS
3.	Wiehle	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 596 creates the Advanced Wireless Infrastructure Deployment Act. Put very simply, it creates a process for gaining access to and use of public rights-of-way in connection with the installation of small wireless communications infrastructure.

The bill creates a process and time limits for review and approval of applications by an authority. An authority is defined as a county or municipality having jurisdiction and control of the rights-of-way of any public road. An authority may deny a proposed collocation of a small wireless facility in the public rights-of-way if the proposed collocation:

- Materially interferes with the safe operation of traffic control equipment.
- Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.
- Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.
- Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.
- Fails to comply with applicable codes. Applicable codes includes objective design standards adopted by ordinance which may address: the design, material, and color of a new utility pole replacing an existing utility pole; reasonable spacing requirements for ground-mounted

equipment; and reasonable location context, color, stealth, and concealment requirements for a small wireless facility. These design standards may be waived or a compromise negotiated.

Collocation fees cannot exceed \$100 per year.

The bill takes effect July 1, 2017.

II. Present Situation:

Use of Right-of-Way by Communications Services Providers

Section 337.401, F.S., authorizes the Department of Transportation (DOT or the department) and local governmental entities that have jurisdiction and control of public roads (jointly referred to as the or an authority) to prescribe and enforce reasonable rules or regulations for placing and maintaining of structures across, on, or within the right-of-way limits of a road. An authority may authorize any person who is a resident of this state or any corporation either organized under the laws of this state or licensed to do business within this state to use a right-of-way for the utility¹ in accordance with the authority's adopted rules or regulations.² The statute prohibits a utility from installing, locating, or relocating within a right-of-way unless authorized by a written permit.³ The permit must require the permit holder to be responsible for any damage resulting from the use of the right-of-way.⁴

Municipal and county rights-of-way access rules and regulations relating to communications services providers must be reasonable and nondiscriminatory and must be generally applicable to all providers of communications services.⁵ The rules and regulations must be "generally applicable" to all such providers and may not require such providers to apply for or enter into an individual license, franchise, or other agreement as a condition of using the right-of-way.⁶

A municipality or charter county may require and collect permit fees from any providers of communications services that use or occupy municipal or county roads or rights-of-way.⁷ To ensure nondiscriminatory and competitively neutral permit fees for communications services providers, municipalities and charter counties must elect to collect permit fees for use of the right-of-way in one of two ways. First, the local government can elect to require the payment of fees from any such providers, provided that the fees are "reasonable and commensurate with the direct and actual cost of the regulatory activity," "demonstrable," and "equitable among users of

¹ Existing paragraph 337.401(1)(a), F.S., refers to "any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404 as the 'utility'." This indirectly defines the term "utility" not by type of entity or by type of service provided but by the type of structure some type of entity might use in providing some type of service.

² Section 337.401(2), F.S.

³ *Id.*

⁴ *Id.*

⁵ Section 337.401(3)(a), F.S.

⁶ *Id.*

⁷ Section 337.401(3)(c)1.a.(I), F.S.

the roads or rights-of-way.”⁸ If the local government makes this election, the rate of its local communications service tax⁹ is automatically reduced by a rate of 0.12 percent. Second, the local government can elect not to require payment of fees from any such provider and may increase its local communications service tax by a rate of up to 0.12 percent. A noncharter county may make the same election. If it chooses not to impose permit fees, it may increase its local communications service tax by a rate of up to 0.24 percent to replace the revenues it would have received for such permit fees.¹⁰

Local Government Pole Attachment Fees

With certain exceptions, the authority of a public body¹¹ to require taxes, fees, charges, or other impositions¹² from dealers of communications services for occupying its roads and rights-of-way is specifically preempted by the state.¹³ Among the taxes, fees, and charges *not* preempted¹⁴ are the following:

- Pole attachment fees charged by a local government for attachments to its utility poles.
- Amounts charged for the rental or other use of property owned by a public body which is not in the public rights-of-way to a dealer of communications services for any purpose, including, but not limited to, the placement or attachment of equipment used in the provision of communications services.
- Permit fees related to placing or maintaining facilities in or on public roads or rights-of-way pursuant to s. 337.401, F.S.

Accordingly, local governments may establish pole attachment fees for communications services facilities by ordinance or agreement.

Collocation of Wireless Communications Facilities in DOT Rights-of-Way

With respect to property acquired for state rights-of-way, the DOT is responsible for negotiating leases that provide access for wireless communications facilities.¹⁵ Payments required under such leases must be reasonable and reflect the market rate for the use of the state government-owned property. DOT is authorized to adopt rules for granting such leases, including terms and conditions.¹⁶

The DOT has entered into three competitively bid leases that allow the lessee to place wireless facilities on the DOT’s rights-of-way or to sublease those rights to a third-party for the same

⁸ Section 337.401(3)(c)1.a.(I), F.S. Such costs include the costs of issuing and processing permits, plan reviews, physical inspection, and direct administrative costs.

⁹ Local communications services taxes are authorized and governed by ch. 202, F.S.

¹⁰ Section 337.401(3)(c)2., F.S.

¹¹ Section 1.01(8), F.S., provides that a “public body” includes counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.

¹² Section 202.24(2)(b), F.S., provides, in part, that a tax, charge, fee, or other imposition includes any amount or in-kind payment of property or services which is required by ordinance or agreement to be paid or furnished to a public body by or through a dealer of communications services in its capacity as a dealer of communications services.

¹³ Section 202.24(1), F.S.

¹⁴ See s. 202.24(2)(c), F.S.

¹⁵ Section 365.172(13)(f), F.S.

¹⁶ *Id.*

purpose.¹⁷ The DOT indicates that it derives an income stream from each of these agreements.¹⁸ The DOT Turnpike System, which includes the Western Beltway, Suncoast Parkway, Veterans Expressway, I-4 connector, Polk Parkway, Sawgrass Expressway, Turnpike Mainline, Beachline Expressway, and Seminole Expressway, is not subject to rights-of-way leases for wireless facilities.¹⁹

Federal Law on Wireless Facilities Siting

The FCC interprets and implements certain provisions of federal law that are designed, among other purposes, to “remove barriers to deployment of wireless network facilities by hastening the review and approval of siting applications by local land-use authorities.”²⁰ These statutory provisions preserve state and local governments’ authority to control the “placement, construction, and modification of personal wireless service facilities” and to manage “use of public rights-of-way,” but they prohibit state and local governments from using certain unreasonable criteria in making such decisions.²¹ Under the authority granted by these provisions, the FCC has issued orders to clarify the “maximum presumptively reasonable time frames for review of siting applications and the criteria local governments may apply in deciding whether to approve them.”²²

Federal law establishes that state and local governments may not establish laws, regulations, or other requirements that prohibit or have the effect of prohibiting the ability of any entity to provide personal wireless services²³ or other telecommunications services.²⁴ The FCC has interpreted these provisions as precluding state or local government actions that materially inhibit the ability of an entity to compete in a fair and balanced legal and regulatory environment. Federal circuit courts have varied on the particular standards to apply in this area.²⁵

Further, federal law provides that state and local governments may manage the public rights-of-way and may require fair and reasonable compensation from telecommunications providers for use of those rights-of-way on a nondiscriminatory basis.²⁶ The FCC has not interpreted this

¹⁷ Florida Department of Transportation, *2017 Legislative Bill Analysis SB 596* (Jan. 30, 2017) (Copy on file with the Governmental Oversight and Accountability Committee). The analysis identifies the following leases: American Tower/Lodestar, entered into on March 25, 1999, with a thirty-year term; Rowstar #1, entered into on December 4, 2014, with a ten-year term, extendable for up to four additional ten year terms at the discretion of Rowstar; and Rowstar #2, entered into on December 29, 2016, with a ten-year term, extendable for up to four additional ten year terms at the discretion of Rowstar.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See FEDERAL COMMUNICATIONS COMMISSION, *Comments Sought on Mobilitie, LLC Petition for Declaratory Ruling and Possible Ways to Streamline Deployment Of Small Cell Infrastructure (FCC 2016 Notice)*, WT Docket No. 16-421, DA 16-1427, December 22, 2016, at p. 2; 47 U.S.C. ss.253, 332(c)(7), and 1455(a).

²¹ *Id.* at p. 5, citing 47 U.S.C. ss.253(c) and 332(c)(7)(A).

²² *Id.* at p. 2

²³ Under 47 U.S.C. 332(c)(7), “personal wireless services” are defined as “commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.”

²⁴ *FCC 2016 Notice* at p. 10, citing 47 U.S.C. ss.253(a) and 332(c)(7).

²⁵ *Id.*

²⁶ *Id.* at p. 12, citing 47 U.S.C. s.253(c).

provision, and federal circuit courts have varied on the issue of what constitutes “fair and reasonable” compensation.²⁷

In December 2016, in response to a petition for declaratory ruling, the FCC issued a public notice seeking comment on streamlining the deployment of small cell infrastructure by improving wireless facilities siting policies.²⁸ In its notice, the FCC summarized the issues:

To satisfy consumers’ rapidly growing demand for wireless broadband and other services, wireless companies are actively expanding the network capacity needed to maintain and improve the quality of existing services and to support the introduction of new technologies and services. In particular, many wireless providers are deploying small cells and distributed antenna systems (DAS) to meet localized needs for coverage and increased capacity in outdoor and indoor environments. Although the facilities used in these networks are smaller and less obtrusive than traditional cell towers and antennas, they must be deployed more densely – i.e., in many more locations – to function effectively. As a result, local land-use authorities in many areas are facing substantial increases in the volume of siting applications for deployment of these facilities. This trend in infrastructure deployment is expected to continue, and even accelerate, as wireless providers begin rolling out 5G services.

This creates a dilemma. We recognize, as did Congress in enacting Sections 253 and 332 of the Communications Act, that localities play an important role in preserving local interests such as aesthetics and safety. At the same time, the Commission has a statutory mandate to facilitate the deployment of network facilities needed to deliver more robust wireless services to consumers throughout the United States. It is our responsibility to ensure that this deployment of network facilities does not become subject to delay caused by unnecessarily time-consuming and costly siting review processes that may be in conflict with the Communications Act.

The stated purpose of the FCC’s request for comments is to develop a factual record to assess whether and to what extent the process of local land-use authorities’ review of siting applications is hindering, or is likely to hinder, the deployment of wireless infrastructure. Among the matters on which the FCC is seeking comment and guidance are questions specifically related to access to state and local government rights-of-way and the fees imposed for such access.²⁹ The FCC indicated that this “data-driven evaluation will make it possible to reach well-supported decisions on which further Commission actions, if any, would most effectively address any problem, while preserving local authorities’ ability to protect interests within their purview.”³⁰

²⁷ *Id.* at p. 13.

²⁸ *Id.*

²⁹ *Id.* at pp. 8-14.

³⁰ *Id.* at p. 2.

Deployment of Small Wireless Facilities in Florida

Wireless service providers and wireless infrastructure providers have begun the deployment of small cell wireless infrastructure in various jurisdictions within Florida. These providers indicate that their efforts have been hampered to varying degrees by some local governments that have imposed conditions or moratoria on the siting of small cell facilities.³¹ In general, these moratoria indicate that they are temporary measures designed to allow the local government to review their standards, regulations, and requirements related to siting of wireless communications facilities to address small cell facilities.³² In one instance, the municipality has renewed its moratoria on multiple occasions, extending its effect from the original six months to over 30 months.³³

III. Effect of Proposed Changes:

The bill creates the Advanced Wireless Infrastructure Deployment Act (Act), a new subsection s. 337.401(7), F.S.

Definitions

The bill creates definitions, including the following related to wireless entities:

- An “applicant” is a person who submits an application and is a wireless provider.
- An “application” is a request submitted by an applicant to an authority for a permit to collocate small wireless facilities.
- A “wireless provider” is a wireless services provider or a wireless infrastructure provider.
- A “wireless services provider” is a person who provides wireless services.
- “Wireless services” are any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.
- A “wireless infrastructure provider” is a person certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures, but is not a wireless services provider.

The bill defines four types of wireless infrastructure:

- A “wireless facility” is equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:
 - The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
 - Wireline backhaul facilities; or
 - Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

³¹ Several municipalities and counties have adopted moratoria, including the City of Fort Lauderdale, the City of Tallahassee, and Pinellas County.

³² See, e.g., City of Tallahassee, Resolution No. 16-R-42, December 2016.

³³ City of Fort Lauderdale, Resolution No. 17-30, February 21, 2017.

- A “small wireless facility” is a wireless facility that meets both the following qualifications:
 - Each antenna associated with the facility is located inside an enclosure of no more than six cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than six cubic feet in volume; and
 - All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.
- A “micro wireless facility” is a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.
- An “antenna” is communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

The bill defines three types of structures on which an applicant may seek to locate infrastructure:

- An “authority utility pole” is a utility pole owned by an authority in the right-of-way. The term does not include a utility pole owned by a municipal electric utility, any utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way within a retirement community or within a municipality on a coastal barrier island that meet specified criteria.
- A “utility pole” is a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights, but does not include any horizontal structures upon which signal lights or other traffic control devices are attached. It does not include any pole or similar structure 15 feet in height or less unless an authority grants a waiver for the pole.
- A “wireless support structure” is a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

The bill also creates the following definitions:

- “Applicable codes” means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons, and local codes or ordinances adopted to implement the Act. It also includes: objective design standards adopted by ordinance which may require that a new utility pole replacing an existing utility pole be of substantially similar design, material, and color, or that ground-mounted equipment meet reasonable spacing requirements; and objective design standards adopted by ordinance which may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements. An applicant may request a waiver of these design standards upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards

impose an excessive expense, and the waiver must be granted or denied within 45 days after the date of the waiver request.

- “Authority” means a county or municipality having jurisdiction and control of the rights-of-way of any public road. The term does not include the Florida DOT, and its rights-of-way are excluded from the bill.
- “Collocate” or “collocation” means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include installation of a utility pole or wireless support structure in the public rights-of-way.
- “FCC” means the Federal Communications Commission.

Except as provided in the Act, an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way.

An authority may require a registration process and permit fees. An authority must accept applications for permits, and must process and issue permits subject to the following requirements:

- An authority may not directly or indirectly requiring an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority.
- An authority may not require an applicant to provide more information to obtain a permit than is necessary to demonstrate the applicant’s compliance with applicable codes for the placement of small wireless facilities in the locations identified in the application.
- An authority may not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole.
- An authority may not limit the placement of small wireless facilities by minimum separation distances. However, within 14 days from the date of filing the application, an authority may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed upon an alternative authority utility pole or support structure or placed upon a new utility pole. The authority and applicant may negotiate the alternate location, including any objective design standards, for 30 days from the date of the request. At the conclusion of the negotiation period, if the applicant accepts the alternative location, the applicant must notify the authority and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application. If no agreement is reached, the applicant must notify the authority and the authority must grant or deny the original application within 90 days from the date the application was filed. A request for an alternative location, an acceptance of an alternate location, or any rejection of an alternative location must be in writing and provided by electronic mail.
- An authority must limit the height of a small wireless facility to no more than 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated. Unless waived by an authority, the height for a new utility pole is limited to the tallest existing utility pole located in the right-of-way, other than a utility pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the authority shall limit the height of the utility pole to 50 feet.

- Except as provided in the above provisions on limitations on facilities placement and height, the installation of a utility pole in the public rights-of-way designed to support a small wireless facility is subject to authority rules or regulations governing the placement of utility poles in the public rights-of-way and is subject to the application review timeframes in the Act.
- The authority must determine whether the application is complete and notify the applicant by electronic mail within 14 days after receiving an application. If an authority deems an application incomplete, the authority must specifically identify the missing information. The application is deemed complete if the authority fails to provide notification to the applicant within the 14 days.
- The authority must process applications on a nondiscriminatory basis. If the authority fails to approve or deny a complete application within 60 days after receipt of the application, the application is deemed approved. If an authority does not use the 30-day negotiation period for facilities location or design standards, discussed above, the parties may mutually agree to extend the 60-day application review period. The authority must grant or deny the application at the end of the extended period. A permit issued pursuant to an approved application remains effective for 1 year unless extended by the authority.
- The authority must notify the applicant of approval or denial by electronic mail. The authority must approve a complete application unless it does not meet the authority's applicable codes. If the authority denies the application, the authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the authority denies the application. The applicant then has 30 days after notice of the denial is sent to the applicant to cure the identified deficiencies and resubmit the application. The authority then must approve or deny the revised application within 30 days after receipt or the application will be deemed approved. Any subsequent review is limited to the deficiencies cited in the denial.
- An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of no more than 30 small wireless facilities. Presumably, the above time limit requirements apply to such a consolidated application. If the application includes multiple small wireless facilities, an authority may remove small wireless facility collocations from the application and treat separately small wireless facility collocations for which incomplete information has been received or which are denied.

An authority may deny a proposed collocation of a small wireless facility in the public rights-of-way if the proposed collocation:

- Materially interferes with the safe operation of traffic control equipment.
- Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.
- Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.
- Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.
- Fails to comply with applicable codes.

An authority may adopt by ordinance provisions for registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties. Such provisions must be reasonable and nondiscriminatory.

Collocation of a small wireless facility on an authority utility pole may not provide the basis for the imposition of an ad valorem tax on the authority utility pole.

An authority may reserve space on authority utility poles for future public safety uses. However, a reservation of space may not preclude collocation of a small wireless facility. If replacement of the authority utility pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use, the pole replacement is subject to make-ready provisions, and the replaced pole shall accommodate the future public safety use.

Any structure granted a permit and installed pursuant to this subsection must comply with ch. 333, F.S., and federal regulations pertaining to airport airspace protections.

An authority may not require approval of or impose fees or other charges for:

- Routine maintenance;
- Replacement of existing wireless facilities with wireless facilities that are substantially similar or the same size or smaller; or
- Installation, placement, maintenance, or replacement of micro wireless facilities suspended on cables strung between existing utility poles in compliance with applicable codes by a communications service provider authorized to occupy the rights-of-way and who is remitting taxes under ch. 202, F.S.

However, an authority may require a right-of-way permit for work that involves excavation, closing a sidewalk, or closing a vehicular lane.

Collocation of small wireless facilities on authority utility poles is subject to the following requirements:

- An authority may not enter into an exclusive arrangement with any person for the right to attach equipment to authority utility poles.
- The rates and fees for collocations on authority utility poles must be nondiscriminatory, regardless of the services provided by the collocating person.
- The rate to collocate small wireless facilities on authority utility poles may not exceed \$100 per year.
- Agreements between authorities and wireless providers which are in effect on July 1, 2017, and which relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on authority utility poles, remain in effect, subject to applicable termination provisions. The wireless provider may accept the rates, fees, and terms established under this subsection for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.
- A person owning or controlling an authority utility pole shall offer rates, fees, and other terms that comply with this subsection. By the later of January 1, 2018, or 3 months after receiving a request to collocate its first small wireless facility on a utility pole owned or controlled by an authority, the person owning or controlling the authority utility pole shall

make available, through ordinance or otherwise, rates, fees, and terms for the collocation of small wireless facilities on the authority utility pole which comply with this subsection:

- The rates, fees, and terms must be nondiscriminatory, competitively neutral, and must comply with this subsection.
- For an authority utility pole that supports an aerial facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. s. 224³⁴ and implementing regulations.³⁵ The good faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.
- For an authority utility pole that does not support an aerial facility used to provide communications services or electric service, the authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, an authority may require the applicant seeking to collocate a

³⁴ Under this law, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way. <https://www.law.cornell.edu/uscode/text/47/224> (Last accessed March 2, 2017).

³⁵ A utility that has received a complete application for pole attachment from a cable operator or telecommunications carrier must respond within 45 days of receipt of the application (or within 60 days, in the case of larger orders, defined as orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state). This response may be a notification that the utility has completed a survey of poles for which access has been requested. A complete application is an application that provides the utility with the information necessary under its procedures to begin to survey the poles. If the request for attachment is not denied, the utility must present an estimate of charges to perform all necessary make-ready work within 14 days of providing the response. A utility may withdraw an outstanding estimate of charges to perform make-ready work within 14 days after the estimate is presented. A cable operator or telecommunications carrier may accept a valid estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn.

Upon receipt of payment of the estimate, the utility must immediately provide written notice to all known entities with existing attachments that may be affected by the make-ready:

- For attachments in the communications space, the utility must complete all make-ready work no later than 60 days after notification is sent (or 105 days in the case of larger orders). If the utility has not completed the make-ready work by within this time, the cable operator or telecommunications carrier requesting access may complete the specified make-ready.
- For wireless attachments above the communications space, the utility must complete all make-ready work no later than 90 days after notification is sent (or 135 days in the case of larger orders). The utility must complete the make-ready work by this date.

A utility may deviate from the time limits specified in this section:

- Before offering an estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment.
- During performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete the make-ready work within the prescribed time frame. A utility that so deviates shall immediately notify, in writing, the cable operator or telecommunications carrier requesting attachment and other affected entities with existing attachments, and shall include the reason for and date and duration of the deviation. The utility shall deviate from the time limits specified in this section for a period no longer than necessary and shall resume make-ready performance without discrimination when it returns to routine operations.

47 CFR s. 1.1420 - Timeline for access to utility poles. <https://www.law.cornell.edu/cfr/text/47/1.1420> (Last accessed March 2, 2017).

small wireless facility to provide a make-ready estimate at the applicant's expense for the work necessary to support the small wireless facility, including pole replacement, and to perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. The authority may not impose conditions on or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-of-way. The replaced or altered utility pole shall remain the property of the authority.

- An authority may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications service providers other than wireless services providers for similar work and may not include any consultant fee or expense.

For any applications filed before the effective dates of ordinances implementing the Act, an authority may apply current ordinances regulating the placement of communications facilities in the right-of-way, including registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties. Permit application requirements and small wireless facility placement requirements, including utility pole height limits, which conflict with this subsection shall be waived by the authority.

Except as provided in this section or specifically required by state law, an authority may not adopt or enforce any regulation on the placement or operation of communications facilities in the rights-of-way by a provider authorized by state law to operate in the rights-of-way and may not regulate any communications services or impose or collect any tax, fee, or charge not specifically authorized under state law. This paragraph is not intended to change state law regarding an authority's ability to regulate the relocation of facilities.

A wireless provider must, in relation to a small wireless facility, utility pole, or wireless support structure in the public rights-of-way, comply with nondiscriminatory undergrounding requirements of the authority which prohibit above-ground structures in public rights-of-way. Any such requirements may be waived by the relevant authority.

A wireless infrastructure provider may apply to an authority to place utility poles in the public rights-of-way to support the collocation of small wireless facilities. The application must include an attestation that small wireless facilities will be collocated on the utility pole or structure and small wireless facilities will be used by a wireless services provider to provide service within 9 months from the date the application is granted. An authority shall accept and process the application in accordance with the Act and any applicable codes and other local codes governing the placement of utility poles in the public rights-of-way.

The Act does not limit a local government's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s. 1455(a), or the

National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement these laws. An authority may enforce local pending ordinances or administrative rules or regulations that are applicable to a historic area designated by the state or authority and subject to waiver by the authority if the intent to adopt regulation or zoning changes has been publicly declared on or before April 1, 2017.

The Act does not authorize a person to collocate or attach wireless facilities, including any antenna, micro wireless facility, or small wireless facility, on a privately owned utility pole, a utility pole owned by an electric cooperative or a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.

The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to the Act may not be construed to authorize the provision of any voice, data, or video communications services or the installation, placement, maintenance, or operation of any communications facilities other than small wireless facilities in the right-of-way.

The Act does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole unless otherwise permitted by federal law, or to erect a wireless support structure in the right-of-way located within a retirement community that:

- Is deed-restricted as housing for older persons as defined in s. 760.29(4)(b), F.S.;
- Has more than 5,000 residents; and
- Has underground utilities for electric transmission or distribution.

Nothing in these provisions applies to the installation of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that once aerial facilities are converted to underground, any such collocation or construction shall be only as provided by the municipality's underground utilities ordinance.

The Act does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole unless otherwise permitted by federal law, or to erect a wireless support structure in the right-of-way located within a municipality that:

- Is located on a coastal barrier island as defined in s. 161.053(1)(b)3, F.S.;
- Has a land area of less than five square miles;
- Has fewer than 10,000 residents; and
- Has, before the adoption of this act, received referendum approval to issue debt to finance municipality-wide undergrounding of its utilities for electric transmission or distribution.

Nothing in these provisions applies to the installation of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that once aerial facilities are converted to underground, any such collocation or construction shall be only as provided by the municipality's underground utilities ordinance.

The Act does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole unless otherwise permitted by federal law, or to erect a wireless support structure in the right-of-way, which do not comply with the covenants,

conditions, and restrictions; articles of incorporation; and by laws applicable to the proposed location.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of section 18, Article VII of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was \$2 million or less.^{36,37,38}

The county/municipality mandates provision of section 18, Article VII of the Florida Constitution, may apply because this bill prohibits governmental entities with authority over public roads and rights-of-way from recovering any consultant fees or expenses relating to preparing a pole for use by a wireless provider. Given the novelty of the infrastructure, pole attachments, and potential risks of liability, local government authorities may need to make frequent use of consultants to ensure public safety, and the bill prohibits recovery of these consultant costs. The Revenue Estimating Conference has not examined the fiscal impact of this bill, however, the bill's impact may exceed the \$2 million threshold.

The bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³⁶ FLA. CONST. art. VII, s. 18(d).

³⁷ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 13, 2017).

³⁸ Based on the Demographic Estimating Conference's population adopted on November 1, 2016. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 13, 2017).

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

According to information provided by opponents of the bill, currently the amount of the pole attachment fee is subject only to market forces, and some authorities are charging considerable more than the bill's maximum of \$100 dollars per year; the Jacksonville Electric Authority's Small Cell Site Rental Schedule, for example, shows a charge of \$1,236.00 per year for each small cell site.

B. Private Sector Impact:

Wireless providers should be able to provide better service to customers.

C. Government Sector Impact:

Authorities may have difficulty and expenses in early implementation as the technology and installations involved are new uses of rights-of-way and the process includes engineering determinations of wind load, structural integrity, and safety.

VI. Technical Deficiencies:

The bill authorizes an authority to "require a registration process and permit fees (subsection (d))". The remainder of the bill uses the terms applicant, application, and permit, and contains provisions that imply that an applicant files an application with an authority for a collocation permit. Given the context, the term presumably has the same meaning as "application" although if this is so, it is unclear why a different term is used here.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 337.401 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS/CS by Rules on April 19, 2017:**

- Includes in the definition of "applicable codes" local codes or ordinances adopted to implement the "Advanced Wireless Infrastructure Act" and objective design standards adopted by ordinance which may address: the design, material, and color of a new utility pole replacing an existing utility pole; reasonable spacing requirements for ground-mounted equipment; and reasonable location context, color, stealth, and concealment requirements for a small wireless facility;

- Provides that the term “utility pole” includes the vertical support structure for traffic lights, but does not include any horizontal structures upon which signal lights or other traffic control devices are attached, and does not include any pole or similar structure 15 feet in height or less;
- Authorizes an authority to request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed upon an alternative authority utility pole or support structure or placed upon a new utility pole, and provides that the authority and applicant have 30 days to negotiate the alternative location and design standards;
- Expands the timeframe for determining whether an application is complete and so notifying the applicant from the previous 10 days to 14 days after receiving an application;
- Limits a consolidated application to no more than 30 proposed small wireless facilities collocations;
- Expands the criteria upon which an authority may deny an application;
- Authorizes an authority to adopt a reasonable and nondiscriminatory ordinance providing for registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties;
- Increases (pole attachment) fees to up to \$100 per year;
- Provides that the Act does not authorize collocation or attachment of a small wireless facility or micro wireless facility or the erection of a wireless support structure within a municipality located on a coastal barrier island meeting specified criteria; and
- Provides that the Act does not authorize a person to collocate or attach wireless facilities to a utility pole or to erect a wireless support structure within an area subject to covenants, conditions, and restrictions; articles of incorporation; or by laws if the wireless facilities or the support structure do not comply with those restrictions

CS/CS by Governmental Oversight and Accountability on March 27, 2017:

- Defines “authority” as a county or municipality having jurisdiction and control of the rights-of-way of any public road. This term does not include the DOT and that agency’s rights-of-way are excluded from the bill;
- Amends the definition of “authority utility pole” to provide that this term does not include a utility pole owned by a municipal electric utility, any utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way of a retirement community that:
 - Is deed-restricted as housing for older persons as defined by s. 760.29(4)(b). F.S.;
 - Has more than 5,000 residents; and
 - Has underground utilities for electric distribution or transmission;
- Requires wireless infrastructure providers include an attestation in their application to an authority regarding the time-frame of collocating small wireless facilities on utility poles or structures and provision of services;
- Provides that an authority must accept and process the application for collocating small wireless facilities on utility poles or structures in accordance with the bill and any applicable local codes governing the placement of utility poles in the public right-of-way;

- Provides that a person is not authorized to collocate small wireless facilities on a utility pole owned by a municipal electric utility;
- Provides that a person is not authorized to collocate or attach small wireless facilities or micro wireless facilities on a utility pole or erect a wireless support structure in the right-of-way located within a retirement community that:
 - Is deed-restricted as housing for older persons as defined by s. 760.29(4)(b). F.S.;
 - Has more than 5,000 residents; and
 - Has underground utilities for electric distribution or transmission.

CS by Communications, Energy, and Public Utilities on March 7, 2017:

- Amends the definition of “applicable codes” to include qualifying local government historic preservation zoning regulations;
- Amends the definition of “authority utility pole” to exclude a utility pole owned by a municipal electric company;
- Excludes from the definition of “wireless facility” wireline backhaul facilities and coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna;
- Makes the prohibition against an authority requiring approval or fees relating to micro wireless facilities that are suspended applicable to facilities suspended from any type of cable, not just “messenger” cables;
- Provides that the new subsection does not authorize collocation of small wireless facilities on a utility pole owned by an electric cooperative; and
- Provides that the new subsection may not be construed to limit local government’s authority to qualifying enforce historic preservation zoning regulations.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
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The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (a) of subsection (1) of section
337.401, Florida Statutes, is amended, and subsection (7) is
added to that section, to read:

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

(1) (a) The department and local governmental entities,
referred to in this section and in ss. 337.402, 337.403, and



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337.404 as the "authority," that have jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining across, on, or within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdictions any electric transmission, voice telephone, telegraph, data, or other communications services lines or wireless facilities; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404 as the "utility." The department may enter into a permit-delegation agreement with a governmental entity if issuance of a permit is based on requirements that the department finds will ensure the safety and integrity of facilities of the Department of Transportation; however, the permit-delegation agreement does not apply to facilities of electric utilities as defined in s. 366.02(2).

(7) (a) This subsection may be cited as the "Advanced Wireless Infrastructure Deployment Act."

(b) As used in this subsection, the term:

1. "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

2. "Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, or local codes or ordinances



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41 adopted to implement this subsection. The term includes
42 objective design standards adopted by ordinance which may
43 require that a new utility pole replacing an existing utility
44 pole be of substantially similar design, material, and color, or
45 that ground-mounted equipment meet reasonable spacing
46 requirements. The term includes objective design standards
47 adopted by ordinance which may require a small wireless facility
48 to meet reasonable location context, color, stealth, and
49 concealment requirements; however, the authority may waive the
50 design standards upon a showing that the design standards are
51 not reasonably compatible for the particular location of a small
52 wireless facility or that the design standards impose an
53 excessive expense. The waiver must be granted or denied within
54 45 days after the date of the waiver request or it is deemed
55 granted.

56 3. "Applicant" means a person who submits an application
57 and is a wireless provider.

58 4. "Application" means a request submitted by an applicant
59 to an authority for a permit to collocate small wireless
60 facilities.

61 5. "Authority" means a county or municipality having
62 jurisdiction and control of the rights-of-way of any public
63 roads. The term does not include the Florida Department of
64 Transportation. The Florida Department of Transportation rights-
65 of-way are excluded from this subsection.

66 6. "Authority utility pole" means a utility pole owned by
67 an authority in the right-of-way. The term does not include a
68 utility pole owned by a municipal electric utility or any
69 utility pole used to support municipally owned or operated



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electric distribution facilities, or a utility pole located in
the right-of-way within:

a. A retirement community that:

(I) Is deed-restricted as housing for older persons as
defined in s. 760.29(4) (b);

(II) Has more than 5,000 residents; and

(III) Has underground utilities for electric transmission
or distribution.

b. A municipality that:

(I) Is located on a coastal barrier island as defined in s.
161.053(1) (b) (3);

(II) Has a land area of less than 5 square miles;

(III) Has fewer than 10,000 residents; and

(IV) Which has, before the adoption of this act, received
referendum approval to issue debt to finance municipality-wide
underground utilities for electric transmission or distribution.

7. "Collocate" or "collocation" means to install, mount,
maintain, modify, operate, or replace one or more wireless
facilities on, under, within, or adjacent to a wireless support
structure or utility pole. The term does not include the
installation of a utility pole or wireless support structure in
the public rights-of-way.

8. "FCC" means the Federal Communications Commission.

9. "Micro wireless facility" means a small wireless
facility having dimensions no larger than 24 inches in length,
15 inches in width, and 12 inches in height and an exterior
antenna, if any, no longer than 11 inches.

10. "Small wireless facility" means a wireless facility
that meets the following qualifications:



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a. Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and

b. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

11. "Utility pole" means a pole or similar structure used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights, but does not include any horizontal structures upon which are attached signal lights or other traffic control devices and does not include any pole or similar structure 15 feet in height or less unless an authority grants a waiver for the pole.

12. "Wireless facility" means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment



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associated with wireless communications. The term includes small wireless facilities. The term does not include:

- a. The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
- b. Wireline backhaul facilities; or
- c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

13. "Wireless infrastructure provider" means a person who is certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures, but is not a wireless services provider.

14. "Wireless provider" means a wireless infrastructure provider or a wireless services provider.

15. "Wireless services" means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

16. "Wireless services provider" means a person who provides wireless services.

17. "Wireless support structure" means a freestanding structure, such as a monopole, a guyed or self-supporting tower or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

(c) Except as provided in this subsection, an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way.

(d) An authority may require a registration process and



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permit fees in accordance with subsection (3). An authority shall accept applications for permits and shall process and issue permits subject to the following requirements:

1. An authority may not directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority.

2. An applicant may not be required to provide more information to obtain a permit than is necessary to demonstrate the applicant's compliance with applicable codes for the placement of small wireless facilities in the locations identified in the application.

3. An authority may not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole.

4. An authority may not limit the placement of small wireless facilities by minimum separation distances; however, within 14 days from the date of filing the application, an authority may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed upon an alternative authority utility pole or support structure or placed upon a new utility pole. The authority and applicant may negotiate the alternate location, including any objective design standards, for 30 days from the date of the request. At the conclusion of the negotiation period, if the applicant accepts the alternative location, the applicant must notify the authority and the application shall be



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186 deemed granted for any new location for which there is agreement
187 and all other locations in the application. If no agreement is
188 reached, the applicant must notify the authority and the
189 authority must grant or deny the original application within 90
190 days from the date the application was filed. A request for an
191 alternative location, an acceptance of an alternate location, or
192 any rejection of an alternative location must be in writing and
193 provided by electronic mail.

194 5. An authority may limit the height of a small wireless
195 facility to no more than 10 feet above the utility pole or
196 structure upon which the small wireless facility is to be
197 collocated. Unless waived by an authority, the height for a new
198 utility pole may be limited to the tallest existing utility pole
199 located in the right-of-way, measured from grade in place within
200 500 feet of the proposed location of the small wireless
201 facility. If there is no utility pole within 500 feet, the
202 authority may limit the height of the utility pole to no more
203 than 50 feet.

204 6. Except as provided in subparagraphs 4. and 5., the
205 installation of a utility pole in the public rights-of-way
206 designed to support a small wireless facility is subject to
207 authority rules or regulations governing the placement of
208 utility poles in the public rights-of-way and is subject to the
209 application review timeframes in in this subsection.

210 7. Within 14 days after receiving an application, an
211 authority must determine and notify the applicant by electronic
212 mail as to whether the application is complete. If an
213 application is deemed incomplete, the authority must
214 specifically identify the missing information. An application is



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215 deemed complete if the authority fails to provide notification
216 to the applicant within 14 days or when all documents,
217 information, and fees specifically enumerated in the authority's
218 permit application form are submitted by the applicant to the
219 authority.

220 8. An application must be processed on a nondiscriminatory
221 basis. A complete application is deemed approved if an authority
222 fails to approve or deny the application within 60 days after
223 receipt of the application. If an authority does not use the 30-
224 day negotiation period provided in subparagraph 4., the parties
225 may mutually agree to extend the 60-day application review
226 period. The authority must grant or deny the application at the
227 end of the extended period. A permit issued pursuant to an
228 approved application remains effective for 1 year unless
229 extended by the authority.

230 9. An authority must notify the applicant of approval or
231 denial by electronic mail. An authority must approve a complete
232 application unless it does not meet the authority's applicable
233 codes. If the application is denied, the authority must specify
234 in writing the basis for denial, including the specific code
235 provisions on which the denial was based, and send the
236 documentation to the applicant by electronic mail on the day the
237 authority denies the application. The applicant may cure the
238 deficiencies identified by the authority and resubmit the
239 application within 30 days after notice of the denial is sent to
240 the applicant. The authority must approve or deny the revised
241 application within 30 days after receipt or the application is
242 deemed approved. Any subsequent review shall be limited to the
243 deficiencies cited in the denial.



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10. An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of no more than 30 small wireless facilities. If the application includes multiple small wireless facilities, an authority may remove small wireless facility collocations from the application and treat separately small wireless facility collocations for which incomplete information has been received or which are denied.

11. An authority may deny a proposed collocation of a small wireless facility in the public rights-of-way if the proposed collocation:

a. Materially interferes with the safe operation of traffic control equipment.

b. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.

c. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.

d. Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.

e. Materially fails to comply with applicable codes.

12. An authority may adopt by ordinance provisions for registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties. Such provisions must be reasonable and nondiscriminatory.

13. Collocation of a small wireless facility on an



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authority utility pole may not provide the basis for the
imposition of an ad valorem tax on the authority utility pole.

14. An authority may reserve space on authority utility
poles for future public safety uses. However, a reservation of
space may not preclude collocation of a small wireless facility.
If replacement of the authority utility pole is necessary to
accommodate the collocation of the small wireless facility and
the future public safety use, the pole replacement is subject to
make-ready provisions and the replaced pole shall accommodate
the future public safety use.

15. Any structure granted a permit and installed pursuant
to this subsection must comply with chapter 333 and federal
regulations pertaining to airport airspace protections.

(e) An authority may not require approval of or impose fees
or other charges for:

1. Routine maintenance;

2. Replacement of existing wireless facilities with
wireless facilities that are substantially similar or of the
same or smaller size; or

3. Installation, placement, maintenance, or replacement of
micro wireless facilities suspended on cables strung between
existing utility poles in compliance with applicable codes by a
communications service provider authorized to occupy the rights-
of-way and who is remitting taxes under chapter 202.

However, notwithstanding this paragraph, an authority may
require a right-of-way permit for work that involves excavation,
closing a sidewalk, or closing a vehicular lane.

(f) Collocation of small wireless facilities on authority



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utility poles is subject to the following requirements:

1. An authority may not enter into an exclusive arrangement with any person for the right to attach equipment to authority utility poles.

2. The rates and fees for collocations on authority utility poles must be nondiscriminatory, regardless of the services provided by the collocating person.

3. The rate to collocate small wireless facilities on authority utility poles may not exceed \$100 per year.

4. Agreements between authorities and wireless providers which are in effect on July 1, 2017, and which relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on authority utility poles, remain in effect, subject to applicable termination provisions. The wireless provider may accept the rates, fees, and terms established under this subsection for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.

5. A person owning or controlling an authority utility pole shall offer rates, fees, and other terms that comply with this subsection. By the later of January 1, 2018, or 3 months after receiving a request to collocate its first small wireless facility on a utility pole owned or controlled by an authority, the person owning or controlling the authority utility pole shall make available, through ordinance or otherwise, rates, fees, and terms for the collocation of small wireless facilities on the authority utility pole which comply with this subsection.

a. The rates, fees, and terms must be nondiscriminatory,



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competitively neutral, and must comply with this subsection.

b. For an authority utility pole that supports an aerial facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. s. 224 and implementing regulations. The good faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.

c. For an authority utility pole that does not support an aerial facility used to provide communications services or electric service, the authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, an authority may require the applicant seeking to collocate a small wireless facility to provide a make-ready estimate at the applicant's expense for the work necessary to support the small wireless facility, including pole replacement, and to perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. The authority may not impose conditions on or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction



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restoration standards for work in the right-of-way. The replaced or altered utility pole shall remain the property of the authority.

d. An authority may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications service providers other than wireless services providers for similar work and may not include any consultant fee or expense.

(g) For any applications filed before the effective dates of ordinances implementing this subsection, an authority may apply current ordinances regulating the placement of communications facilities in the right-of-way, including registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties. Permit application requirements and small wireless facility placement requirements, including utility pole height limits, which conflict with this subsection shall be waived by the authority.

(h) Except as provided in this section or specifically required by state law, an authority may not adopt or enforce any regulation on the placement or operation of communications facilities in the rights-of-way by a provider authorized by state law to operate in the rights-of-way and may not regulate any communications services or impose or collect any tax, fee, or charge not specifically authorized under state law.

(i) A wireless provider shall, in relation to a small



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wireless facility, utility pole, or wireless support structure in the public rights-of-way, comply with nondiscriminatory undergrounding requirements of the authority which prohibit above-ground structures in public rights-of-way. Any such requirements may be waived by the relevant authority.

(j) A wireless infrastructure provider may apply to an authority to place utility poles in the public rights-of-way to support the collocation of small wireless facilities. The application must include an attestation that small wireless facilities will be collocated on the utility pole or structure and small wireless facilities will be used by a wireless services provider to provide service within 9 months from the date the application is granted. An authority shall accept and process the application in accordance with subparagraph (7)(d)6. and any applicable codes and other local codes governing the placement of utility poles in the public rights-of-way.

(k) This subsection does not limit a local government's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s. 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement these laws. An authority may enforce local codes adopted by ordinance in effect on April 1, 2017, which are applicable to a historic area designated by the state or authority and subject to waiver by the authority.

(l) This subsection does not authorize a person to collocate or attach wireless facilities, including any antenna, micro wireless facility, or small wireless facility, on a



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privately owned utility pole, a utility pole owned by an electric cooperative or a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.

(m) The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this subsection may not be construed to authorize the provision of any voice, data, or video communications services or the installation, placement, maintenance, or operation of any communications facilities other than small wireless facilities in the right-of-way.

(n) This subsection does not affect the provisions of subsection (6) relating to pass-through providers.

(o) This subsection does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole unless otherwise permitted by federal law, or to erect a wireless support structure in the right-of-way located within a retirement community that:

1. Is deed-restricted as housing for older persons as defined in s. 760.29(4)(b);

2. Has more than 5,000 residents; and

3. Has underground utilities for electric transmission or distribution.

Nothing in this paragraph applies to the installation of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that once aerial facilities are converted to underground, any such collocation or construction shall be only as provided by the municipality's



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underground utilities ordinance.

(p) This subsection does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole unless otherwise permitted by federal law, or to erect a wireless support structure in the right-of-way located within a municipality that:

1. Is located on a coastal barrier island as defined in s. 161.053(1)(b)3.;

2. Has a land area of less than 5 square miles;

3. Has fewer than 10,000 residents; and

4. Which has, before the adoption of this act, received referendum approval to issue debt to finance municipality-wide undergrounding of its utilities for electric transmission or distribution.

Nothing in this paragraph applies to the installation of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that once aerial facilities are converted to underground, any such collocation or construction shall be only as provided by the municipality's underground utilities ordinance.

Section 2. 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 utilities; amending s. 337.401,



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F.S.; authorizing the Department of Transportation and certain local governmental entities to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining across, on, or within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdictions any voice or data communications services lines or wireless facilities; providing a short title; defining terms; prohibiting a county or municipality having jurisdiction and control of the rights-of-way of any public road, referred to as the "authority," from prohibiting, regulating, or charging for the collocation of small wireless facilities in public rights-of-way under certain circumstances; authorizing an authority to require a registration process and permit fees only under certain circumstances; requiring an authority to receive and process applications for permits and to issue such permits, subject to specified requirements; prohibiting an authority from requiring approval of or imposing fees or other charges for routine maintenance, the replacement of certain wireless facilities, or the installation, placement, maintenance, or replacement of certain micro wireless facilities; providing an exception; providing requirements for the collocation of small wireless facilities on authority utility poles; providing requirements for rates, fees, and other terms related to authority utility poles; authorizing an authority to apply current ordinances



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regulating placement of communications facilities in the right-of-way, including registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties for certain applications; providing that certain permit application requirements and small wireless facility placement requirements shall be waived by the authority; prohibiting an authority from adopting or enforcing any regulation on the placement or operation of certain communications facilities, from regulating any communications services, or from imposing or collecting any tax, fee, or charge not specifically authorized under state law; requiring a wireless provider to comply with certain nondiscriminatory undergrounding requirements of the authority; authorizing the authority to waive any such requirements; authorizing a wireless infrastructure provider to apply to an authority to place utility poles in the public rights-of-way to support the collocation of small wireless facilities; providing requirements for such application; requiring the authority to accept and process the application, subject to certain requirements; providing construction; authorizing an authority to enforce local codes adopted by ordinance in effect on a specified date which are applicable to a historic area designated by the state or authority and subject to waiver by the authority; providing an effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
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The Committee on Rules (Hutson) recommended the following:

Senate Amendment to Amendment (219028) (with title amendment)

Delete lines 54 - 414
and insert:
45 days after the date of the waiver request.

3. "Applicant" means a person who submits an application and is a wireless provider.

4. "Application" means a request submitted by an applicant to an authority for a permit to collocate small wireless facilities.



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12 5. "Authority" means a county or municipality having
13 jurisdiction and control of the rights-of-way of any public
14 roads. The term does not include the Florida Department of
15 Transportation. The Florida Department of Transportation rights-
16 of-way are excluded from this subsection.

17 6. "Authority utility pole" means a utility pole owned by
18 an authority in the right-of-way. The term does not include a
19 utility pole owned by a municipal electric utility or any
20 utility pole used to support municipally owned or operated
21 electric distribution facilities, or a utility pole located in
22 the right-of-way within:

23 a. A retirement community that:

24 (I) Is deed-restricted as housing for older persons as
25 defined in s. 760.29(4) (b);

26 (II) Has more than 5,000 residents; and

27 (III) Has underground utilities for electric transmission
28 or distribution; or

29 b. A municipality that:

30 (I) Is located on a coastal barrier island as defined in s.
31 161.053(1) (b) 3.;

32 (II) Has a land area of less than 5 square miles;

33 (III) Has fewer than 10,000 residents; and

34 (IV) Has, before the adoption of this act, received
35 referendum approval to issue debt to finance municipality-wide
36 underground utilities for electric transmission or distribution.

37 7. "Collocate" or "collocation" means to install, mount,
38 maintain, modify, operate, or replace one or more wireless
39 facilities on, under, within, or adjacent to a wireless support
40 structure or utility pole. The term does not include the



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41 installation of a utility pole or wireless support structure in
42 the public rights-of-way.

43 8. "FCC" means the Federal Communications Commission.

44 9. "Micro wireless facility" means a small wireless
45 facility having dimensions no larger than 24 inches in length,
46 15 inches in width, and 12 inches in height and an exterior
47 antenna, if any, no longer than 11 inches.

48 10. "Small wireless facility" means a wireless facility
49 that meets the following qualifications:

50 a. Each antenna associated with the facility is located
51 inside an enclosure of no more than 6 cubic feet in volume or,
52 in the case of antennas that have exposed elements, each antenna
53 and all of its exposed elements could fit within an enclosure of
54 no more than 6 cubic feet in volume; and

55 b. All other wireless equipment associated with the
56 facility is cumulatively no more than 28 cubic feet in volume.
57 The following types of associated ancillary equipment are not
58 included in the calculation of equipment volume: electric
59 meters, concealment elements, telecommunications demarcation
60 boxes, ground-based enclosures, grounding equipment, power
61 transfer switches, cutoff switches, vertical cable runs for the
62 connection of power and other services, and utility poles or
63 other support structures.

64 11. "Utility pole" means a pole or similar structure used
65 in whole or in part to provide communications services or for
66 electric distribution, lighting, traffic control, signage, or a
67 similar function. The term includes the vertical support
68 structure for traffic lights, but does not include any
69 horizontal structures upon which are attached signal lights or



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other traffic control devices and does not include any pole or similar structure 15 feet in height or less unless an authority grants a waiver for the pole.

12. "Wireless facility" means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:

a. The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;

b. Wireline backhaul facilities; or

c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

13. "Wireless infrastructure provider" means a person who is certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures, but is not a wireless services provider.

14. "Wireless provider" means a wireless infrastructure provider or a wireless services provider.

15. "Wireless services" means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

16. "Wireless services provider" means a person who provides wireless services.



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17. "Wireless support structure" means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

(c) Except as provided in this subsection, an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way.

(d) An authority may require a registration process and permit fees in accordance with subsection (3). An authority shall accept applications for permits and shall process and issue permits subject to the following requirements:

1. An authority may not directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority.

2. An applicant may not be required to provide more information to obtain a permit than is necessary to demonstrate the applicant's compliance with applicable codes for the placement of small wireless facilities in the locations identified in the application.

3. An authority may not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole.

4. An authority may not limit the placement of small wireless facilities by minimum separation distances; however, within 14 days after the date of filing the application, an



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authority may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed upon an alternative authority utility pole or support structure or placed upon a new utility pole. The authority and applicant may negotiate the alternative location, including any objective design standards, for 30 days after the date of the request. At the conclusion of the negotiation period, if the applicant accepts the alternative location, the applicant must notify the authority, and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application. If no agreement is reached, the applicant must notify the authority, and the authority must grant or deny the original application within 90 days after the date the application is filed. A request for an alternative location, an acceptance of an alternative location, or any rejection of an alternative location must be in writing and provided by electronic mail.

5. An authority shall limit the height of a small wireless facility to no more than 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated. Unless waived by an authority, the height for a new utility pole is limited to the tallest existing utility pole located in the right-of-way, other than a utility pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the authority shall limit the height of the utility pole to 50 feet.

6. Except as provided in subparagraphs 4. and 5., the



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installation of a utility pole in the public rights-of-way designed to support a small wireless facility is subject to authority rules or regulations governing the placement of utility poles in the public rights-of-way and is subject to the application review timeframes in this subsection.

7. Within 14 days after receiving an application, an authority must determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the authority must specifically identify the missing information. An application is deemed complete if the authority fails to provide notification to the applicant within 14 days.

8. An application must be processed on a nondiscriminatory basis. A complete application is deemed approved if an authority fails to approve or deny the application within 60 days after receipt of the application. If an authority does not use the 30-day negotiation period provided in subparagraph 4., the parties may mutually agree to extend the 60-day application review period. The authority must grant or deny the application at the end of the extended period. A permit issued pursuant to an approved application remains effective for 1 year unless extended by the authority.

9. An authority must notify the applicant of approval or denial by electronic mail. An authority must approve a complete application unless it does not meet the authority's applicable codes. If the application is denied, the authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the



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authority denies the application. The applicant may cure the
deficiencies identified by the authority and resubmit the
application within 30 days after notice of the denial is sent to
the applicant. The authority must approve or deny the revised
application within 30 days after receipt or the application is
deemed approved. Any subsequent review shall be limited to the
deficiencies cited in the denial.

10. An applicant seeking to collocate small wireless
facilities within the jurisdiction of a single authority may, at
the applicant's discretion, file a consolidated application and
receive a single permit for the collocation of no more than 30
small wireless facilities. If the application includes multiple
small wireless facilities, an authority may remove small
wireless facility collocations from the application and treat
separately small wireless facility collocations for which
incomplete information has been received or which are denied.

11. An authority may deny a proposed collocation of a small
wireless facility in the public rights-of-way if the proposed
collocation:

a. Materially interferes with the safe operation of traffic
control equipment.

b. Materially interferes with sight lines or clear zones
for transportation, pedestrians, or public safety purposes.

c. Materially interferes with compliance with the Americans
with Disabilities Act or similar federal or state standards
regarding pedestrian access or movement.

d. Materially fails to comply with the 2010 edition of the
Florida Department of Transportation Utility Accommodation
Manual.



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e. Fails to comply with applicable codes.

12. An authority may adopt by ordinance provisions for registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties. Such provisions must be reasonable and nondiscriminatory.

13. Collocation of a small wireless facility on an authority utility pole may not provide the basis for the imposition of an ad valorem tax on the authority utility pole.

14. An authority may reserve space on authority utility poles for future public safety uses. However, a reservation of space may not preclude collocation of a small wireless facility. If replacement of the authority utility pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use, the pole replacement is subject to make-ready provisions, and the replaced pole shall accommodate the future public safety use.

15. Any structure granted a permit and installed pursuant to this subsection must comply with chapter 333 and federal regulations pertaining to airport airspace protections.

(e) An authority may not require approval of or impose fees or other charges for:

1. Routine maintenance;

2. Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; or

3. Installation, placement, maintenance, or replacement of micro wireless facilities suspended on cables strung between existing utility poles in compliance with applicable codes by a



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communications service provider authorized to occupy the rights-
of-way and who is remitting taxes under chapter 202.

However, notwithstanding this paragraph, an authority may
require a right-of-way permit for work that involves excavation,
closing a sidewalk, or closing a vehicular lane.

(f) Collocation of small wireless facilities on authority
utility poles is subject to the following requirements:

1. An authority may not enter into an exclusive arrangement
with any person for the right to attach equipment to authority
utility poles.

2. The rates and fees for collocations on authority utility
poles must be nondiscriminatory, regardless of the services
provided by the collocating person.

3. The rate to collocate small wireless facilities on
authority utility poles may not exceed \$100 per year.

4. Agreements between authorities and wireless providers
which are in effect on July 1, 2017, and which relate to the
collocation of small wireless facilities in the right-of-way,
including the collocation of small wireless facilities on
authority utility poles, remain in effect, subject to applicable
termination provisions. The wireless provider may accept the
rates, fees, and terms established under this subsection for
small wireless facilities and utility poles that are the subject
of an application submitted after the rates, fees, and terms
become effective.

5. A person owning or controlling an authority utility pole
shall offer rates, fees, and other terms that comply with this
subsection. By the later of January 1, 2018, or 3 months after



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receiving a request to collocate its first small wireless facility on a utility pole owned or controlled by an authority, the person owning or controlling the authority utility pole shall make available, through ordinance or otherwise, rates, fees, and terms for the collocation of small wireless facilities on the authority utility pole which comply with this subsection.

a. The rates, fees, and terms must be nondiscriminatory, competitively neutral, and must comply with this subsection.

b. For an authority utility pole that supports an aerial facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. s. 224 and implementing regulations. The good faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.

c. For an authority utility pole that does not support an aerial facility used to provide communications services or electric service, the authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, an authority may require the applicant seeking to collocate a small wireless facility to provide a make-ready estimate at the applicant's expense for the work necessary to support the small wireless facility, including pole replacement, and to perform



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the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. The authority may not impose conditions on or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-of-way. The replaced or altered utility pole shall remain the property of the authority.

d. An authority may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications service providers other than wireless services providers for similar work and may not include any consultant fee or expense.

(g) For any applications filed before the effective dates of ordinances implementing this subsection, an authority may apply current ordinances regulating the placement of communications facilities in the right-of-way, including registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties. Permit application requirements and small wireless facility placement requirements, including utility pole height limits, which conflict with this subsection shall be waived by the authority.

(h) Except as provided in this section or specifically



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required by state law, an authority may not adopt or enforce any regulation on the placement or operation of communications facilities in the rights-of-way by a provider authorized by state law to operate in the rights-of-way and may not regulate any communications services or impose or collect any tax, fee, or charge not specifically authorized under state law. This paragraph is not intended to change state law regarding an authority's ability to regulate the relocation of facilities.

(i) A wireless provider shall, in relation to a small wireless facility, utility pole, or wireless support structure in the public rights-of-way, comply with nondiscriminatory undergrounding requirements of the authority which prohibit above-ground structures in public rights-of-way. Any such requirements may be waived by the relevant authority.

(j) A wireless infrastructure provider may apply to an authority to place utility poles in the public rights-of-way to support the collocation of small wireless facilities. The application must include an attestation that small wireless facilities will be collocated on the utility pole or structure and small wireless facilities will be used by a wireless services provider to provide service within 9 months from the date the application is granted. An authority shall accept and process the application in accordance with subparagraph (7)(d)6. and any applicable codes and other local codes governing the placement of utility poles in the public rights-of-way.

(k) This subsection does not limit a local government's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C s. 332(c)(7), the requirements for facility



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modifications under 47 U.S.C. s. 1455(a), or the National
Historic Preservation Act of 1966, as amended, and the
regulations adopted to implement these laws. An authority may
enforce local pending ordinances or administrative rules or
regulations that are applicable to a historic area designated by
the state or authority and subject to waiver by the authority if
the intent to adopt regulation or zoning changes has been
publicly declared on or before April 1, 2017.

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

And the title is amended as follows:

Delete lines 518 - 533

and insert:

authorized under state law; providing construction;
requiring a wireless provider to comply with certain
nondiscriminatory undergrounding requirements of the
authority; authorizing the authority to waive any such
requirements; authorizing a wireless infrastructure
provider to apply to an authority to place utility
poles in the public rights-of-way to support the
collocation of small wireless facilities; providing
requirements for such application; requiring the
authority to accept and process the application,
subject to certain requirements; providing
construction; authorizing an authority to enforce
local pending ordinances or administrative regulations
that are applicable to a historic area designated by
the state or authority and subject to waiver by the
authority if the intent to adopt regulation or zoning



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389 changes has been publicly declared on or before a
390 specified date; providing retroactive applicability;
391 providing an effective date.



567676

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment to Amendment (219028)

Delete lines 194 - 203
and insert:

5. An authority shall limit the height of a small wireless facility to no more than 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated. The height for a new utility pole shall be limited to the tallest existing utility pole in place as of July 1, 2017, located in the same right-of-way, measured from grade in place within 500 feet of the proposed location of the small



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12 wireless facility. If there is no utility pole within 500 feet
13 of the facility, the authority shall limit the height of the
14 utility pole to no more than 50 feet. The height limitations do
15 not apply to the placement of any small wireless facility on a
16 utility pole or wireless support structure constructed on or
17 before June 30, 2017, if the small wireless facility does not
18 extend more than 10 feet above the structure.



325560

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Rules (Lee) recommended the following:

Senate Amendment to Amendment (219028)

Delete lines 309 - 310
and insert:

3. The rate to collocate equipment on authority utility
poles must be reasonable and must reflect the market rate for
the use of the government-owned property.



741036

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Rules (Lee) recommended the following:

Senate Amendment to Amendment (219028)

Between lines 467 and 468
insert:

(q) This subsection does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole unless otherwise permitted by federal law, or to erect a wireless support structure in the right-of-way, which do not comply with the covenants, conditions, and restrictions; articles of incorporation; and by laws applicable to the proposed location.

By the Committees on Governmental Oversight and Accountability;
and Communications, Energy, and Public Utilities; and Senators
Hutson, Young, and Broxson

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1 A bill to be entitled
2 An act relating to utilities; amending s. 337.401,
3 F.S.; authorizing the Department of Transportation and
4 certain local governmental entities to prescribe and
5 enforce reasonable rules or regulations with reference
6 to the placing and maintaining across, on, or within
7 the right-of-way limits of any road or publicly owned
8 rail corridors under their respective jurisdictions
9 any voice or data communications services lines or
10 wireless facilities; providing a short title; defining
11 terms; prohibiting a county or municipality having
12 jurisdiction and control of the rights-of-way of any
13 public road, referred to as the "authority," from
14 prohibiting, regulating, or charging for the
15 collocation of small wireless facilities in public
16 rights-of-way under certain circumstances; authorizing
17 an authority to require permit fees only under certain
18 circumstances; requiring an authority to receive and
19 process applications for permits and to issue such
20 permits, subject to specified requirements; providing
21 that height limitations do not apply to the placement
22 of small wireless facilities on or before a specified
23 date under certain circumstances; prohibiting an
24 authority from requiring approval, fees, or other
25 charges for routine maintenance, the replacement of
26 certain wireless facilities, or the installation,
27 placement, maintenance, or replacement of certain
28 micro wireless facilities; requiring an authority to
29 approve the collocation of small wireless facilities

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

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30 on authority utility poles, subject to certain
31 requirements; providing requirements for rates, fees,
32 and other terms related to authority utility poles;
33 prohibiting an authority from adopting or enforcing
34 any regulation on the placement or operation of
35 certain communications facilities, from regulating any
36 communications services, or from imposing or
37 collecting any tax, fee, or charge not specifically
38 authorized under state law; providing construction;
39 providing an effective date.

41 Be It Enacted by the Legislature of the State of Florida:
42

43 Section 1. Paragraph (a) of subsection (1) of section
44 337.401, Florida Statutes, is amended, and subsection (7) is
45 added to that section, to read:

46 337.401 Use of right-of-way for utilities subject to
47 regulation; permit; fees.—

48 (1) (a) The department and local governmental entities,
49 referred to in this section and in ss. 337.402, 337.403, and
50 337.404 as the "authority," that have jurisdiction and control
51 of public roads or publicly owned rail corridors are authorized
52 to prescribe and enforce reasonable rules or regulations with
53 reference to the placing and maintaining across, on, or within
54 the right-of-way limits of any road or publicly owned rail
55 corridors under their respective jurisdictions any electric
56 transmission, voice telephone, telegraph, data, or other
57 communications services lines or wireless facilities; pole
58 lines; poles; railways; ditches; sewers; water, heat, or gas

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

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mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404 as the "utility." The department may enter into a permit-delegation agreement with a governmental entity if issuance of a permit is based on requirements that the department finds will ensure the safety and integrity of facilities of the Department of Transportation; however, the permit-delegation agreement does not apply to facilities of electric utilities as defined in s. 366.02(2).

(7) (a) This subsection may be cited as the "Advanced Wireless Infrastructure Deployment Act."

(b) As used in this subsection, the term:

1. "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

2. "Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons. The term includes local government historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s. 1455(a), or the National Historic Preservation Act of 1966, as amended; and the regulations adopted to implement these laws.

3. "Applicant" means a person who submits an application and is a wireless provider.

4. "Application" means a request submitted by an applicant

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to an authority for a permit to collocate small wireless facilities.

5. "Authority" means a county or municipality having jurisdiction and control of the rights-of-way of any public road. The term does not include the Department of Transportation. The Department of Transportation rights-of-way are excluded from this subsection.

6. "Authority utility pole" means a utility pole owned by an authority in the right-of-way. The term does not include a utility pole owned by a municipal electric utility, any utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way within a retirement community that:

a. Is deed-restricted as housing for older persons as defined in s. 760.29(4)(b);

b. Has more than 5,000 residents; and

c. Has underground utilities for electric transmission or distribution.

7. "Collocate" or "collocation" means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole.

8. "FCC" means the Federal Communications Commission.

9. "Micro wireless facility" means a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

10. "Small wireless facility" means a wireless facility that meets the following qualifications:

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a. Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and

b. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

11. "Utility pole" means a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function.

12. "Wireless facility" means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:

a. The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;

b. Wireline backhaul facilities; or

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c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

13. "Wireless infrastructure provider" means a person who is certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures, but is not a wireless services provider.

14. "Wireless provider" means a wireless infrastructure provider or a wireless services provider.

15. "Wireless services" means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

16. "Wireless services provider" means a person who provides wireless services.

17. "Wireless support structure" means a freestanding structure, such as a monopole, a guyed or self-supporting tower, a billboard, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

(c) Except as provided in this subsection, an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way.

(d) An authority may require permit fees only in accordance with subsection (3). An authority shall accept applications for permits and shall process and issue permits subject to the following requirements:

1. An authority may not directly or indirectly require an applicant to perform services unrelated to the collocation for

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which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority.

2. An applicant may not be required to provide more information to obtain a permit than is required of electric service providers and other communications service providers that are not wireless services providers.

3. An authority may not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole.

4. An authority may not limit the placement of small wireless facilities by minimum separation distances.

5. An authority may limit the height of a small wireless facility to be no more than 10 feet above the tallest existing utility pole within 500 feet, measured from grade in place, of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the authority may limit the height of the small wireless facility to be no more than 60 feet. The height limitations do not apply to the placement of any small wireless facility on a utility pole or wireless support structure constructed on or before June 30, 2017, if the small wireless facility does not extend more than 10 feet above the structure.

6. A wireless infrastructure provider may apply to an authority to place utility poles or wireless support structures in the public rights-of-way to support the collocation of small wireless facilities. The application must include an attestation that small wireless facilities will be collocated on the utility

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pole or structure and small wireless facilities will be used by a wireless services provider to provide service within 9 months after the date the application is granted. An authority shall accept and process the application in accordance with this paragraph and any applicable local codes governing the placement of utility poles in the public rights-of-way.

7. Within 10 days after receiving an application, an authority must determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the authority must specifically identify the missing information. An application is deemed complete if the authority fails to provide notification to the applicant within 10 days or when all documents, information, and fees specifically enumerated in the authority's permit application form are submitted by the applicant to the authority.

8. An application must be processed on a nondiscriminatory basis. A complete application is deemed approved if an authority fails to approve or deny the application within 60 days after receipt of the application.

9. An authority must notify the applicant of approval or denial by electronic mail. An authority shall approve a complete application unless it does not meet the authority's applicable codes. If the application is denied, the authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the authority denies the application. The applicant may cure the deficiencies identified by the authority and resubmit the

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application within 30 days after notice of the denial is sent to the applicant. The authority shall approve or deny the revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

10. An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities.

(e) An authority may not require approval, fees, or other charges for:

1. Routine maintenance;

2. Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; or

3. Installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by a communications service provider that is authorized to occupy the rights-of-way and that is remitting taxes under chapter 202.

(f) An authority shall approve the collocation of small wireless facilities on authority utility poles, subject to the following requirements:

1. An authority may not enter into an exclusive arrangement with any person for the right to attach equipment to authority utility poles.

2. The rates and fees for collocations on authority utility

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poles must be nondiscriminatory, regardless of the services provided by the collocating person.

3. The rate to collocate equipment on authority utility poles may not exceed the lesser of the annual recurring rate that would be permitted under rules adopted by the FCC under 47 U.S.C. s. 224(d) if the collocation rate were regulated by the FCC or \$15 per year per authority utility pole.

4. If an authority has an existing pole attachment rate, fee, or other term that does not comply with this subsection, the authority shall, no later than January 1, 2018, revise such rate, fee, or term to be in compliance with this subsection.

5. A person owning or controlling an authority utility pole shall offer rates, fees, and other terms that comply with this subsection. By the later of January 1, 2018, or 3 months after receiving a request to collocate its first small wireless facility on a utility pole owned or controlled by an authority, the person owning or controlling the authority utility pole shall make available, through ordinance or otherwise, rates, fees, and terms for the collocation of small wireless facilities on the authority utility pole which comply with this subsection.

a. The rates, fees, and terms must be nondiscriminatory, competitively neutral, and commercially reasonable and must comply with this subsection.

b. For an authority utility pole that supports an aerial facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. s. 224 and implementing regulations. The good faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to

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291 support the requested collocation must include pole replacement
 292 if necessary.

293 c. For an authority utility pole that does not support an
 294 aerial facility used to provide communications services or
 295 electric service, the authority shall provide a good faith
 296 estimate for any make-ready work necessary to enable the pole to
 297 support the requested collocation, including necessary pole
 298 replacement, within 60 days after receipt of a complete
 299 application. Make-ready work, including any pole replacement,
 300 must be completed within 60 days after written acceptance of the
 301 good faith estimate by the applicant.

302 d. An authority may not require more make-ready work than
 303 is required to meet applicable codes or industry standards. Fees
 304 for make-ready work may not include costs related to preexisting
 305 damage or prior noncompliance. Fees for make-ready work,
 306 including any pole replacement, may not exceed actual costs or
 307 the amount charged to communications service providers other
 308 than wireless services providers for similar work and may not
 309 include any consultant fee or expense.

310 (g) Except as provided in this chapter or specifically
 311 required by state law, an authority may not adopt or enforce any
 312 regulation on the placement or operation of communications
 313 facilities in the rights-of-way by a provider authorized by
 314 state law to operate in the rights-of-way and may not regulate
 315 any communications services or impose or collect any tax, fee,
 316 or charge not specifically authorized under state law.

317 (h) This subsection does not authorize a person to
 318 collocate small wireless facilities on a privately owned utility
 319 pole, a utility pole owned by an electric cooperative or by a

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320 municipal electric utility, a privately owned wireless support
 321 structure, or other private property without the consent of the
 322 property owner.

323 (i) This subsection does not authorize a person to
 324 collocate or attach small wireless facilities or micro wireless
 325 facilities on a utility pole or erect a wireless support
 326 structure in the right-of-way located within a retirement
 327 community that:

328 1. Is deed-restricted as housing for older persons as
 329 defined in s. 760.29(4)(b);

330 2. Has more than 5,000 residents; and

331 3. Has underground utilities for electric transmission or
 332 distribution.

333 (j) This subsection may not be construed to limit a local
 334 government's authority to enforce historic preservation zoning
 335 regulations consistent with the preservation of local zoning
 336 authority under 47 U.S.C s. 332(c)(7), the requirements for
 337 facility modifications under 47 U.S.C. s. 1455(a), or the
 338 National Historic Preservation Act of 1966, as amended; and the
 339 regulations adopted to implement these laws.

340 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)

4/19/17
Meeting Date

0596
Bill Number (if applicable)

Topic Utilities

Amendment Barcode (if applicable)

Name Connie Vanassche

Job Title _____

Address P.O. Box

Phone 561-512-0089

Street

Canal Point

FL

33438

City

State

Zip

Email CASgorser@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Wauchula

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

0596

Bill Number (if applicable)

Topic Utilities

Amendment Barcode (if applicable)

Name Connie Vanaasche

Job Title _____

Address P.O. Box 35

Street

Canal Point

City

FL

State

33438

Zip

Phone 561-512-0089

Email casgouser@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Okeechobee 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)

Apr 19

Meeting Date

SB 596

Bill Number (if applicable)

Topic Wireless Communications Infrastructure

Amendment Barcode (if applicable)

Name JB Whitten

Job Title Crestview City Councilman

Address 102 Crab Apple Ave

Phone 850-345-3890

Street

Crestview

City

FL

State

32536

Zip

Email jwhitten@cityofcrestview.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Crestview

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)

4/19/17

Meeting Date

596

Bill Number (if applicable)

Topic Wireless Communications Infrastructure Amendment Barcode (if applicable)

Name Donda Merritt

Job Title Mayer Town of Inglis

Address 135 Hwy 40 W

Street

Inglis

City

FL

State

34449

Zip

Phone 352-229-0477

Email mayer.dondamerritt@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Town of Inglis

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)

4/19/14

Meeting Date

Topic

Utilities

Bill Number

596

(if applicable)

Name

Corinne Mixon

Amendment Barcode

(if applicable)

Job Title

Lobbyist

Address

119 S Monroe

Phone

Street

E-mail

City

State

Zip

Speaking:

☒

For

☐

Against

☐

Information

Representing

T-Mobile

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

04/19/2017
Meeting Date

596
Bill Number (if applicable)

Topic WIRELESS COMMUNICATIONS INFRASTRUCTURE

Amendment Barcode (if applicable)

Name MICHAEL BEEDIE

Job Title CITY MANAGER

Address 107 MIRACLE STRIP PKWY SW
Street

Phone (850) 461-2687

FORT WATSON BEACH FL 32548
City State Zip

Email MBEEDIE@FWB.ORG

Speaking: ☐ For ☒ Against ☐ Information

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

Representing CITY OF FORT WATSON 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

4/19/2017
Meeting Date

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

CSCS SB 596
Bill Number (if applicable)

Topic Wireless Infrastructure

Amendment Barcode (if applicable)

Name TRACY HATCH

Job Title GENERAL ATTORNEY

Address 150 S. MONROE
Street

Phone 850-425-6360

TALLAHASSEE FL 32301
City State Zip

Email thatch@att.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing ATT

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)

596

Bill Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date _____
Topic UNITES

Name CHRISTOPHER EMMANUEL

Job Title POLICY DIRECTOR

Address 136 S BRONCRAFT
Street
TLH FL 32302
City State Zip

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA CHAMBER

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)

4/19
Meeting Date

596
Bill Number (if applicable)

Topic Utilities

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 W Adams St
Street
TLH FL 32301
City State Zip

Phone 224-7133

Email bbevis

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name

Job Title

Address

Street

Phone

City

State

Zip

Email

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

04/19/17

Meeting Date

596

Bill Number (if applicable)

Topic Utilities

Amendment Barcode (if applicable)

Name Natalie King

Job Title VP/COO

Address 113 E. College Ave.
Street
Tallahassee FL 32301
City State Zip

Phone N/A

Email natalie@draconsultingllc.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Uniti Fiber

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)

4/19/17

Meeting Date

596

Bill Number (if applicable)

Topic Utilities

Amendment Barcode (if applicable)

Name Edward Briggs

Job Title Consultant

Address 235 W. Brandon Blvd. Ste. 640

Phone 850-933-5994

Street

Brandon

City

FL

State

33511

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Mobilitie

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)

4.19.17

Meeting Date

SB 594

Bill Number (if applicable)

Topic UTILITIES

Amendment Barcode (if applicable)

Name MEGAN SIRJANE-SAMPLES

Job Title LEGISLATIVE ADVOCATE

Address P.O. Box 1757

Phone 850.701.3455

Street

TALLAHASSEE FL 32302

City

State

Zip

Email MSIRJANESAMPLES
@FECITIES.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 Rules

BILL: CS/CS/CS/SB 660

INTRODUCER: Rules Committee; Judiciary Committee; Banking and Insurance Committee; and Senator Passidomo

SUBJECT: Bankruptcy Matters in Foreclosure Proceedings

DATE: April 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Billmeier</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 660 allows for documents filed in a bankruptcy case that show a debtor's intention to surrender property to then be filed in a mortgage foreclosure proceeding as admissions against the debtor/mortgagor. A mortgage foreclosure is a legal action by a lender against a debtor to force the sale of real property that secures a defaulted-upon loan. The proceeds of the sale are used to repay the debt. Often, a debtor subject to foreclosure will file for bankruptcy as a means of obtaining an automatic stay of the foreclosure action and a discharge of the mortgage debt.

In bankruptcy, a debtor must file a statement under penalty of perjury stating his or her intent to retain, redeem, or surrender any property securing a debt. The debtor is supposed to act on that decision as a condition of obtaining a discharge of his or her debts. In some cases, debtors have stated an intention to surrender real property in bankruptcy proceedings, but later have actively contested the completion of a foreclosure proceeding regarding the property in state court.

This bill provides that a lender may use certain documents filed in a bankruptcy case as an admission by the defendant in a foreclosure case. To qualify, these documents must:

- Evidence intention to surrender to the lienholder the property that is the subject of the foreclosure;
- Not have been withdrawn by the defendant; and
- Be submitted together with a final bankruptcy order that discharges the defendant's debts or confirms the defendant's repayment plan.

Submitting a document meeting these criteria creates a rebuttable presumption that the defendant has waived any defenses to the foreclosure.

The bill also requires a court in foreclosure proceeding, upon the request of a lienholder, to take judicial notice of any order entered in a bankruptcy case. Lastly, regarding the document that evidenced the defendant's intention to surrender the mortgaged property to the lienholder, the defendant is expressly guaranteed the authority to raise a defense in the foreclosure case based upon the lienholders' action or inaction subsequent to the document's filing.

II. Present Situation:

Bankruptcy Proceedings

In general, the two purposes of bankruptcy are to convert the debtor's non-exempt assets—his or her “estate”—into cash and distribute it among creditors, and to give the debtor a fresh start with those exemptions and rights as the bankruptcy statute leaves untouched.¹ The filing of a bankruptcy petition operates as an automatic stay on most legal actions against a debtor, including foreclosure.² The automatic stay is in effect from the time the petition is filed until discharge of the debtor, unless sooner lifted by the bankruptcy court.

For individuals, there are two primary forms of bankruptcy, often referred to by the respective chapters in the United States Bankruptcy Code that govern them—Chapter 7 and Chapter 13. A petition filed pursuant to Chapter 7 of the bankruptcy code is used when the rehabilitative chapters of the code would not be applicable, such as when there is no non-exempt property to protect.³ A Chapter 13 petition allows the debtor to stay creditor actions and propose a plan to pay creditors, rehabilitating the debtor financially.⁴

In a Chapter 7 bankruptcy, the debtor must express his or her intent regarding secured property. The statement of intention must declare an intent to do one of four things:

- Declare the secured property is exempt;
- Surrender the property and be discharged of the debt;
- Reaffirm the debt, meaning the debtor keeps the property but is liable for the debt in the future (the debt is not discharged by bankruptcy); or
- Redeem the property by paying cash to pay off the security interest.⁵

The statement of intent must be made under penalty of perjury. The debtor must file the statement of intent within 30 days after the filing of the Chapter 7 petition or on or before the date of the meeting of the creditors to appoint a trustee for the estate, whichever date is earlier.⁶ Within 30 days after the first set date for the meeting of the creditors, the debtor must perform his intention with respect to each piece of secured property.⁷

¹ 9 Am Jur 2d Bankruptcy Section 5.

² 11 U.S.C. 362(a)(4).

³ 9 Am Jur 2d Bankruptcy Section 68.

⁴ 9 Am Jur 2d Bankruptcy Section 72.

⁵ *In re Failla*, 838 F. 3d 1170, 1175 (11th Cir. 2016).

⁶ 9 Am Jur 2d Bankruptcy Section 72.

⁷ 11 U.S.C. 521(2)(B).

In Chapter 13 filings, the debtor must create a plan to restructure and repay his or her debt.⁸ For this plan to be confirmed by the court, it must describe how the debtor is responding to each secured claim.⁹ The debtor must make a plan for the secured property that the holder of the claim accepts or the debtor surrenders the property securing the claim to the claim holder.¹⁰

After the debtor has fulfilled his or her duties to the bankruptcy estate, the court must grant the debtor a discharge, unless the debtor acts wrongfully in one of the list of ways set forth in statute.¹¹ As a general matter, this discharge voids any dischargeable debt of the debtor.¹²

Mortgage Foreclosure

A mortgage creates a specific lien, held by the lender or servicer (the “mortgagee”) on the mortgaged property, such as a house.¹³ Mortgages commonly include an “acceleration clause,” which gives the mortgagee the authority to declare the entire mortgage obligation due and payable immediately upon default of the borrower, who is called the mortgagor. Thus, when a mortgagor fails to meet the terms of the mortgage, such as by missing a payment, the mortgagee has a right to payment of the entire balance of the loan. The legal action taken to obtain this payment is called a foreclosure. And the primary purpose of a foreclosure action is compel the sale of the property, with the sale proceeds going toward payment of the loan balance.¹⁴

The following is a general outline of the judicial foreclosure process:

- Upon proper notice of default to the defendant, the mortgage servicer files a foreclosure complaint;¹⁵
- Service of process must be made on defendants within 120 days after the filing of the initial pleadings;¹⁶
- If a defendant has not filed an answer or another paper indicating an intent to respond to the suit, then the plaintiff is entitled to an entry of default against the defendant;¹⁷
- If an answer is filed, the plaintiff may then file for a motion of summary judgment or proceed to trial; however, the vast majority of plaintiffs file a motion for summary judgment;¹⁸
- Following the proper motions, answers, affidavits, and other evidence being filed with the court, the judge holds a summary judgment hearing and renders a final judgment if he or she finds in the favor of the plaintiff;¹⁹
- If summary judgment is denied, the foreclosure proceeds to a trial without a jury;²⁰

⁸ See 11 U.S.C. 1321 and 1322.

⁹ 11 U.S.C. 1325(a)(5).

¹⁰ 11 U.S.C. 1325(a)(5).

¹¹ 11 U.S.C. 727(a).

¹² 11 U.S.C. 727(b).

¹³ *Cukierman v. BankAtlantic*, 89 So. 3d 250, 251 (Fla. 3d DCA 2012).

¹⁴ See, *Gonzalez v. Chase Home Fin. LLC*, 37 So. 3d 955, 957 (Fla. 3d DCA 2010).

¹⁵ Fla.R.Civ.P. Form 1.944.

¹⁶ Fla.R.Civ.P. 1.070(j).

¹⁷ Fla.R.Civ.P. 1.500.

¹⁸ Fla.R.Civ.P. 1.510(a).

¹⁹ Section 45.031, F.S.

²⁰ Section 702.01, F.S.

- If the plaintiff prevails, the court schedules a judicial sale of the property not less than 20 days, but no more than 35 days after the judgment;²¹
- A notice of sale must be published once a week, for 2 consecutive weeks, in a publication of general circulation, and the second publication must be at least 5 days prior to the sale;²²
- The winning bid at a public judicial sale is conclusively presumed to be sufficient consideration for the sale;²³
- Parties have 10 days to file a verified objection to the amount of the bid or the sale procedure;²⁴
- After the 10 days have expired with no objection, the sale is confirmed by the clerk's issuance of the certificate of title to the purchaser, sale proceeds are disbursed, and the court may, in its discretion, enter a deficiency decree for the difference between the fair market value of the security received and the amount of the debt;²⁵ and
- The clerk may issue a writ of possession giving possession of the real property to the purchaser and directing the sheriff to assist that purchaser with obtaining possession. Up to the point that a writ of possession is served on the property, the debtor who was foreclosed has the legal right to stay in possession of the real property.

Florida Evidence Code

The Florida Evidence Code governs what evidence may be admitted this state's courts.²⁶ Sections 90.201 and 90.202, F.S., authorize courts to take "judicial notice" of certain facts. Judicial notice is ". . . the cognizance of certain facts which judges and jurors may properly take and act upon without proof, because they already know them."²⁷ In other words, if the court takes judicial notice of something, a party need not admit evidence to establish that thing as true. Among several other things, a court may take judicial notice of records of any court of this state or any court of record of the United States.²⁸

The Florida Evidence Code generally prohibits the admission of hearsay evidence.²⁹ Hearsay is an out of court statement admitted to prove the truth of the matter asserted in the statement.³⁰ The general prohibition on the admission of hearsay is subject to many exceptions, including a written admission of an opposing party.³¹

Recent Cases Involving the Problem Addressed by the Bill

In several recent cases, debtors in federal bankruptcy proceedings have agreed to surrender property, and yet continued to fight liquidation of the same property in state foreclosure

²¹ Section 45.031(1)(a), F.S.

²² Section 45.031(2), F.S.

²³ Section 45.031(8), F.S.

²⁴ Section 45.031(8), F.S.

²⁵ Section 702.06, F.S.

²⁶ Section 90.103, F.S.

²⁷ *Mitchum v. State*, 251 So. 2d 298, 300 (Fla. 4th DCA 1972).

²⁸ Section 90.202(6), F.S.

²⁹ Section 90.802, F.S.

³⁰ Section 90.801(1)(c), F.S.

³¹ Section 90.803(18), F.S.

proceedings.³² In *In re Failla*,³³ the debtors filed for bankruptcy in 2011. They admitted that they owned the home, that the home was collateral for the mortgage, and that the mortgage was valid. They filed a statement of their intention to surrender the home in the bankruptcy proceedings. After the filing of their intention to surrender, the debtors continued to live in the home and defend against the creditor's ongoing foreclosure action in state court. The debtors argued that the effect of the surrender was simply to lift the automatic stay and allow the creditor to proceed with a foreclosure action in state court.³⁴ The court held that stating an intention to surrender in bankruptcy court meant that the debtors could not contest the foreclosure action in state court.³⁵

III. Effect of Proposed Changes:

The bill addresses the problem of a debtor in a bankruptcy action declaring his or her intention to give up property, then litigating to keep the property in a foreclosure action.

The bill allows for a certain documents that were filed in a bankruptcy case and that show a debtor's intention to surrender property to be filed subsequently in a mortgage foreclosure proceeding as admissions against a debtor/mortgagor. A mortgage foreclosure is a legal action by a lender against a debtor to force the sale of real property that secures a defaulted-upon loan. The proceeds of the sale are used to repay the debt. Often, a debtor subject to foreclosure will file for bankruptcy as a means of obtaining an automatic stay of the foreclosure action plus a discharge of the mortgage debt.

In bankruptcy, a debtor must file a statement under penalty of perjury stating his or her intent to retain, redeem, or surrender any property securing a debt. The debtor is supposed to act on that decision as a condition of obtaining a discharge of his or her debts. In some cases, debtors have stated an intention to surrender real property in bankruptcy proceedings, but later have actively contested the completion of a foreclosure proceeding regarding the property in state court.

This bill provides that a lender may use certain documents filed in a bankruptcy case as an admission by the defendant in a foreclosure case. To qualify, these documents must:

- Evidence intention to surrender to the lienholder the property that is the subject of the foreclosure;
- Not have been withdrawn by the defendant; and
- Be submitted together with a final bankruptcy order that discharges the defendant's debts or confirms the defendant's repayment plan.

Submitting a document meeting these criteria creates a rebuttable presumption that the defendant has waived any defenses to the foreclosure.

The bill also requires the court in a foreclosure case to take judicial notice, pursuant to s. 90.203, F.S., of any order entered in a bankruptcy case upon the request of a lienholder. Lastly, regarding the document that evidenced the defendant's intention to surrender the mortgaged property to the

³² See, e.g., *Green Tree Servicing v. Hardmon*, Case No. 162012-CA-13629-FC-E (Fla. 4th Judicial Circuit November 13, 2015); *In re Guerra*, 544 B.R. 707 (Bankr. M.D. Fla. 2016); *In re Metzler*, 530 B.R. 894 (Bankr. M.D. Fla. 2015).

³³ *In re Failla*, 838 F.3d 1170 (11th Cir. 2016).

³⁴ *In re Failla*, 838 F.3d at 1173-1175.

³⁵ *In re Failla*, 838 F.3d at 1178.

lienholder, the defendant is expressly guaranteed the authority to raise a defense in the foreclosure case based upon the lienholders' action or inaction subsequent to the document's filing.

The bill takes effect on October 1, 2017, and applies to foreclosure actions filed on or after that date.

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 may expedite some foreclosure cases, thus decreasing the cost of these proceedings.

C. Government Sector Impact:

The bill may expedite some foreclosure cases, thus decreasing costs to the court system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 702.12, Florida Statutes.

IX. Additional Information:

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

CS/CS/CS by Rules on April 19, 2017:

The CS made a technical change related to the submission of documents from a bankruptcy proceeding.

CS/CS by Judiciary on March 22, 2017:

The committee substitute requires a court in foreclosure proceeding to, upon the request of a lienholder, take judicial notice of any order entered in a bankruptcy case, pursuant to s. 90.203, F.S.

CS by Banking and Insurance on March 6, 2017:

The CS makes stylistic changes to improve clarity.

- B. **Amendments:**

None.



675346

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Rules (Passidomo) recommended the following:

Senate Amendment

Delete line 25
and insert:
submits documents filed in the defendant's bankruptcy case
which:

By the Committees on Judiciary; and Banking and Insurance; and
Senator Passidomo

590-02718-17

2017660c2

A bill to be entitled

An act relating to bankruptcy matters in foreclosure proceedings; creating s. 702.12, F.S.; authorizing lienholders to use certain documents as an admission in an action to foreclose a mortgage; providing that submission of certain documents in a foreclosure action creates a rebuttable presumption that the defendant has waived any defenses to the foreclosure; requiring a court to take judicial notice of final orders entered in bankruptcy cases; providing construction; providing applicability; providing an effective date.

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

Section 1. Section 702.12, Florida Statutes, is created to read:

702.12 Actions in foreclosure.—

(1)(a) A lienholder, in an action to foreclose a mortgage, may submit any document the defendant filed in the defendant's bankruptcy case under penalty of perjury for use as an admission by the defendant.

(b) A rebuttable presumption that the defendant has waived any defenses to the foreclosure is created if a lienholder enters documents filed in the defendant's bankruptcy case which:

1. Evidence the defendant's intention to surrender to the lienholder the property that is the subject of the foreclosure;

2. Have not been withdrawn by the defendant; and

3. Show that a final order has been entered in the

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defendant's bankruptcy case which discharges the defendant's debts or confirms the defendant's repayment plan that provides for the surrender of the property.

(2) Pursuant to s. 90.203, a court shall take judicial notice of any order entered in a bankruptcy case upon the request of a lienholder.

(3) This section does not preclude the defendant in a foreclosure action from raising a defense based upon the lienholder's action or inaction subsequent to the filing of the document filed in the bankruptcy case which evidenced the defendant's intention to surrender the mortgaged property to the lienholder.

(4) This section applies to any foreclosure action filed on or after October 1, 2017.

Section 2. This act shall take effect October 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 22, 2017

I respectfully request that **Senate Bill #660**, relating to Bankruptcy Matters On Foreclosure Proceedings, be placed on the:

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

A handwritten signature in black ink, appearing to read "K. Passidomo", with a horizontal line extending to the right.

Senator Kathleen Passidomo
Florida Senate, District 28

File signed original with committee office

S-020 (03/2004)

✓cf
3/22/17

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

Topic Bankruptcy matters in Foreclosure

Bill Number 660
(if applicable)

Name Jennifer Martin

Amendment Barcode _____
(if applicable)

Job Title Dir. of Governmental Affairs

Address 3696 Coolidge Ct
Street

Phone 450-558-1150

TLH FL 32311
City State Zip

E-mail jennifer.martin@scu.coop

Speaking: ☒ For ☐ Against ☐ Information

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.

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 730

INTRODUCER: Rules Committee; Banking and Insurance Committee; and Senator Passidomo

SUBJECT: Insurer Insolvency

DATE: April 20, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Billmeier	Knudson	BI	Fav/CS
2. Sanders	Betta	AGG	Recommend: Favorable
3. Sanders	Hansen	AP	Favorable
4. Billmeier	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 730 amends Florida's Insurer's Rehabilitation and Liquidation Act to include various provisions from the National Association of Insurance Commissioners' "Insurer Receivership Model Act." The bill:

- Adds the Florida Health Maintenance Organization Consumer Assistance Plan to the list of organizations to which notice of hearings shall be delivered pertaining to the insolvency of a member insurer;
- Provides exclusive jurisdiction to the Circuit Court of Leon County over all assets and property of an insurer in receivership, regardless of whether such assets or property are located in or out of Florida;
- Creates deadlines for written responses from an insurer subject to an order to show cause pursuant to chapter 631, Florida Statutes, and establishes a deadline for commencement of a hearing to determine whether cause exists for the Department of Financial Services (DFS) to be appointed receiver;
- Exempts the Office of Insurance Regulation (OIR) from the automatic stay provisions;
- Provides that the DFS may assume or reject unexpired leases or executory contracts of an insurer and pay expenses during the pendency of a receivership under contracts, leases, and other arrangements entered by insurers before commencement of the receivership;
- Provides that officers, directors, and managers, of a liquidated insurer are discharged of authority except as may be delegated by the DFS;

- Limits certain defenses which may be raised by third parties in actions brought by or against the DFS in its capacity as receiver;
- Limits third parties from asserting or raising obligations, claims, and defenses, which were not recorded in the records of the insurer in receivership, with certain exceptions;
- Allows the court more flexibility in approving procedures for the “deem filing” of claims, or claims where the DFS deems a claim filed and can distribute funds, such as a refund of unearned premium, to the claimant without the need of a formal claim;
- Allows the court to set a deadline for the filing of claims;
- Disallows claims for post-judgment interest accrued after the liquidation date;
- Creates a process for administering large deductible workers’ compensation policies and the collateral for large deductible workers’ compensation policies;
- Adds all costs and expenses related to administrative supervision to Class 1 of the priority of claims to be paid in distribution;
- Adds claims related to healthcare coverage by physicians, hospitals, and other providers of a health insurer or health maintenance organization to Class 2 of the priority of claims to be paid in a distribution;
- Adds claims of residents which arise out of a continuing care contract to Class 2 of the priority of claims to be paid in a distribution; and
- Removes certain notice requirements related to early access distributions to guaranty associations.

The bill does not affect state revenues or expenditures.¹

The bill has an effective date of July 1, 2017.

II. Present Situation:

Receivership is a judicial proceeding in which the Department of Financial Services (DFS) is placed in control of the insurer for the purpose of rehabilitating or liquidating the insurer. The DFS may seek to be appointed receiver² through a delinquency proceeding in court for the purpose of rehabilitating an impaired insurer or, if appropriate, liquidating the insolvent company. The primary goal of rehabilitation is to restore the financial solvency of the insurer³ while the primary goal of liquidation is to secure and maximize the assets of the insolvent company for the benefit of its policyholders.⁴ Over the years, the National Association of Insurance Commissioners (NAIC) has drafted various model laws to govern insurer insolvency.⁵ The NAIC adopted the Insurer Receivership Model Act in 2005.⁶

¹ Office of Insurance Regulation, *Bill Analysis of SB 730* (March 6, 2017) (on file with Appropriations Subcommittee on General Government).

² The DFS Division of Rehabilitation and Liquidation acts as receiver when the DFS is appointed. See <http://www.myfloridacfo.com/Division/Receiver/>.

³ See <http://www.myfloridacfo.com/Division/Receiver/SummaryofRehabilitationunderChapter631PartIFloridaStatutes.htm> (last accessed March 22, 2017).

⁴ See <http://www.myfloridacfo.com/Division/Receiver/LiquidationSummary.htm> (last accessed March 22, 2017).

⁵ Prior model acts include the Uniform Insurers Liquidation Act and the Rehabilitation and Liquidation Model Act. See <https://www.irmi.com/articles/expert-commentary/insurer-insolvency-and-reinsurance> (last accessed February 28, 2017).

⁶ See <http://www.naic.org/store/free/MDL-555.pdf> (last accessed March 22, 2017).

This bill amends various provisions of part I of ch. 631, F.S., governing insurer rehabilitation and liquidation in Florida. Many of the revisions are to adopt portions of the NAIC Insurer Receivership Model Act (Model Act).

Delinquency Proceedings

A delinquency proceeding is a proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving the insurer.⁷ The Circuit Court in Leon County has jurisdiction over delinquency proceedings.⁸ Florida law provides for various guaranty associations to protect policyholders in the event an insurer becomes insolvent. Insurers are generally required to be members of the associations related to their lines of business. The DFS must give notice of all hearings pertain to the adjudication of a member insurer to the Florida Insurance Guaranty Association, the Florida Workers' Compensation Insurance Guaranty Association, and the Florida Life and Health Guaranty Association.

Section 631.031, F.S., governs the initiation of delinquency proceedings. It requires the Office of Insurance Regulation (OIR) to notify the DFS upon a determination that one or more grounds for the initiation of delinquency proceedings exist. The OIR must provide the DFS with evidence and documentation of the delinquency. The DFS may commence a proceeding by application to the court for an order directing the insurer to show cause why the relief (such as rehabilitation or liquidation) should not be granted. The DFS has noted periods of extended delay in some cases where the insurer does not respond or the court does not hold a hearing.⁹

Once the DFS files an application or a petition for an order to show cause, s. 631.041, F.S., provides for an automatic stay. The stay prohibits:

- The commencement or continuation of judicial, administrative, or other action or proceeding against the insurer or against its assets;
- The enforcement of a judgment against the insurer obtained either before or after the commencement of the delinquency proceeding;
- Any act to obtain possession of property of the insurer;
- Any act to create, perfect, or enforce a lien against property of the insurer with specified exceptions;
- Any act to collect, assess, or recover a claim against the insurer; and
- The setoff or offset of any debt owing to the insurer with specified exceptions.¹⁰

The stay applies to all persons except the DFS. According to the DFS, there has been confusion over whether the stay applies to regulatory actions taken by the OIR.¹¹

⁷ Section 631.011(6), F.S.

⁸ Section 631.021(1)-(3), F.S.

⁹ Department of Financial Services, *Analysis of SB 730* (February 19, 2017) (on file with Senate Appropriations Subcommittee on General Government).

¹⁰ Section 631.041(1), F.S.

¹¹ Department of Financial Services, *Analysis of SB 730* (February 19, 2017).

Actions by and Against the Receiver

Section 112 of the Model Act prohibits third parties from raising insurer management misconduct as a defense to a claim by the receiver. For example, there have been cases where the insurer's managers set up a scheme to issue high-risk policies without sufficient funds to cover claims. When the insurer became insolvent, the liquidator sued auditors for negligently failing to discover the scheme. The auditors argued that the liquidator, who stands in the shoes of the insurer, cannot prevail because the misdeeds of the insurer's management should be imputed to the liquidator.¹² Section 112 of the Model Act prohibits such defenses.

Workers' Compensation Large Deductible Policies and Insured Collateral

Some employers use what is referred to as a "large-deductible" workers' compensation policy to fulfill workers' compensation insurance requirements. Under a large-deductible policy, the insurance carrier is obligated to pay the claim in full; however, the carrier seeks reimbursement from the employer for the deductible amount for each claim. Employers provide collateral to secure the payment of the deductible. Employers use these policies to obtain lower premiums from the carrier. Issues have arisen over how to disburse the collateral used to secure the payment of large deductible claims and how to deal with large deductible policies when a company is placed in receivership.¹³

Claim Priority

Section 631.271, F.S., sets the priority order in which claims against the receivership will be paid. Class 1 claims, the first claims paid, include the receiver's costs and expenses of administration and the expenses of guaranty associations in handling claims. It does not include costs and expenses of administrative supervision.¹⁴ In general, loss claims under health insurance are Class 2 claims.¹⁵ The DFS considers medical provider claims in HMO receiverships to be Class 6 claims.¹⁶

III. Effect of Proposed Changes:

The bill makes various changes to ch. 631, F.S., relating to insurer insolvency, rehabilitation, and liquidation.

Section 1 amends s. 631.015, F.S., to provide that Florida will provide reciprocity in the treatment of policyholders in receivership with states that enact the NAIC Insurer Model Receivership Act.

¹² *Thaubalt v. Chait*, 541 F.3d 512, 528 (3rd Cir. 2008); *Schacht v. Brown*, 711 F.2d 1343 (7th Cir. 1982).

¹³ NAIC 2016 Workers' Compensation Large Deductible Study (http://www.naic.org/documents/committees_c_wctf_naic_iaiaabc_exposure_wc_study_combined.pdf).

¹⁴ The OIR can place an insurer in administrative supervision if it finds the insurer is in an unsound condition or other reasons. See s. 624.81, F.S. It may appoint a deputy supervisor to supervise the insurer during the period of administrative supervision. See s. 624.87, F.S.

¹⁵ Section 631.271(1)(b), F.S.

¹⁶ Department of Financial Services, *Bill Analysis of SB 730* (February 10, 2017) at p. 3-4.

Delinquency Proceedings

Section 2 amends s. 631.021, F.S., to require the DFS to give notice of hearings to the Florida Health Maintenance Organization Consumer Assistance Plan¹⁷ that pertain to the insolvency of a member insurer. It provides that the Circuit Court in Leon County has exclusive jurisdiction over all insurer assets or property wherever located once it enters an order of rehabilitation or liquidation.¹⁸ The bill also provides that ch. 631, F.S., constitutes the state's receivership laws, which prevail in any conflict with any other law.¹⁹

Section 3 amends s. 631.031, F.S., to require an insurer subject to an order to show cause to file a response to the order, together with any defenses it may have, no later than 20 days after service of the order to show cause. The response must be filed at least 15 days before the date of the hearing set by the order to show cause. The hearing to determine whether cause exists for the DFS to be appointed receiver must be commenced within 60 days directing an insurer to show cause.

Section 4 amends s. 631.041, F.S., to provide that the automatic stay does not apply to the OIR. This will allow OIR to continue to perform its regulatory role as necessary during a receivership.

Section 5 amends s. 631.141, F.S., to allow the DFS to assume or reject any executory contract or unexpired lease of the insurer and allow the DFS to pay any expenses under contracts, leases, employment agreements, or other arrangements entered into by the insurer before receivership. These provisions are from sections 114 and 116 of the Model Act and give the DFS the flexibility to review contracts and other obligations and determine how to proceed based on the best interest of the receivership.

The section additionally provides that all officers, directors, and managers of the insurer are discharged except as provided by the DFS. This resolves any conflicts between ch. 631, F.S., and other statutes relating to the dissolution of business entities.

Section 6 makes a technical change to s. 631.152, F.S.

Actions by and Against the Receiver

Section 7 creates s. 631.1521, F.S., to adopt the provisions of section 112 of the Model Act in Florida law. An allegation by the receiver of improper or fraudulent conduct against any person may not be the basis of a defense by a third party to the enforcement of a contractual obligation owed to the insurer. The bill does not bar a third party from raising a defense that the conduct was materially and substantially related to the contractual obligation for which enforcement is sought. This will limit the ability of third parties to avoid contractual obligations based on improper conduct by, for example, officers of the insurer that is unrelated to the contractual obligation.

¹⁷ The Florida Health Maintenance Organization Consumer Assistance Plan is created to protect the subscribers of HMOs against the failure of the HMO to perform its contractual obligations due to its insolvency. See s. 631.812, F.S. HMOs are required to be members of the plan. See s. 631.815, F.S.

¹⁸ The language in the bill is from section 105 of the Model Act.

¹⁹ Section 102 of the Model Act.

This section further provides that a prior wrongful or negligent action of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may not be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise. Section 7 further provides that the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract. Evidence of fraud in the inducement is admissible only if it is contained in the records of the insurer.

Additionally, this section provides that an action or inaction by an insurance regulatory authority may not be asserted as a defense to a claim by the DFS. This will prevent, for example, an officer of the insurer from arguing that the OIR should have known of the insolvency sooner and taken steps to prevent it.²⁰

Section 8 creates s. 631.1552, F.S., based on section 113 of the Model Act. It requires evidence of claims or defenses raised by certain parties other than the DFS to be recorded in the books or records of the insurer. This puts the DFS on notice of the possible claims or defenses. It provides that in a proceeding by the receiver against an affiliate, a controlled or controlling person, or a present or former officer, manager, director, trustee, or shareholder of the insurer may not assert any defense unless:

- Evidence of the defense was recorded in the books and records of the insurer at or about the time the events giving rise to the defense occurred; and
- Such events were timely reported on the insurer's official financial statements filed with the OIR, if required by statutory accounting practices and procedures.

The bill prohibits an affiliate, a controlled or controlling person, or a present or former officer, manager, director, trustee, or shareholder of the insurer from asserting any claim unless:

- The obligations were recorded in the books and records of the insurer at or about the time the obligations were incurred; and
- If required by statutory accounting practices and procedures, the obligations were reported on the insurer's official financial statements filed with the OIR.

In addition, this section does not bar claims based on unrecorded or unreported transactions by the receiver against any affiliate, controlled or controlling person, or a present or former officer, manager, director, trustee, or shareholder of the insurer.

Claim Filing

Section 631.181, F.S., generally requires claimants to file a proof of claim with the DFS before receiving a distribution from the estate. There are some situations, such as returning unearned premium, where the DFS can determine the claim without requiring a claimant to submit proof. **Section 9** amends s. 631.181, F.S., to allow the court to permit alternative procedures and requirements for claim filing and proof of claims. This is consistent with section 701 of the Model Act.

This section grants specific authority to the court to set a deadline for the filing of claims.

²⁰ Such an argument was made, and rejected, in *Wooley v. Lucksinger*, 61 So.3d 507 (La. 2011).

Administration of Workers' Compensation Large Deductible Policies

Section 10 amends s. 631.131, F.S., to create a process for administering large deductible workers' compensation policies and the collateral related to those policies. The section applies to delinquency proceedings that commence on or after July 1, 2017. The bill defines a "large deductible policy" as a combination of one or more workers' compensation policies and endorsements issued to an insured, and contracts or security agreements entered into between an insured and the insurer, in which the insured has agreed with the insurer to:

- Pay directly the initial portion of any claim up to a specified dollar amount or the expenses related to any claim; or
- Reimburse the insurer for its payment of any claim up to the specified dollar amount of the deductible.

As defined within this section, large deductible policy also includes those policies that contain an aggregate limit on the insured's liability for all deductible claims in addition to a per-claim deductible limit. This section provides guidelines and eligibility standards for large deductible workers' compensation filings as defined by DFS. In addition, this section provides that the term "large deductible policy" does not include:

- Policies, endorsements, or agreements providing that the initial portion of any covered claim must be self-insured and that the insurer has no payment obligation within the self-insured retention; and,
- Policies that provide for retrospectively rated premium payments by the insured or reinsurance arrangements or agreements unless such arrangements or agreements assume, secure, or pay the policyholder's large deductible obligations.

This section provides that a large deductible claim must be turned over to the guaranty association for handling. To the extent the insured funds or pays the deductible claim pursuant to an agreement by the guaranty fund, the insured's funding or payment of a deductible claim extinguishes the obligations of the DFS and any guaranty association to pay such claim.

This section provides that, if a guaranty association pays any deductible claim for which an insurer would have been entitled to reimbursement from an insured, a guaranty association is entitled to the amount of reimbursements received or collateral available. If a guaranty association pays a deductible claim that is not reimbursed from collateral or by insured payments, the guaranty association is entitled to assert a claim for those amounts in the delinquency proceeding.

The section provides that the DFS may collect reimbursements owed for deductible claims. The DFS must use reasonable efforts to collect such reimbursements from the insured or the party that is obligated to pay the deductible as specified in the large deductible policy. The DFS may bill insureds and others for reimbursement of deductible claims that are:

- Paid by the insurer before the commencement of delinquency proceedings;
- Paid by a guaranty association upon receipt by the DFS of notice from a guaranty association of reimbursable payments; or
- Paid or allowed by the DFS.

The section provides that the receiver may take reasonable steps to collect any reimbursements owed if the insured or other party does not make payment within the time specified in the large deductible policy or within a reasonable time, after the date of billing, if no time is specified within the policy.

The section requires the DFS to use collateral, when available, to secure the insured's obligation to fund or reimburse deductible claims or other secured obligations or payment obligations. The guaranty association is entitled to collateral to the extent needed to reimburse a guaranty association for the payment of a deductible claim. The section requires the DFS to draw down collateral to the extent necessary if the insured fails to:

- Perform its funding or payment obligations under any large deductible policy;
- Pay deductible claim reimbursements within the time specified in the large deductible policy;
- Pay amounts due to the estate for preliquidation obligations;
- Timely fund any other secured obligation; or
- Timely pay expenses.

The section provides that claims that are validly asserted against the collateral must be satisfied in the order in which such claims are received by the DFS. If more than one creditor has a valid claim against the same collateral and the available collateral and other funds are together insufficient to pay each creditor in full, the DFS may prorate payments. Payments must be based upon the ratio of the amount of claims each creditor has to the total of all claims paid by all such creditors. The bill provides that excess collateral may be returned to the insured.

The section allows the DFS to deduct from the collateral or from the deductible reimbursements reasonable and actual expenses incurred in connection with the collection of the collateral and deductible reimbursements.

Claim Priority

Section 12 amends s. 631.271, F.S., to provide that the deputy supervisor's costs and expenses of administration are Class 1 claims. All claims related to a patient's healthcare coverage by physicians, hospitals, and other providers of a health insurer or health maintenance organization are Class 2 claims. The bill provides that interest on allowed claims accrue from the date the court enters the order of liquidation until the receivership court approves the distribution. The interest rate is the statutory rate calculated according to s. 55.03, F.S.

Miscellaneous Provisions

Section 11 amends s. 631.192, F.S., to provide that claims for postjudgment interest accrued after the date the court enters the order of liquidation are not allowed.

Section 13 amends s. 631.391, F.S., to require former officers, directors, managers, trustees, agents, adjusters, employees, independent contractors, or a controlling person of an insurer or affiliate to cooperate with the DFS or OIR in any proceeding under ch. 631, F.S., or any investigation preliminary or incidental to the proceeding.

Section 631.395, F.S., provides that an order of liquidation must direct the DFS to coordinate the operation of the receivership with the relevant insurance guaranty fund. The authorization must include authorization to release copies of claim files or other documents related to claims on file with the insolvent insurer. **Section 14** amends s. 631.395, F.S., to provide that the DFS may release the original documents to the guaranty fund.

Section 631.397, F.S., deals with “early access” distributions by the DFS to guaranty associations to allow the associations to begin paying claims without the need to assess member insurers. Current law requires the DFS to propose a plan to the court within 120 days of the determination of insolvency and give notice of the plan to other insurance commissioners at least 15 days before filing the plan with the court. **Section 15** amends s. 631.397, F.S., by eliminating the 120-day requirement and the notice to other insurance commissioners. In practice, the DFS coordinates early access distributions with the appropriate guaranty associations so the DFS believes the requirements are not necessary.²¹

Section 16 provides a July 1, 2017, effective date.

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:

The bill does not affect state revenues or expenditures.²²

²¹ Department of Financial Services, *Bill Analysis of SB 730* at p. 6-7.

²² Office of Insurance Regulation, *Bill Analysis of SB 730* (March 6, 2017) (on file with Appropriations Subcommittee on General Government).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 631.015, 631.021, 631.031, 631.041, 631.141, 631.152, 631.181, 631.191, 631.192, 631.271, 631.391, 631.395, and 631.397.

This bill creates the following sections of the Florida Statutes: 631.1521 and 631.1522.

IX. Additional Information:

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

CS/CS by Rules on April 19, 2017:

The CS made technical changes related to late-filed claims, the payment of high deductible claims, and liquidation orders entered by the court.

CS by Banking and Insurance on March 6, 2017:

The CS creates a process for administering large deductible workers' compensation policies and the collateral for large deductible workers' compensation policies. It also removes provisions from the bill prohibiting the payment of claims in excess of policy limits and provisions placing bad faith claims, punitive damages claims, and wrongful settlement practices claims in Class 6.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Rules (Passidomo) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 325 - 586
and insert:

(3) After the entry of the order of liquidation against a Florida-domiciled insurer, regardless of any prior notice that may have been given to creditors, the receiver shall notify all persons who may have claims against the insurer that they must file such claims with it at a place and within the time specified in the notice, or else such claims will be late-filed ~~forever barred~~. The Florida receiver need not give such notice



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in ancillary proceedings if the receiver obtains an order from the court authorizing the receiver to not send out such notices, which order the court shall issue upon satisfactory evidence that the domiciliary receiver will be sending out similar notices and will accept and evaluate claims from Florida residents, that Florida residents may have objections to evaluations heard in Florida, and that there are reasonable assurances that Florida policyholders and claimants will be treated fairly and equally as compared to residents of the domicile state. The time specified in the notice shall be as fixed by the court for filing of claims and shall be not less than 6 months after the entry of the order of insolvency. The notice shall be given in such manner and for such reasonable period of time as may be ordered by the court.

(4) The receiver may petition the receivership court to set a date certain before which all contingent or unliquidated claims are final. In addition to the notice requirements in this section, the receiver shall give notice of filing the petition to all claimants with claims that remain contingent or unliquidated under this section.

(5) Notwithstanding any other provision of this chapter, the receiver may petition the receivership court to set a date certain after which no further claims may be filed.

Section 10. Section 631.191, Florida Statutes, is amended to read:

631.191 Special deposit claims; ~~and~~ secured claims; administration of workers' compensation large deductible policies and insured collateral.-

(1) SPECIAL DEPOSIT CLAIMS.-The owners of special deposit



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claims against an insurer against which a liquidation order has been entered in this or any other state shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that the claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(2) SECURED CLAIMS.—

(a) The owner of a secured claim against an insurer against which a liquidation order has been entered in this or any other state may surrender her or his security and file her or his claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this chapter, or if it has been adjudicated by a court of competent jurisdiction in a proceeding in which the domiciliary receiver has had notice and an opportunity to be heard, such amount shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state.

(b) The value of any security held by a secured creditor shall be determined under supervision of the court by:



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1. Converting the same into money according to the terms of the agreement pursuant to which the security was delivered to such creditor; or

2. If no such agreement exists, the court shall determine the value in the event the creditor and the receiver cannot agree upon same.

(3) ADMINISTRATION OF WORKERS' COMPENSATION LARGE DEDUCTIBLE POLICIES AND INSURED COLLATERAL.—

(a) Definitions.—As used in this subsection, the term:

1. "Collateral" means cash, a letter of credit, a surety bond, or any other form of security posted by the insured, or by a captive insurer or reinsurer, to secure the insured's obligation under a large deductible policy to pay deductible claims or to reimburse the insurer for deductible claim payments. "Collateral" may also secure an insured's obligation to reimburse or pay the insurer as may be required for other secured obligations.

2. "Deductible claim" means any claim that is within the deductible under a large deductible policy, including a claim for loss and defense and cost containment expense, unless such expense is excluded by the terms of the policy.

3.a. "Large deductible policy" means a combination of one or more workers' compensation policies and endorsements issued to an insured, and contracts or security agreements entered into between an insured and the insurer, in which the insured has agreed with the insurer to:

(I) Pay directly the initial portion of any claim under the policy up to a specified dollar amount or the expenses related to any claim; or



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(II) Reimburse the insurer for its payment of any claim or related expenses under the policy up to the specified dollar amount of the deductible.

b. The term also includes policies that contain an aggregate limit on the insured's liability for all deductible claims in addition to a per-claim deductible limit. A policy must meet the current guidelines for large deductible workers' compensation filings as defined by the office, including the eligibility standards regarding the minimum standard premium and the minimum deductible to be deemed a large deductible policy.

c. The term does not include policies, endorsements, or agreements providing that the initial portion of any covered claim must be self-insured and that the insurer has no payment obligation within the self-insured retention.

d. The term does not include policies that provide for retrospectively rated premium payments by the insured or reinsurance arrangements or agreements, except to the extent such arrangements or agreements assume, secure, or pay the policyholder's large deductible obligations.

4. "Other secured obligations" means obligations of an insured to an insurer other than those under a large deductible policy, such as those under a reinsurance agreement or other agreement involving retrospective premium obligations, the performance of which is secured by collateral that also secures an insured's obligations under a large deductible policy.

(b) Applicability.—

1. This subsection applies to workers' compensation large deductible policies issued by an insurer that is subject to delinquency proceedings under this chapter. This subsection does



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not apply to first-party claims, or to covered claims funded by a guaranty association above the deductible unless paragraph (c) applies. Large deductible policies must be administered in accordance with the terms of the policy, except to the extent such terms conflict with this subsection.

2. This subsection applies to all delinquency proceedings that commence on or after July 1, 2017.

(c) Handling of large deductible claims.—Unless otherwise agreed to by the responsible guaranty association, all large deductible claims that are also covered claims as defined by an applicable guaranty association law, including those that may have been funded by an insured before liquidation, must be turned over to the guaranty association for handling. To the extent the insured funds or pays the deductible claim pursuant to an agreement by the guaranty fund or otherwise, the insured's funding or payment of a deductible claim extinguishes the obligations, if any, of the receiver and any guaranty association to pay such claim. A charge may not be made against the receiver or a guaranty association on the basis of an insured's funding or payment of a deductible claim.

(d) Deductible claims paid by a guaranty association.—

1. To the extent a guaranty association pays any deductible claim for which an insurer would have been entitled to reimbursement from an insured, a guaranty association is entitled to the amount of reimbursements received or collateral available, subject to paragraph (g). Reimbursements paid to the guaranty association pursuant to this paragraph may not be treated as distributions under s. 631.271 or as early access payments under s. 631.397(1).



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2. To the extent that a guaranty association pays a deductible claim that is not reimbursed from collateral or by insured payments, or the guaranty association incurred expenses in connection with large deductible policies that are not reimbursed under this subsection, the guaranty association is entitled to assert a claim for those amounts in the delinquency proceeding.

3. This paragraph does not limit any right of the receiver or a guaranty association which may otherwise exist under applicable law to obtain reimbursement from insureds for claims payments made by the guaranty association under policies of the insurer or for the guaranty association's related expenses.

(e) Collections.-

1. The receiver may collect reimbursements owed for deductible claims as provided in this paragraph, and must use reasonable efforts to collect such reimbursements from the insured or the party that is obligated to pay the deductible as specified in the large deductible policy or other agreement. The receiver may bill insureds and others for reimbursement of deductible claims that are:

a. Paid by the insurer before the commencement of delinquency proceedings;

b. Paid by a guaranty association upon receipt by the receiver of notice from a guaranty association of reimbursable payments; or

c. Paid or allowed by the receiver.

2. If the insured or other party does not make payment within the time specified in the large deductible policy, or, if no time is specified, within a reasonable time after the date of



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186 billing, the receiver may take reasonable steps to collect any
187 reimbursements owed.

188 3. The insolvency of the insurer or its inability to
189 perform any of its obligations under the large deductible policy
190 may not be a defense to the insured's reimbursement obligation
191 under the large deductible policy.

192 4. An allegation of improper handling or payment of a
193 deductible claim by the receiver or a guaranty association may
194 not be a defense to the insured's reimbursement obligations
195 under the large deductible policy.

196 (f) Collateral.—

197 1. Subject to this paragraph, the receiver shall use
198 collateral, when available, to secure the insured's obligation
199 to fund or reimburse deductible claims or other secured
200 obligations or payment obligations. A guaranty association is
201 entitled to collateral as provided for in this paragraph to the
202 extent needed to reimburse a guaranty association for the
203 payment of a deductible claim. Any distributions made to a
204 guaranty association pursuant to this paragraph may not be
205 treated as distributions under s. 631.271 or as early access
206 payments under s. 631.397(1).

207 2. The receiver shall draw down collateral to the extent
208 necessary in the event the insured fails to:

209 a. Perform its funding or payment obligations under any
210 large deductible policy;

211 b. Pay deductible claim reimbursements within the time
212 specified in the large deductible policy, or, if no time is
213 specified, within 60 days after the date of the billing;

214 c. Pay amounts due to the estate for preliquidation



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obligations;

d. Timely fund any other secured obligation; or

e. Timely pay expenses.

3. Claims that are validly asserted against the collateral must be satisfied in the order in which such claims are received by the receiver. However, if more than one creditor has a valid claim against the same collateral and the available collateral, along with billing collection efforts and to the extent that the collateral is subject to other known secured obligations, are together insufficient to pay each creditor in full, the receiver may prorate payments to each creditor based upon the ratio of the amount of claims each creditor has to the total claims paid by all such creditors.

4. Excess collateral may be returned to the insured, as determined by the receiver, after a periodic review of claims paid, outstanding case reserves, and a factor for claims that were incurred but not reported.

(g) Receiver's expenses.—The receiver is entitled to deduct from the collateral or from the deductible reimbursements reasonable and actual expenses incurred in connection with the collection of the collateral and deductible reimbursements as provided pursuant to s. 631.271.

(h) Construction.—This subsection does not limit or adversely affect any rights or powers a guaranty association may have under applicable state law to obtain reimbursement from certain classes of policyholders for claims payments made by the guaranty association under policies of the insolvent insurer, or for related expenses the guaranty association incurs.

Section 11. Subsection (5) is added to section 631.192,



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Florida Statutes, to read:

631.192 Allowance of certain claims.—

(5) A claim may not be allowed for postjudgment interest accrued after the date the court enters the order of liquidation.

Section 12. Paragraphs (a), (b), and (j) of subsection (1) of section 631.271, Florida Statutes, are amended to read:

631.271 Priority of claims.—

(1) The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this subsection. Every claim in each class shall be paid in full or adequate funds shall be retained for such payment before the members of the next class may receive any payment. No subclasses may be established within any class. The order of distribution of claims shall be:

(a) *Class 1.*—

1. All of the receiver's costs and expenses of administration.

2. All of the expenses of a guaranty association or foreign guaranty association in handling claims.

3. All of the deputy supervisor's costs and expenses of administration incurred as a result of administrative supervision under part VI of chapter 624.

(b) *Class 2.*—All claims under policies for losses incurred, including third-party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which claims are not under policies, ~~and~~ all claims of a guaranty association or foreign guaranty



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association, and all claims related to a patient's healthcare coverage by physicians, hospitals, and other providers of a health insurer or health maintenance organization. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, may not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to her or his employee may be treated as a gratuity.

(j) *Class 10.*—Interest on allowed claims of Classes 1 through 9. The rate of interest payable on an allowed claim must accrue from the date the court enters the order of liquidation until such time as the

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

And the directory clause is amended as follows:

Delete lines 308 - 309

and insert:

Section 9. Subsection (3) of section 631.181, Florida Statutes, is amended, and paragraph (g) of subsection (2) and subsections (4) and (5) are added to that section, to

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

And the title is amended as follows:

Delete lines 52 - 78



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and insert:

requirements; providing that certain claims against an insurer which do not meet specified filing requirements are deemed late-filed rather than forever barred; authorizing a receiver to petition the receivership court to set certain deadlines; requiring a receiver to provide notice of filing a certain petition to certain claimants; amending s. 631.191, F.S.; defining terms; providing applicability; requiring that specified large deductible claims under certain workers' compensation policies must be turned over to the applicable responsible guaranty association for handling; providing for construction relating to payment of deductible claims; authorizing receivers to collect reimbursements owed for certain deductible claims; providing requirements for such collections; providing for construction relating to such collections; requiring receivers to use collateral, when available, to secure certain obligations; providing that a guaranty association is entitled to collateral for a certain purpose; providing for construction relating to certain distributions; requiring receivers to draw down collateral under certain circumstances; providing a procedure for payment of claims; authorizing the return of excess collateral under certain circumstances; providing that a receiver is entitled to deduct certain expenses from the collateral or deductible reimbursements; providing for construction;



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331 amending s. 631.192, F.S.; prohibiting claims for
332 postjudgment interest accrued after the date the court
333 enters the order of

By the Committee on Banking and Insurance; and Senator Passidomo

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1 A bill to be entitled
 2 An act relating to insurer insolvency; amending s.
 3 631.015, F.S.; adding the Insurer Receivership Model
 4 Act to a list of acts that extend reciprocity in the
 5 treatment of policyholders in receivership if such act
 6 is enacted in other states; amending s. 631.021, F.S.;
 7 adding the Florida Health Maintenance Organization
 8 Consumer Assistance Plan to a list of entities that
 9 must be given reasonable written notice by the
 10 Department of Financial Services of hearings
 11 pertaining to certain insurers; revising the exclusive
 12 jurisdiction of the Circuit Court of Leon County, upon
 13 issuance of specified orders, of an insurer's assets
 14 or property in a delinquency proceeding; providing
 15 construction; amending s. 631.031, F.S.; requiring an
 16 insurer to file its response and defenses to a certain
 17 order within a specified timeframe; requiring that a
 18 hearing to determine whether cause exists to appoint
 19 the department as receiver must be commenced by a
 20 specified time; amending s. 631.041, F.S.; providing
 21 an exception for the Office of Insurance Regulation
 22 from applicability of a certain application or
 23 petition operating as an automatic stay; amending s.
 24 631.141, F.S.; authorizing a receiver to assume or
 25 reject an insurer's executory contract or unexpired
 26 lease; authorizing the department as domiciliary
 27 receiver to pay certain expenses or reject certain
 28 contracts; providing that, under certain
 29 circumstances, certain persons of an insurer that is

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

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30 under liquidation are permanently discharged and have
 31 no further authority over the affairs or assets of the
 32 insurer; amending s. 631.152, F.S.; conforming a
 33 cross-reference; creating s. 631.1521, F.S.;
 34 prohibiting certain defenses in actions by and against
 35 a receiver; authorizing certain defenses in actions by
 36 and against a receiver; specifying that a principal
 37 under a surety bond or surety undertaking, under
 38 certain circumstances, is entitled to credit for the
 39 value of certain property against a reimbursement
 40 obligation to the receiver; limiting admissibility of
 41 evidence of fraud in the inducement to evidence
 42 contained in insurer records; creating s. 631.1522,
 43 F.S.; prohibiting, in a receiver's proceeding or
 44 claim, the assertion of defenses or claims by an
 45 affiliate or certain persons of an insurer except
 46 under certain circumstances; providing construction;
 47 amending s. 631.181, F.S.; authorizing a receivership
 48 court to allow alternative procedures and requirements
 49 for filing proofs of claim or allowing or proving
 50 claims; providing construction; prohibiting a
 51 receivership court from waiving certain filing
 52 requirements; authorizing a receiver to petition the
 53 receivership court to set certain deadlines; requiring
 54 a receiver to provide notice of filing a certain
 55 petition to certain claimants; amending s. 631.191,
 56 F.S.; defining terms; providing applicability;
 57 requiring that specified large deductible claims under
 58 certain workers' compensation policies must be turned

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59 over to the applicable responsible guaranty
 60 association for handling; providing for construction
 61 relating to payment of deductible claims; authorizing
 62 receivers to collect reimbursements owed for certain
 63 deductible claims; providing requirements for such
 64 collections; providing for construction relating to
 65 such collections; requiring receivers to use
 66 collateral, when available, to secure certain
 67 obligations; providing that a guaranty association is
 68 entitled to collateral for a certain purpose;
 69 providing for construction relating to certain
 70 distributions; requiring receivers to draw down
 71 collateral under certain circumstances; providing a
 72 procedure for payment of claims; authorizing the
 73 return of excess collateral under certain
 74 circumstances; providing that a receiver is entitled
 75 to deduct certain expenses from the collateral or
 76 deductible reimbursements; providing for construction;
 77 amending s. 631.192, F.S.; prohibiting claims for
 78 postjudgment interest accrued after the date of
 79 liquidation; amending s. 631.271, F.S.; adding and
 80 revising claims to a list that establishes the
 81 priority of distribution of claims from an insurer's
 82 estate; specifying when interest on claims accrue and
 83 the interest rate calculation; amending s. 631.391,
 84 F.S.; specifying that certain persons in relation to
 85 an insurer who must cooperate with the department or
 86 office in certain proceedings or investigations
 87 include present or former roles; defining the term

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88 "person"; amending s. 631.395, F.S.; requiring an
 89 order of liquidation to authorize the release of
 90 certain claims files, records, documents, or claims,
 91 rather than only copies of the claims files, records,
 92 documents, or claims; amending s. 631.397, F.S.;
 93 authorizing the department as receiver to apply to the
 94 court for approval of a specified proposal, rather
 95 than requiring the department to make such application
 96 within a specified timeframe; deleting a specified
 97 notice requirement of the department; deleting a
 98 provision authorizing the court to take action on the
 99 application under certain circumstances; providing an
 100 effective date.

101
 102 Be It Enacted by the Legislature of the State of Florida:

103
 104 Section 1. Section 631.015, Florida Statutes, is amended to
 105 read:

106 631.015 Reciprocity; treatment of policyholders.—
 107 Reciprocity in the treatment of policyholders in receivership is
 108 extended to those states which, in substance and effect, enact
 109 the National Association of Insurance Commissioners
 110 Rehabilitation and Liquidation Model Act, ~~or~~ the Uniform
 111 Insurers Liquidation Act, or the Insurer Receivership Model Act.

112 Section 2. Section 631.021, Florida Statutes, is amended to
 113 read:

114 631.021 Jurisdiction of delinquency proceeding; venue;
 115 change of venue; exclusiveness of remedy; appeal; construction.—
 116 (1) The circuit court shall have original jurisdiction of

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any delinquency proceeding under this chapter, and any court with jurisdiction is authorized to make all necessary or proper orders to carry out the purposes of this chapter. Any delinquency proceeding in this chapter is in equity.

(2) The venue of a delinquency proceeding or summary proceeding against a domestic, foreign, or alien insurer shall be in the Circuit Court of Leon County.

(3) A delinquency proceeding pursuant to this chapter constitutes the sole and exclusive method of liquidating, rehabilitating, reorganizing, or conserving an insurer. A No court may not ~~shall~~ entertain a petition for the commencement of such a proceeding unless the petition has been filed in the name of the state on the relation of the department. The Florida Insurance Guaranty Association, Incorporated, the Florida Workers' Compensation Insurance Guaranty Association, Incorporated, the Florida Health Maintenance Organization Consumer Assistance Plan, and the Florida Life and Health Guaranty Association, Incorporated, shall be given reasonable written notice by the department of all hearings that which ~~which~~ pertain to an adjudication of insolvency of a member insurer.

(4) An appeal shall lie to the District Court of Appeal, First District, from an order granting or refusing rehabilitation, liquidation, or conservation and from every order in a delinquency proceeding having the character of a final order as to the particular portion of the proceeding embraced therein.

(5) No service of process against the department in its capacity as receiver shall be effective unless served upon a person designated by the receiver and filed with the circuit

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court having jurisdiction over the delinquency proceeding. The designated person shall refuse to accept service if acceptance would violate a stay against legal proceedings involving an insurer that is the subject of delinquency proceedings or would violate any orders of the circuit court governing a delinquency proceeding. The person denied service may petition the circuit court having jurisdiction over the delinquency proceeding for relief from the receiver's refusal to accept service. This subsection shall be strictly construed, and any purported service on the receiver or the department that is not in accordance with this subsection shall be null and void.

(6) The domiciliary court acquiring jurisdiction over persons subject to this chapter may exercise exclusive jurisdiction to the exclusion of all other courts, except as limited by the provisions of this chapter. Upon the issuance of an order of conservation, rehabilitation, or liquidation, the Circuit Court of Leon County has ~~shall have~~ exclusive jurisdiction over all ~~with respect to~~ assets or property of the ~~any~~ insurer, wherever located, including property located outside the territorial limits of the state ~~subject to such proceedings and claims against said insurer's assets or property.~~

(7) This chapter constitutes this state's insurer receivership laws, and these laws must be construed as consistent with each other. If there is a conflict between this chapter and any other law, this chapter prevails.

Section 3. Subsections (3) and (4) are added to section 631.031, Florida Statutes, to read:

631.031 Initiation and commencement of delinquency

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proceeding.-

(3) An insurer subject to an order to show cause entered pursuant to this chapter must file its written response to the order, together with any defenses it may have to the department's allegations, no later than 20 days after service of the order to show cause, but no less than 15 days before the date of the hearing set by the order to show cause.

(4) A hearing held pursuant to this chapter to determine whether cause exists for the department to be appointed receiver must be commenced within 60 days after an order directing an insurer to show cause.

Section 4. Subsection (1) of section 631.041, Florida Statutes, is amended to read:

631.041 Automatic stay; relief from stay; injunctions.-

(1) An application or petition under s. 631.031 operates as a matter of law as an automatic stay applicable to all persons and entities, other than the receiver and the office, which shall be permanent and survive the entry of an order of conservation, rehabilitation, or liquidation, and which shall prohibit:

(a) The commencement or continuation of judicial, administrative, or other action or proceeding against the insurer or against its assets or any part thereof;

(b) The enforcement of a judgment against the insurer or an affiliate obtained either before or after the commencement of the delinquency proceeding;

(c) Any act to obtain possession of property of the insurer;

(d) Any act to create, perfect, or enforce a lien against

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property of the insurer, except that a secured claim as defined in s. 631.011(21) may proceed under s. 631.191 after the order of liquidation is entered;

(e) Any act to collect, assess, or recover a claim against the insurer, except claims as provided for under this chapter; and

(f) The setoff or offset of any debt owing to the insurer, except offsets as provided in s. 631.281.

Section 5. Present subsections (3) through (5) and (6) through (10) of section 631.141, Florida Statutes, are redesignated as subsections (4) through (6) and (8) through (12), respectively, new subsections (3) and (7) are added to that section, and present subsection (8) is amended, to read:

631.141 Conduct of delinquency proceeding; domestic and alien insurers.-

(3) The receiver may assume or reject any executory contract or unexpired lease of the insurer.

(7) The department as domiciliary receiver may pay any expenses under contracts, leases, employment agreements, or other arrangements entered into by the insurer before receivership as the department deems necessary for the purposes of this chapter. The department is not required to pay any such expenses that it determines are not necessary and may reject any contract pursuant to subsection (3).

(10)-(8) The department as domiciliary receiver may take such action as it deems necessary or appropriate to reform and revitalize the insurer. The department shall have all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the receiver.

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The receiver shall have full power to direct and manage the affairs of the insurer, to hire and discharge employees, and to deal with the property and business of the insurer. In the event of the liquidation of an insurer domiciled in this state, and notwithstanding any provision of chapter 605, chapter 607, chapter 617, chapter 620, or chapter 621, all officers, directors, and managers of the insurer are permanently discharged and have no further authority of any kind over the affairs or assets of the insurer, except as may be redelegated by the department.

Section 6. Subsection (4) of section 631.152, Florida Statutes, is amended to read:

631.152 Conduct of delinquency proceeding; foreign insurers.—

(4) Paragraph 631.141(9)(b) ~~Section 631.141(7)(b)~~ applies to ancillary delinquency proceedings opened for the purpose of obtaining records necessary to adjudicate the covered claims of Florida policyholders.

Section 7. Section 631.1521, Florida Statutes, is created to read:

631.1521 Actions by and against the receiver.—

(1) An allegation by the receiver of improper or fraudulent conduct against any person may not be the basis of a defense by a third party to the enforcement of a contractual obligation owed to the insurer. This section does not bar a third party from the right to raise a defense that the conduct was materially and substantially related to the contractual obligation for which enforcement is sought.

(2) A prior wrongful or negligent action of any present or

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former officer, manager, director, trustee, owner, employee, or agent of the insurer may not be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise. However, the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract; and a principal under a surety bond or a surety undertaking is entitled to credit for the value of any property pledged to secure the reimbursement obligation against any reimbursement obligation to the receiver, to the extent that the receiver has possession or control of the property, or that the insurer or its agents misappropriated such property, which includes, but is not limited to, the comingling of such property. Evidence of fraud in the inducement is admissible only if it is contained in the records of the insurer.

(3) An action or inaction by an insurance regulatory authority may not be asserted as a defense to a claim by the department.

Section 8. Section 631.1522, Florida Statutes, is created to read:

631.1522 Unrecorded obligations and defenses and claims of affiliates.—

(1) In any proceeding or claim by the receiver, an affiliate, a controlled or controlling person, or a present or former officer, manager, director, trustee, or shareholder of the insurer may not assert any defense unless:

(a) Evidence of the defense was recorded in the books and records of the insurer at or about the time the events giving

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rise to the defense occurred; and

(b) If required by statutory accounting practices and procedures, such events were timely reported on the insurer's official financial statements filed with the office.

(2) An affiliate, a controlled or controlling person, or a present or former officer, manager, director, trustee, or shareholder of the insurer may not assert any claim unless:

(a) The obligations were recorded in the books and records of the insurer at or about the time the obligations were incurred; and

(b) If required by statutory accounting practices and procedures, the obligations were timely reported on the insurer's official financial statements filed with the office.

(3) This section does not bar claims based on unrecorded or unreported transactions by the receiver against any affiliate, controlled or controlling person, or present or former officer, manager, director, trustee, or shareholder of the insurer.

Section 9. Paragraph (g) of subsection (2) and subsections (4) and (5) are added to section 631.181, Florida Statutes, to read:

631.181 Filing and proof of claim.—

(2)

(g) Upon application of the receiver:

1. The receivership court may allow alternative procedures and requirements for the filing of proofs of claim or for allowing or proving claims.

2. If the receivership court waives the requirements of filing a proof of claim for a person, class, or group of persons, a timely proof of claim by such person, class, or group

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is deemed to be filed for all purposes. However, the receivership court may not waive guaranty association or coverage determination proof of claim filing requirements, to the extent that the guaranty fund statute or filing requirements are inconsistent with the receivership court's waiver of proof.

(4) The receiver may petition the receivership court to set a date certain before which all contingent or unliquidated claims are final. In addition to the notice requirements in this section, the receiver shall give notice of filing the petition to all claimants with claims that remain contingent or unliquidated under this section.

(5) Notwithstanding any other provision of this chapter, the receiver may petition the receivership court to set a date certain after which no further claims may be filed.

Section 10. Section 631.191, Florida Statutes, is amended to read:

631.191 Special deposit claims; ~~and~~ secured claims; administration of workers' compensation large deductible policies and insured collateral.—

(1) SPECIAL DEPOSIT CLAIMS.—The owners of special deposit claims against an insurer against which a liquidation order has been entered in this or any other state shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that the claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who

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have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(2) SECURED CLAIMS.—

(a) The owner of a secured claim against an insurer against which a liquidation order has been entered in this or any other state may surrender her or his security and file her or his claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this chapter, or if it has been adjudicated by a court of competent jurisdiction in a proceeding in which the domiciliary receiver has had notice and an opportunity to be heard, such amount shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state.

(b) The value of any security held by a secured creditor shall be determined under supervision of the court by:

1. Converting the same into money according to the terms of the agreement pursuant to which the security was delivered to such creditor; or

2. If no such agreement exists, the court shall determine the value in the event the creditor and the receiver cannot agree upon same.

(3) ADMINISTRATION OF WORKERS' COMPENSATION LARGE DEDUCTIBLE POLICIES AND INSURED COLLATERAL.—

(a) Definitions.—As used in this subsection, the term:

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1. "Collateral" means cash, a letter of credit, a surety bond, or any other form of security posted by the insured, or by a captive insurer or reinsurer, to secure the insured's obligation under a large deductible policy to pay deductible claims or to reimburse the insurer for deductible claim payments. "Collateral" may also secure an insured's obligation to reimburse or pay the insurer as may be required for other secured obligations.

2. "Deductible claim" means any claim that is within the deductible under a large deductible policy, including a claim for loss and defense and cost containment expense, unless such expense is excluded by the terms of the policy.

3.a. "Large deductible policy" means a combination of one or more workers' compensation policies and endorsements issued to an insured, and contracts or security agreements entered into between an insured and the insurer, in which the insured has agreed with the insurer to:

(I) Pay directly the initial portion of any claim under the policy up to a specified dollar amount or the expenses related to any claim; or

(II) Reimburse the insurer for its payment of any claim or related expenses under the policy up to the specified dollar amount of the deductible.

b. The term also includes policies that contain an aggregate limit on the insured's liability for all deductible claims in addition to a per-claim deductible limit. A policy must meet the current guidelines for large deductible workers' compensation filings as defined by the office, including the eligibility standards regarding the minimum standard premium and

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the minimum deductible to be deemed a large deductible policy.

c. The term does not include policies, endorsements, or agreements providing that the initial portion of any covered claim must be self-insured and that the insurer has no payment obligation within the self-insured retention.

d. The term does not include policies that provide for retrospectively rated premium payments by the insured or reinsurance arrangements or agreements, except to the extent such arrangements or agreements assume, secure, or pay the policyholder's large deductible obligations.

4. "Other secured obligations" means obligations of an insured to an insurer other than those under a large deductible policy, such as those under a reinsurance agreement or other agreement involving retrospective premium obligations, the performance of which is secured by collateral that also secures an insured's obligations under a large deductible policy.

(b) Applicability.—

1. This subsection applies to workers' compensation large deductible policies issued by an insurer that is subject to delinquency proceedings under this chapter. This subsection does not apply to first-party claims, or to covered claims funded by a guaranty association above the deductible unless paragraph (c) applies. Large deductible policies must be administered in accordance with the terms of the policy, except to the extent such terms conflict with this subsection.

2. This subsection applies to all delinquency proceedings that commence on or after July 1, 2017.

(c) Handling of large deductible claims.—Unless otherwise agreed to by the responsible guaranty association, all large

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deductible claims that are also covered claims as defined by an applicable guaranty association law, including those that may have been funded by an insured before liquidation, must be turned over to the guaranty association for handling. To the extent the insured funds or pays the deductible claim pursuant to an agreement by the guaranty fund or otherwise, the insured's funding or payment of a deductible claim extinguishes the obligations, if any, of the receiver and any guaranty association to pay such claim. A charge may not be made against the receiver or a guaranty association on the basis of an insured's funding or payment of a deductible claim.

(d) Deductible claims paid by a guaranty association.—

1. To the extent a guaranty association pays any deductible claim for which an insurer would have been entitled to reimbursement from an insured, a guaranty association is entitled to the amount of reimbursements received or collateral available, subject to paragraph (g). Reimbursements paid to the guaranty association pursuant to this paragraph may not be treated as distributions under s. 631.271 or as early access payments under s. 631.397(1).

2. To the extent that a guaranty association pays a deductible claim that is not reimbursed from collateral or by insured payments, or the guaranty association incurred expenses in connection with large deductible policies that are not reimbursed under this subsection, the guaranty association is entitled to assert a claim for those amounts in the delinquency proceeding.

3. This paragraph does not limit any right of the receiver or a guaranty association which may otherwise exist under

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applicable law to obtain reimbursement from insureds for claims payments made by the guaranty association under policies of the insurer or for the guaranty association's related expenses.

(e) Collections.—

1. The receiver may collect reimbursements owed for deductible claims as provided in this paragraph, and must use reasonable efforts to collect such reimbursements from the insured or the party that is obligated to pay the deductible as specified in the large deductible policy or other agreement. The receiver may bill insureds and others for reimbursement of deductible claims that are:

a. Paid by the insurer before the commencement of delinquency proceedings;

b. Paid by a guaranty association upon receipt by the receiver of notice from a guaranty association of reimbursable payments; or

c. Paid or allowed by the receiver.

2. If the insured or other party does not make payment within the time specified in the large deductible policy, or, if no time is specified, within a reasonable time after the date of billing, the receiver must take reasonable steps to collect any reimbursements owed.

3. The insolvency of the insurer or its inability to perform any of its obligations under the large deductible policy may not be a defense to the insured's reimbursement obligation under the large deductible policy.

4. An allegation of improper handling or payment of a deductible claim by the insurer, the receiver, or a guaranty association may not be a defense to the insured's reimbursement

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obligations under the large deductible policy.

(f) Collateral.—

1. Subject to this paragraph, the receiver shall use collateral, when available, to secure the insured's obligation to fund or reimburse deductible claims or other secured obligations or payment obligations. A guaranty association is entitled to collateral as provided for in this paragraph to the extent needed to reimburse a guaranty association for the payment of a deductible claim. Any distributions made to a guaranty association pursuant to this paragraph may not be treated as distributions under s. 631.271 or as early access payments under s. 631.397(1).

2. The receiver shall draw down collateral to the extent necessary in the event the insured fails to:

a. Perform its funding or payment obligations under any large deductible policy;

b. Pay deductible claim reimbursements within the time specified in the large deductible policy, or, if no time is specified, within 60 days after the date of the billing;

c. Pay amounts due to the estate for preliquidation obligations;

d. Timely fund any other secured obligation; or

e. Timely pay expenses.

3. Claims that are validly asserted against the collateral must be satisfied in the order in which such claims are received by the receiver. However, if more than one creditor has a valid claim against the same collateral and the available collateral, along with billing collection efforts and to the extent that the collateral is subject to other known secured obligations, are

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523 together insufficient to pay each creditor in full, the receiver
 524 must prorate payments to each creditor based upon the
 525 relationship the amount of claims each creditor has paid bears
 526 to the total of all claims paid by all such creditors.

527 4. Excess collateral may be returned to the insured, as
 528 determined by the receiver, after a periodic review of claims
 529 paid, outstanding case reserves, and a factor for claims that
 530 were incurred but not reported.

531 (g) Receiver's expenses.—The receiver is entitled to deduct
 532 from the collateral or from the deductible reimbursements
 533 reasonable and actual expenses incurred in connection with the
 534 collection of the collateral and deductible reimbursements as
 535 provided pursuant to s. 631.271.

536 (h) Construction.—This subsection does not limit or
 537 adversely affect any rights or powers a guaranty association may
 538 have under applicable state law to obtain reimbursement from
 539 certain classes of policyholders for claims payments made by the
 540 guaranty association under policies of the insolvent insurer, or
 541 for related expenses the guaranty association incurs.

542 Section 11. Subsection (5) is added to section 631.192,
 543 Florida Statutes, to read:

544 631.192 Allowance of certain claims.—

545 (5) A claim may not be allowed for postjudgment interest
 546 accrued after the date of liquidation.

547 Section 12. Paragraphs (a), (b), and (j) of subsection (1)
 548 of section 631.271, Florida Statutes, are amended to read:

549 631.271 Priority of claims.—

550 (1) The priority of distribution of claims from the
 551 insurer's estate shall be in accordance with the order in which

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552 each class of claims is set forth in this subsection. Every
 553 claim in each class shall be paid in full or adequate funds
 554 shall be retained for such payment before the members of the
 555 next class may receive any payment. No subclasses may be
 556 established within any class. The order of distribution of
 557 claims shall be:

558 (a) Class 1.—

559 1. All of the receiver's costs and expenses of
 560 administration.

561 2. All of the expenses of a guaranty association or foreign
 562 guaranty association in handling claims.

563 3. All of the deputy supervisor's costs and expenses of
 564 administration incurred as a result of administrative
 565 supervision under part VI of chapter 624.

566 (b) Class 2.—All claims under policies for losses incurred,
 567 including third-party claims, all claims against the insurer for
 568 liability for bodily injury or for injury to or destruction of
 569 tangible property which claims are not under policies, ~~and~~ all
 570 claims of a guaranty association or foreign guaranty
 571 association, and all claims related to a patient's healthcare
 572 coverage by physicians, hospitals, and other providers of a
 573 health insurer or health maintenance organization. All claims
 574 under life insurance and annuity policies, whether for death
 575 proceeds, annuity proceeds, or investment values, shall be
 576 treated as loss claims. That portion of any loss,
 577 indemnification for which is provided by other benefits or
 578 advantages recovered by the claimant, may not be included in
 579 this class, other than benefits or advantages recovered or
 580 recoverable in discharge of familial obligations of support or

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by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to her or his employee may be treated as a gratuity.

(j) Class 10.—Interest on allowed claims of Classes 1 through 9. The rate of interest payable on an allowed claim must accrue from the date of liquidation until such time as the receivership court approves the distribution. The interest rate must be calculated in accordance with s. 55.03, ~~according to the terms of a plan to pay interest on allowed claims proposed by the liquidator and approved by the receivership court.~~

Section 13. Section 631.391, Florida Statutes, is amended to read:

631.391 Cooperation of officers and employees.—

(1) Any present or former officer, director, manager, trustee, agent, adjuster, employee, or independent contractor of any insurer or affiliate and any other person who possesses any executive authority over, or who exercises any control over, any segment of the affairs of the insurer or affiliate shall fully cooperate with the department and office in any proceeding under this chapter or any investigation preliminary or incidental to the proceeding. An order of rehabilitation or liquidation which results in the discharge or suspension of any of the persons listed above does not operate to release such person from the duty to cooperate with the department and office as set out herein. As used in this section, the term "person" includes any person who directly or indirectly exercises control over activities of the insurer through any holding company or other affiliate of the insurer. The term ~~To~~ "cooperate" includes, but is not limited to, the following:

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(a) To reply promptly in writing to any inquiry from the department or office requesting such a reply;

(b) Promptly to make available and deliver to the department or office any books, accounts, documents, other records, information, data processing software, or property of or pertaining to the insurer and in her or his possession, custody, or control; or

(c) Promptly to provide access to all data processing records in hard copy and in electronic form and to data processing facilities and services.

(2) No person shall obstruct or interfere with the department or office in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto.

(3) This section does not prohibit any person from seeking legal relief from a court when aggrieved by the petition for liquidation or other delinquency proceeding or by other orders.

(4) Any person referred to in subsection (1) who fails to cooperate with the department or office, or any other person who obstructs or interferes with the department or office, in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or by fine of not more than \$10,000.

(5) Refusal by any person referred to in subsection (1) to provide records upon the request of the department or office is grounds for revocation of any insurance-related license, including, but not limited to, agent and third-party administrator licenses.

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(6) Any person referred to in subsection (1) who refuses to cooperate in providing records upon the request of the department or office is liable for any penalties, fines, or other costs assessed against the guaranty association or the receiver that result from the refusal or delay to provide records.

Section 14. Section 631.395, Florida Statutes, is amended to read:

631.395 Guaranty fund; orders of court.—Any order of liquidation issued pursuant to s. 631.111 or s. 631.131 must ~~shall~~ authorize and direct the department as receiver to coordinate the operation of the receivership with the operation of any insurance guaranty fund authorized to operate in this state and may authorize the department to provide data processing services for any appropriate guaranty fund. Such authorization must ~~shall~~ include, but not be limited to, release of copies of any of the following:

(1) Claims files, records, or documents pertaining to claims on file with the insolvent insurer; and

(2) Insurance claims filed with the receiver.

Section 15. Subsections (1), (4), and (5) of section 631.397, Florida Statutes, are amended to read:

631.397 Use of certain marshaled assets.—

(1) ~~Within 120 days of a final determination of insolvency of an insurer by a court of competent jurisdiction of this state,~~ The department, as receiver, may ~~shall~~ apply to the court for approval of a proposal to disburse assets out of such insurer's marshaled assets, as such assets become available, to each association entitled thereto or, if there are no assets

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available for such disbursement, then for approval of such proposal as the receiver deems appropriate. For the purposes of this section, the term "association" includes the Florida Insurance Guaranty Association, Incorporated, the Florida Workers' Compensation Insurance Guaranty Association, and any entity or person performing a function in another state similar to that performed in this state by the Florida Insurance Guaranty Association, Incorporated, or the Florida Workers' Compensation Insurance Guaranty Association, provided the Florida Insurance Guaranty Association, Incorporated, or the Florida Workers' Compensation Insurance Guaranty Association, is entitled to like payment under the laws of the association's state of domicile in respect to insolvent companies doing business in that state.

~~(4) Notice of such application shall be given by the department to the associations in, and to the commissioners of insurance of, each of the states to which disbursement may be made. Such notice shall be made by certified mail, first-class postage prepaid, at least 15 days prior to submission of such application to the court. Such notice shall be deemed to have been made when deposited in the mail.~~

~~(5) Action on the application may be taken by the court if notice has been given pursuant to subsection (4) and the department's proposal complies with subsection (2).~~

Section 16. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 13, 2017

I respectfully request that **Senate Bill #730**, relating to Insurer Insolvency, be placed on the:

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

A handwritten signature in black ink, appearing to read "K. Passidomo", followed by a horizontal line.

Senator Kathleen Passidomo
Florida Senate, District 28

THE FLORIDA SENATE

APPEARANCE RECORD

4-19-17

Meeting Date

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

730

Bill Number (if applicable)

Topic Insurer Insolvency

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Legislative Affairs Director - DFS

Address 200 E. Gaines St.

Phone 413-2863

Street

Tallahassee, FL

City

State

32399

Zip

Email elizabeth.boyd@myfloridacfo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Dept. of Financial Services

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 788

INTRODUCER: Appropriations Committee; Criminal Justice Committee; and Senator Clemens

SUBJECT: Marketing Practices for Substance Abuse Services

DATE: April 20, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Cellon</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2. <u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	<u>Favorable</u>
3. <u>McAuliffe</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>
4. <u>Cellon</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 788 takes a comprehensive approach to the problem of fraudulent patient brokering and deceptive marketing practices in the business of substance use addiction services, particularly related to the economic relationship between service providers and “recovery residences.”

The bill creates new and amends existing criminal offenses (prohibited acts) related to patient brokering and marketing practices that create or increase fines and potential prison sentences. These offenses are added to the Criminal Punishment Code ranking chart for purposes of assigning sentencing points.

The bill provides assistance to law enforcement and prosecutors by:

- Extending the jurisdiction of the Office of the Statewide Prosecutor to investigate and prosecute patient brokering offenses;
- Adding patient brokering to the list of predicate offenses that may be prosecuted as RICO offenses which could result in higher penalties; and
- Adopting federal law with regard to the timing of law enforcement giving notice to a patient regarding obtaining the patient’s records pursuant to a court order.

Additionally, the bill requires substance abuse treatment service provider personnel who provide direct clinical treatment services to be certified through a Department of Children and Families-recognized certification process.

The Criminal Justice Impact Conference met on March 29, 2017, and determined the bill will increase the state prison population by an insignificant amount. According to the Department of Legal Affairs, the bill will increase the workload of the Office of the Statewide Prosecutor, requiring two new full-time equivalent positions and \$194,120. The bill provides an appropriation for these positions. See Section V. C. below.

The bill becomes effective on July 1, 2017.

II. Present Situation:

There has been an alarming increase of deaths from drug overdoses around the country and Florida has not escaped the trend. Total drug-related deaths increased by 13.9 percent in Florida (1,197 more) in 2015 when compared with 2014.¹ Heroin accounted for 733 deaths in Florida and increased by 79.7 percent between 2014 and 2015.²

The number of deadly heroin overdoses more than quadrupled in the United States from 2010 to 2015, as the price of heroin fell and its potency increased.³ In 2015, there were 12,989 deaths involving heroin across the country compared with 3,036 deaths in 2010.⁴ There was a 346 percent increase in admissions nationally for opioid treatment from 2001 to 2011.⁵

In 2012, the rate of substance abuse or dependence among eighteen to twenty-five year olds was twice that of adults twenty-six and older.⁶ Florida is a destination for many young substance use addicts from all over the country who are seeking addiction treatment and recovery services.⁷

The typical model for substance addiction treatment and recovery consists of two basic stages. The length of time a patient spends in each stage varies, depending on the patient's needs and the protocol that will help the patient achieve a healthy outcome. The two stages are:

- Detoxification and services including in-patient treatment, if necessary; and

¹ Florida Department of Law Enforcement, Medical Examiners Commission, *2015 Annual Medical Examiners Commission Drug Report*, page ii, September 2016.

² *2015 Annual Medical Examiners Commission Drug Report*, at pages ii and 41.

³ David Beasley, *Deadly U.S. Heroin Overdoses Quadrupled in Five Years*, Reuters, February 24, 2017, available at <http://www.reuters.com/article/us-usa-heroin-idUSKBN1630EO> (last visited March 2, 2017).

⁴ *Id.*

⁵ Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality (2013); Treatment Episode Data Set (TEDS): 2001-2011.

⁶ Substance Abuse and Mental Health Services Administration (2013); Results from the 2012 National Survey on Drug Use and Health: Summary of National Findings (HHS Publication No. SMA 13-4795, NSDUH Series H-46).

⁷ 15th Judicial Circuit, Presentment of the Palm Beach County, Florida, Grand Jury, Fall Term, 2016; *Report on the Proliferation of Fraud and Abuse in Florida's Addiction Treatment Industry*, December 8, 2016, at page 5 (hereinafter referred to as the "Grand Jury Report"), citing Optum White Paper, *Young Adults and the Behavioral Health System*, 2014, page 4; and Palm Beach County Sober Homes Task Force Report, *Identification of Problems in the Substance Abuse Treatment and Recovery Residence Industries with Recommended Changes to Existing Laws and Regulations*, January 1, 2017, at page 1 (hereinafter referred to as the "Task Force Report"); these materials are available at <http://www.sa15.state.fl.us/stateattorney/SoberHomes/indexSH.htm> (last visited March 2, 2017).

- Out-patient treatment coupled with a therapeutic residential recovery home or “sober home” environment.

A private industry has grown throughout the state to fill a void in programming, namely “recovery residences.”⁸ This component of treatment services is not currently state-licensed or regulated.⁹ Unfortunately, fraudulent activity in the recovery residence industry has become obvious to local communities, law enforcement, and prosecutors.¹⁰

In 2016, the State Attorney from the 15th Judicial Circuit was given the following task by the Legislature in the General Appropriations Act:

Conduct a study aimed to strengthen investigation and prosecution of criminal and regulatory violations within the substance abuse treatment industry. The state attorney shall coordinate with local and state law enforcement and regulatory agencies, the Department of Children and Families, the Florida Alcohol & Drug Abuse Association, and certifying entities of recovery residences and recovery residence administrators to identify statutory clarifications and enhancements to existing law to ensure that communities remain safe and individuals with substance use disorders are protected. The state attorney shall submit the study to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2017.¹¹

The State Attorney’s assignment resulted in the creation of a Sober Homes Task Force (Task Force), and the convening of the Grand Jury. Both the Task Force and the Grand Jury issued reports making many of the same findings and suggesting similar solutions to the problems related to fraud in the substance use addiction treatment and recovery industry in Florida.¹²

Among the findings made by the Task Force and Grand Jury:

- Persons seeking substance use treatment and, often, their families are particularly vulnerable to predatory marketing practices.¹³

⁸ Task Force Report, at page 6. “Recovery residence” is defined in s. 397.311(36), F.S., as “a residential dwelling unit, or other form of group housing, that is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment.”

⁹ Sections 397.487 and 397.4871, F.S., provide for a voluntary certification program for recovery residences and recovery residence administrators offered through a “credentialing entity” approved by the Department of Children and Families, Office of Substance Abuse and Mental Health. See office website, available at <http://www.myflfamilies.com/service-programs/substance-abuse/recovery-residence> (last visited March 2, 2017). The current credentialing entity for recovery residences is the Florida Association of Recovery Residences, which reported the existence of 257 recovery residences in Florida as of March 1, 2017. See <http://farronline.org/>.

¹⁰ Grand Jury Report, at page 5; and Task Force Report, at pages 1 and 3. See also a recent press release from the U.S. Attorney’s Office in the Southern District of Florida, *Six Defendants Charged in Health Care Fraud Scheme Involving Sober Homes and Alcohol and Drug Addiction Treatment Centers*, December 21, 2016, available at <https://www.justice.gov/usao-sdfl/pr/six-defendants-charged-health-care-fraud-scheme-involving-sober-homes-and-alcohol-and> (last visited March 2, 2017).

¹¹ See Specific Appropriation 884 (proviso), ch. 2016-66, L.O.F.

¹² See footnote 7.

¹³ “Some marketers create an online presence whereby potential patients and their families are willfully mislead and misdirected by unqualified individuals who offer diagnoses and placement recommendations. Often the result of these ‘lead

- Patients engaged in out-patient treatment typically need housing while in a treatment program and if the patient is far from home, unemployed, and unable to pay for basic needs, the patient may fall prey to patient brokering schemes.¹⁴
- Strengthening and modifying existing statutes, including patient brokering as a predicate RICO offense, creating new laws related to marketing practices, and amending existing law related to patient records, would be of benefit to state law enforcement and state attorneys as they investigate and prosecute these criminal enterprises.¹⁵

III. Effect of Proposed Changes:

The bill addresses two components of addiction treatment and recovery fraud, law enforcement and prosecution challenges surrounding those two types of fraud, and the certification of certain substance abuse treatment services provider personnel.

Marketing Practices

Although service providers are licensed through the Department of Children and Families (DCF), currently there is no real regulation or oversight of the marketing practices of service providers or of unlicensed recovery residences.¹⁶

Section 5 creates s. 397.488, F.S., to prohibit service providers, operators of recovery residences, or third parties that provide any form of advertising or marketing services to either of those entities, from engaging in deceptive, false, or misleading marketing practices. These entities cannot:

- Make or provide false or misleading statements or information about their business in marketing, advertising, media, or on their websites.
- Include on their websites false information, links, or coding or activation that provides false information or redirects to another website.

generators' is a referral to a provider in Florida." Task Force Report, page 4; "But when the person calls the number listed, the marketer silently routes the call to one of five different customers of the marketer. Some of those customers are simply other call centers or referral services. Others might be good or bad treatment centers in Florida that have paid the marketer for the referral. One of the problems with this practice is the monetary conflict of interest created once a 'lead' is already paid for. For example, when a treatment center pays \$1,000 for a lead, they are compelled to convince that caller to go to *their* treatment center, regardless of what the caller says or whether that particular treatment is in the caller's best interest. The level of care recommended will also be influenced by this monetary incentive. A person calling about outpatient treatment may be urged to get more intensive (and expensive) treatment under this scenario. The Grand Jury finds that deceptive marketing practices like these are detrimental to a patient's chances of receiving quality care and the appropriate level of care." Grand Jury Report, at pages 13-16.

¹⁴ "A common practice within the industry in Florida is for the treatment provider to pay a weekly fee or kickback to the recovery residence, with the understanding that the recovery residence will allow the patient to live at the residence for free or at a greatly reduced rent while attending the provider's outpatient treatment program. This practice was developed, in part, to ensure that out-of-state patients have a local place to live after they step down from inpatient to outpatient treatment. Most out-of-state patients who are attending intensive outpatient treatment are not locally employed, and while some are able to pay rent, many do not have the means. Without a local, stable address, it would be difficult, if not impossible, for a provider to treat the patient. This creates economic pressure for the provider to find a way to house the patient locally. Brokering, by providing kickbacks to the recovery residence in exchange for the delivery of a patient, is commonplace. Some treatment providers and recovery residences offer incentives such as gym memberships, scooters, weekly massages, chiropractic services, cigarettes, clothes, gift cards and more." Task Force Report, at pages 9-10. See Grand Jury Report, at pages 17-18.

¹⁵ Grand Jury Report, at pages 27-30.

¹⁶ Sections 397.401 and 397.487, F.S.

The entities also cannot enter into a contract with a marketing provider who agrees to generate referrals or leads for patient placement through a call center or website. However, the entity can enter into such a contract if the entity discloses certain information to a prospective patient.

This section also prohibits the entities from soliciting or receiving a commission, benefit, bonus, rebate, kickback, or bribe in exchange for a patient referral or acceptance or acknowledgement of treatment. A violation of this provision is punishable as a felony patient brokering offense under s. 817.505, F.S. All other violations created in this section are punishable as first degree misdemeanors.¹⁷

Section 6 creates s. 817.0345, F.S., to make it unlawful for a person to knowingly and willfully make a materially false or misleading statement with the intent to induce another to seek treatment with a particular service provider. A violation of this section is punishable as a felony of the third degree.¹⁸

Patient Brokering

Section 817.505, F.S., is the current law that prohibits patient brokering. Substance abuse service providers, which includes out-patient treatment service providers licensed by the Department of Children and Families under ch. 397, F.S.,¹⁹ are prohibited from engaging in patient brokering. It is unlawful to:²⁰

- Offer or pay any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of patients or patronage to or from a health care provider or health care facility;
- Solicit or receive any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring patients or patronage to or from a health care provider or health care facility;
- Solicit or receive any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgment of treatment from a health care provider or health care facility; or
- Aid, abet, advise, or otherwise participate in the conduct prohibited under any of the above.²¹

Section 7 amends s. 817.505(1), F.S., to add the term “benefit” to the list of things a person, health care provider, or health care facility may not offer, pay, solicit, or receive:

- To induce the referral of a patient or patronage to or from a health care provider or facility;
- In return for a referral of a patient or patronage to or from a health care provider or facility; or
- In return for the acceptance or acknowledgment of treatment.

¹⁷ Pursuant to the bill, the punishment is up to a \$1,000 fine or court ordered restitution. Sections 775.083 and 775.089, F.S.

¹⁸ A third degree felony is punishable by a fine of up to \$5,000, a term of imprisonment up to 5 years, or both; a habitual offender may be sentenced to a term of imprisonment of up to 10 years. Sections 775.082, 775.083, and 775.084, F.S.

¹⁹ Substance abuse service providers are included under the term “health care provider or health care facility” in s. 817.505(2)(a), F.S.

²⁰ Section 817.505(4), F.S., sets forth third degree felony penalties for patient brokering offenses.

²¹ Section 817.505(1), F.S.

Section 7 also creates the following graduated monetary penalties and new second and first degree felony offenses for violations of s. 817.505, F.S., based upon the number of patients involved in the violation:

- If fewer than 10 patients are involved, the third degree felony²² penalties apply and a new \$50,000 fine is created by the bill;
- If 10-19 patients are involved, a new second degree felony²³ and a \$100,000 fine is created; and
- If 20 or more patients are involved, a new first degree felony²⁴ and a \$500,000 fine is created by the bill.

Section 9 amends the Criminal Punishment Code to rank the above-referenced offenses as a Level 4, Level 6, and Level 8, respectively, for the purpose of assigning sentencing points.²⁵

Section 3 amends s. 397.407(11), F.S., to address the economic relationship between licensed service providers and recovery residences.²⁶

This section prohibits a service provider from referring a prospective patient to, or accepting a referral from, a recovery residence that is not in compliance with the voluntary certification program set forth in ss. 397.487 and 397.4871, F.S.²⁷

Section 8 amends s. 895.02, F.S., to add “patient brokering” to the list of crimes in the RICO statute.²⁸

Related Law Enforcement and Prosecution Challenges

Patient Records

Section 397.501(7), F.S., protects a substance abuse patient’s right to confidentiality of his or her records. The records of service providers pertaining to the identity, diagnosis, prognosis, and service provision are confidential and exempt from public records disclosure requirements.²⁹

²² Under the bill, the third degree felony is punishable by a fine of \$50,000 and a term of imprisonment up to 5 years; a habitual offender may be sentenced to a term of imprisonment of up to 10 years. Sections 775.082 and 775.084, F.S.

²³ Under the bill, the second degree felony is punishable by a fine of \$100,000 and a term of imprisonment up to 15 years; a habitual offender may be sentenced to a term of imprisonment of up to 30 years. Sections 775.082 and 775.084, F.S.

²⁴ Under the bill, the first degree felony is punishable by a fine of \$500,000 and a term of imprisonment up to 30 years; a habitual offender may be sentenced to a term of imprisonment for life. Sections 775.082 and 775.084, F.S.

²⁵ Assuming the defendant is before the court to be sentenced on one offense and assuming the defendant has no criminal history, the lowest permissible sentence for a Level 4 crime is probation or community control; for a Level 6 crime is probation or community control; and for a Level 8 crime is 34.5 months in prison. (Sentencing scoresheets computed by Criminal Justice Committee staff based upon s. 921.0024, F.S.).

²⁶ According to the Grand Jury Report, there is a “strong economic motive to promote a cycle of unnecessary treatment and/or relapse.” The Grand Jury heard testimony from “countless patients who have fallen prey to this cycle of dependence and its devastating impacts on recovery. It is not uncommon for a person to be in this cycle of treatment/relapse for years.” Grand Jury Report, at page 20.

²⁷ See footnote 9.

²⁸ Sections 895.01-895.06, F.S., make up the Racketeer Influenced and Corrupt Organization (RICO) Act. Prosecution under the RICO Act may result in higher criminal penalties.

²⁹ Section 119.07(1) and s. 24(a), Art. 1 of the State Constitution.

Section 397.501(7)(a)5., F.S., provides for “appropriate” disclosure without a patient’s consent “[u]pon court order based on application showing good cause for disclosure. In determining whether there is good cause for disclosure, the court shall examine whether the public interest and the need for disclosure outweigh the potential injury to the individual, to the service provider and the individual, and to the service provider itself.”

Section 397.501(7)(h), F.S., requires that “[t]he individual and the person holding the records from whom disclosure is sought must be given adequate notice in a manner which will not disclose identifying information to other persons, and an opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order.”

It is the requirement of “adequate notice...and an opportunity to file a written response to the application” for the court order that has proven somewhat problematic for law enforcement investigators.³⁰

Section 4 creates s. 397.501(7)(h)2., F.S., to adopt the federal standard for patient notice.³¹ Federal case law interpreting the federal code reinforces the plain-reading of the code, that notice can be delayed until the order has been “implemented.”³²

Office of the Statewide Prosecutor

Section 1 amends s. 16.56, F.S., to expand the jurisdiction of the Statewide Prosecutor to extend to the investigation and prosecution of patient brokering. This should aid local law enforcement and prosecutors because the Statewide Prosecutor has the ability to seamlessly move from one local jurisdiction to another in a large-scale, jurisdiction-crossing investigation.

Substance Abuse Service Provider Personnel

As provided in ch. 397, F.S., the substance abuse services chapter, “service provider personnel” or “personnel” includes all owners, directors, chief financial officers, staff, and volunteers, including foster parents, of a service provider.³³

Section 397.321(13), F.S., currently requires the DCF to ensure that service provider personnel have background checks as required in ch. 397, F.S., and meet the minimum standards.

Section 397.451, F.S., lists the persons who must have a background check, including:

- All owners, directors, and chief financial officers of service providers; and
- All service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services.

³⁰ Grand Jury Report, at pages 31-32.

³¹ 42 C.F.R. 2.66 provides that “upon implementation” of the court order, the patient and other parties must be given an opportunity to seek revocation or amendment of the order “limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the court order.”

³² *U.S. v. Shinderman*, 515 F.3d 5 (1st Cir., 2008).

³³ Section 397.311(43), F.S.

However, service providers that are exempt from licensing provisions of ch. 397, F.S., are exempt from personnel fingerprinting and background check requirements, except as otherwise provided in s. 397.451, F.S.

Section 2 amends s. 397.321, F.S., to require the DCF to ensure that substance abuse service provider personnel who provide direct clinical treatment services are certified through a DCF-recognized certification process. Licensed physicians, physician assistants, advanced registered nurse practitioners, psychologists, mental health counselors, and others are exempted from this requirement.

Section 10 appropriates \$194,120 in recurring funds from the Operating Trust Fund in the Department of Legal Affairs, for two assistant statewide prosecutors to assist in the prosecution of fraudulent patient brokering.

The bill becomes effective on 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:

None.

C. Government Sector Impact:

CS/CS/SB 788 creates new felony offenses and increases potential prison sentences within existing offenses. The Criminal Justice Impact Conference met on March 29, 2017 and determined the bill will increase the state prison population by an insignificant amount.

The Office of the Statewide Prosecutor indicates that the bill could increase the workload for the office and would result in the need for two additional prosecutors.³⁴ The bill appropriates \$194,120 in recurring funds from the Operating Trust Fund in the Department of Legal Affairs, for two assistant statewide prosecutors to assist in the prosecution of fraudulent patient brokering.

According to the Department of Children and Families, this bill will have no fiscal impact on the department.³⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 16.56, 397.321, 397.407, 397.501, 817.505, 895.02, and 921.0022.

This bill creates the following sections of the Florida Statutes: 397.488 and 817.0345.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Appropriations on April 5, 2017:

This committee substitute appropriates \$194,120 in recurring funds from the Operating Trust Fund in the Department of Legal Affairs, for two assistant statewide prosecutors to assist in the prosecution of fraudulent patient brokering.

CS by Criminal Justice on March 6, 2017:

The CS:

- Amended s. 397.321, F.S., in a new Section 2 of the bill, to require the Department of Children and Families to ensure that substance abuse service provider personnel who provide direct clinical treatment services are certified through a DCF-recognized certification process.
- Amended Section 3 of the bill to clarify that the bill does not require a recovery residence to refer any patient to a licensed service provider.
- Amended Section 4 of the bill to make technical changes putting the new statutory language in s. 397.488, F.S., clarifying what information must be given to prospective

³⁴ E-mail dated March 3, 2017, from Office of the Attorney General staff to Criminal Justice Committee staff, on file with Criminal Justice Committee staff.

³⁵ E-mail dated March 30, 2017, from Department of Children and Families staff to Appropriation Subcommittee on Civil and Criminal Justice staff, on file with Appropriation Subcommittee on Civil and Criminal Justice staff.

patients, and removing the requirement that the Department of Business and Professional Regulation license the marketing entities addressed in the bill.

- Made technical changes removing “s. 775.083,” F.S., a reference to potential fines a person may be sentenced to pay, because the fines are specifically set forth in Section 6 of the bill.
- Amended the Criminal Punishment Code ranking chart found in s. 921.0022, F.S., in Section 9 of the bill.

B. Amendments:

None.

By the Committees on Appropriations; and Criminal Justice; and
Senator Clemens

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1 A bill to be entitled
2 An act relating to marketing practices for substance
3 abuse services; amending s. 16.56, F.S.; authorizing
4 the Office of Statewide Prosecution in the Department
5 of Legal Affairs to investigate and prosecute patient
6 brokering offenses; amending 397.321, F.S.; requiring
7 the Department of Children and Families to ensure that
8 substance abuse service provider personnel providing
9 direct clinical treatment services are certified
10 through a department-recognized certification process;
11 exempting specified licensed individuals from
12 certification; amending s. 397.407, F.S.; revising the
13 requirements for the referral of patients to, and the
14 acceptance of referrals from, a recovery residence;
15 specifying that certain referrals are not prohibited;
16 providing applicability; clarifying that such
17 referrals are not required; amending s. 397.501, F.S.;
18 providing that an application for the disclosure of an
19 individual's records may be filed as part of an active
20 criminal investigation; authorizing a court to approve
21 an application for the disclosure of an individual's
22 substance abuse treatment records without providing
23 express notice of the application to the individual or
24 identified parties with an interest in the records if
25 the application is filed as part of an active criminal
26 investigation; providing that upon implementation of
27 the order granting such application, the individual
28 and identified parties with an interest in the records
29 must be afforded an opportunity to seek revocation or

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30 amendment of that order; creating s. 397.488, F.S.;
31 providing legislative findings; prohibiting service
32 providers, operators of recovery residences, and
33 certain third parties from engaging in specified
34 marketing practices; providing penalties; creating s.
35 817.0345, F.S.; prohibiting a person from knowingly
36 and willfully making specified false or misleading
37 statements or providing specified false or misleading
38 information under certain circumstances; providing
39 penalties; amending s. 817.505, F.S.; providing that
40 it is unlawful for a person to offer or pay, or
41 solicit or receive, benefits under certain
42 circumstances; providing fines and penalties; amending
43 s. 895.02, F.S.; revising the definition of the term
44 "racketeering activity"; amending s. 921.0022, F.S.;
45 ranking offenses; providing an appropriation;
46 providing an effective date.

47
48 Be It Enacted by the Legislature of the State of Florida:
49

50 Section 1. Paragraph (a) of subsection (1) of section
51 16.56, Florida Statutes, is amended to read:

52 16.56 Office of Statewide Prosecution.—

53 (1) There is created in the Department of Legal Affairs an
54 Office of Statewide Prosecution. The office shall be a separate
55 "budget entity" as that term is defined in chapter 216. The
56 office may:

57 (a) Investigate and prosecute the offenses of:

58 1. Bribery, burglary, criminal usury, extortion, gambling,

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59 kidnapping, larceny, murder, prostitution, perjury, robbery,
 60 carjacking, ~~and~~ home-invasion robbery, and patient brokering;
 61 2. Any crime involving narcotic or other dangerous drugs;
 62 3. Any violation of the Florida RICO (Racketeer Influenced
 63 and Corrupt Organization) Act, including any offense listed in
 64 the definition of racketeering activity in s. 895.02(8)(a),
 65 providing such listed offense is investigated in connection with
 66 a violation of s. 895.03 and is charged in a separate count of
 67 an information or indictment containing a count charging a
 68 violation of s. 895.03, the prosecution of which listed offense
 69 may continue independently if the prosecution of the violation
 70 of s. 895.03 is terminated for any reason;
 71 4. Any violation of the Florida Anti-Fencing Act;
 72 5. Any violation of the Florida Antitrust Act of 1980, as
 73 amended;
 74 6. Any crime involving, or resulting in, fraud or deceit
 75 upon any person;
 76 7. Any violation of s. 847.0135, relating to computer
 77 pornography and child exploitation prevention, or any offense
 78 related to a violation of s. 847.0135 or any violation of
 79 chapter 827 where the crime is facilitated by or connected to
 80 the use of the Internet or any device capable of electronic data
 81 storage or transmission;
 82 8. Any violation of chapter 815;
 83 9. Any criminal violation of part I of chapter 499;
 84 10. Any violation of the Florida Motor Fuel Tax Relief Act
 85 of 2004;
 86 11. Any criminal violation of s. 409.920 or s. 409.9201;
 87 12. Any crime involving voter registration, voting, or

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88 candidate or issue petition activities;
 89 13. Any criminal violation of the Florida Money Laundering
 90 Act;
 91 14. Any criminal violation of the Florida Securities and
 92 Investor Protection Act; or
 93 15. Any violation of chapter 787, as well as any and all
 94 offenses related to a violation of chapter 787;
 95
 96 or any attempt, solicitation, or conspiracy to commit any of the
 97 crimes specifically enumerated above. The office shall have such
 98 power only when any such offense is occurring, or has occurred,
 99 in two or more judicial circuits as part of a related
 100 transaction, or when any such offense is connected with an
 101 organized criminal conspiracy affecting two or more judicial
 102 circuits. Informations or indictments charging such offenses
 103 shall contain general allegations stating the judicial circuits
 104 and counties in which crimes are alleged to have occurred or the
 105 judicial circuits and counties in which crimes affecting such
 106 circuits or counties are alleged to have been connected with an
 107 organized criminal conspiracy.
 108 Section 2. Subsection (21) of section 397.321, Florida
 109 Statutes, is added to read:
 110 397.321 Duties of the department.—The department shall:
 111 (21) Ensure that substance abuse service provider personnel
 112 who provide direct clinical treatment services as defined in s.
 113 397.311(25)(a) are certified through a department-recognized
 114 certification process. A physician or a physician assistant
 115 licensed under chapter 458 or chapter 459; a professional
 116 licensed under chapter 490 or chapter 491; or an advanced

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117 registered nurse practitioner licensed under part I of chapter
 118 464 is exempt from the requirements of this subsection.

119 Section 3. Subsection (11) of section 397.407, Florida
 120 Statutes, is amended to read:

121 397.407 Licensure process; fees.—

122 (11) Effective July 1, 2017 ~~2016~~, a service provider
 123 licensed under this part may not refer a prospective, current,
 124 or discharged patient to, or accept a referral from, a recovery
 125 residence unless the recovery residence holds a valid
 126 certificate of compliance as provided in s. 397.487 and is
 127 actively managed by a certified recovery residence administrator
 128 as provided in s. 397.4871 ~~or the recovery residence is owned~~
 129 ~~and operated by a licensed service provider or a licensed~~
 130 ~~service provider's wholly owned subsidiary~~. For purposes of this
 131 subsection, the term "refer" means to inform a patient by any
 132 means about the name, address, or other details of the recovery
 133 residence. However, this subsection does not require a licensed
 134 service provider to refer any patient to a recovery residence.
 135 This subsection does not require a recovery residence to refer
 136 any patient to a licensed service provider. This subsection does
 137 not prohibit a referral by a recovery residence to a licensed
 138 service provider when the recovery residence, including its
 139 owners, operators, and employees, do not benefit, directly or
 140 indirectly, from the referral, and does not apply to a licensed
 141 service provider under contract with a managing entity as
 142 defined in s. 394.9082.

143 Section 4. Paragraphs (g) and (h) of subsection (7) of
 144 section 397.501, Florida Statutes, are amended to read:

145 397.501 Rights of individuals.—Individuals receiving

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146 substance abuse services from any service provider are
 147 guaranteed protection of the rights specified in this section,
 148 unless otherwise expressly provided, and service providers must
 149 ensure the protection of such rights.

150 (7) RIGHT TO CONFIDENTIALITY OF INDIVIDUAL RECORDS.—

151 (g) An order authorizing the disclosure of an individual's
 152 records may be applied for by any person having a legally
 153 recognized interest in the disclosure which is sought. The
 154 application may be filed alone separately or as part of a
 155 pending civil action or an active criminal investigation in
 156 which it appears that the individual's records are needed to
 157 provide evidence. An application must use a fictitious name,
 158 such as John Doe or Jane Doe, to refer to any individual and may
 159 not contain or otherwise disclose any identifying information
 160 unless the individual is the applicant or has given a written
 161 consent to disclosure or the court has ordered the record of the
 162 proceeding sealed from public scrutiny.

163 (h)1. For applications filed alone or as part of a pending
 164 civil action, the individual and the person holding the records
 165 from whom disclosure is sought must be given adequate notice in
 166 a manner which will not disclose identifying information to
 167 other persons, and an opportunity to file a written response to
 168 the application, or to appear in person, for the limited purpose
 169 of providing evidence on the statutory and regulatory criteria
 170 for the issuance of the court order.

171 2. Applications filed as part of an active criminal
 172 investigation may, in the discretion of the court, be granted
 173 without notice. Although no express notice is required to the
 174 agents, owners, and employees of the treatment provider or to

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any patient whose records are to be disclosed, upon implementation of an order so granted, any of these persons must be afforded an opportunity to seek revocation or amendment of the order, limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the order.

Section 5. Section 397.488, Florida Statutes, is created to read:

397.488 Prohibition of deceptive marketing practices.—

(1) The Legislature recognizes that consumers of substance abuse treatment have disabling conditions and that such consumers and their families are vulnerable and at risk of being easily victimized by fraudulent marketing practices that adversely impact the delivery of health care. To protect the health, safety, and welfare of this vulnerable population, a service provider, an operator of a recovery residence, or a third party who provides any form of advertising or marketing services to a service provider or an operator of a recovery residence may not engage in any of the following marketing practices:

(a) Making a false or misleading statement or providing false or misleading information about the provider's or operator's or third party's products, goods, services, or geographical locations in its marketing, advertising materials, or media or on its website.

(b) Including on its website false information, electronic links, or coding or activation that provides false information or that surreptitiously directs the reader to another website.

(c) Soliciting, receiving, or making an attempt to solicit or receive a commission, benefit, bonus, rebate, kickback, or

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bribe, directly or indirectly, in cash or in kind, or engaging or making an attempt to engage in a split-fee arrangement in return for a referral or an acceptance or acknowledgment of treatment from a service provider or recovery residence.

(d) Entering into a contract with a marketing provider who agrees to generate referrals or leads for the placement of patients with a service provider or in a recovery residence through a call center or a web-based presence, unless the service provider or the operator of the recovery residence discloses the following to the prospective patient so that the patient can make an informed health care decision:

1. Information about the specific licensed service providers or recovery residences that are represented by the marketing provider and pay a fee to the marketing provider, including the identity of such service providers or recovery residences; and

2. Clear and concise instructions that allow the prospective patient to easily access lists of licensed service providers and recovery residences on the department website.

(2) In addition to any other punishment authorized by law, a person or entity that knowingly and willfully violates paragraph (1)(a), paragraph (1)(b), or paragraph (1)(d) commits a misdemeanor of the first degree, punishable as provided in s. 775.083 or s. 775.089. A violation of paragraph (1)(c) is a violation of the prohibition on patient brokering and may subject the party committing the violation to criminal penalties under s. 817.505.

Section 6. Section 817.0345, Florida Statutes, is created to read:

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233 817.0345 Prohibition of fraudulent marketing practices.—It
 234 is unlawful for any person to knowingly and willfully make a
 235 materially false or misleading statement or provide false or
 236 misleading information about the identity, products, goods,
 237 services, or geographical location of a licensed service
 238 provider, as defined in chapter 397, in marketing, advertising
 239 materials, or other media or on a website with the intent to
 240 induce another person to seek treatment with that service
 241 provider. A person who violates this section commits a felony of
 242 the third degree, punishable as provided in s. 775.082, s.
 243 775.083, or s. 775.084.

244 Section 7. Subsections (1) and (4) of section 817.505,
 245 Florida Statutes, are amended to read:

246 817.505 Patient brokering prohibited; exceptions;
 247 penalties.—

248 (1) It is unlawful for any person, including any health
 249 care provider or health care facility, to:

250 (a) Offer or pay a ~~any~~ commission, benefit, bonus, rebate,
 251 kickback, or bribe, directly or indirectly, in cash or in kind,
 252 or engage in any split-fee arrangement, in any form whatsoever,
 253 to induce the referral of a patient ~~patients~~ or patronage to or
 254 from a health care provider or health care facility;

255 (b) Solicit or receive a ~~any~~ commission, benefit, bonus,
 256 rebate, kickback, or bribe, directly or indirectly, in cash or
 257 in kind, or engage in any split-fee arrangement, in any form
 258 whatsoever, in return for referring a patient ~~patients~~ or
 259 patronage to or from a health care provider or health care
 260 facility;

261 (c) Solicit or receive a ~~any~~ commission, benefit, bonus,

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262 rebate, kickback, or bribe, directly or indirectly, in cash or
 263 in kind, or engage in any split-fee arrangement, in any form
 264 whatsoever, in return for the acceptance or acknowledgment of
 265 treatment from a health care provider or health care facility;
 266 or

267 (d) Aid, abet, advise, or otherwise participate in the
 268 conduct prohibited under paragraph (a), paragraph (b), or
 269 paragraph (c).

270 (4) (a) Any person, including an officer, partner, agent,
 271 attorney, or other representative of a firm, joint venture,
 272 partnership, business trust, syndicate, corporation, or other
 273 business entity, who violates any provision of this section
 274 commits a felony of the third degree, punishable as provided in
 275 s. 775.082, ~~s. 775.083~~, or s. 775.084, and a fine of \$50,000.

276 (b) Any person, including an officer, partner, agent,
 277 attorney, or other representative of a firm, joint venture,
 278 partnership, business trust, syndicate, corporation, or other
 279 business entity, who violates any provision of this section,
 280 where the prohibited conduct involves 10 or more patients but
 281 fewer than 20 patients, commits a felony of the second degree,
 282 punishable as provided in s. 775.082 or s. 775.084, and a fine
 283 of \$100,000.

284 (c) Any person, including an officer, partner, agent,
 285 attorney, or other representative of a firm, joint venture,
 286 partnership, business trust, syndicate, corporation, or other
 287 business entity, who violates any provision of this section,
 288 where the prohibited conduct involves 20 or more patients,
 289 commits a felony of the first degree, punishable as provided in
 290 s. 775.082 or s. 775.084, and a fine of \$500,000.

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291 Section 8. Paragraph (a) of subsection (8) of section
 292 895.02, Florida Statutes, is amended to read:
 293 895.02 Definitions.—As used in ss. 895.01-895.08, the term:
 294 (8) "Racketeering activity" means to commit, to attempt to
 295 commit, to conspire to commit, or to solicit, coerce, or
 296 intimidate another person to commit:
 297 (a) Any crime that is chargeable by petition, indictment,
 298 or information under the following provisions of the Florida
 299 Statutes:
 300 1. Section 210.18, relating to evasion of payment of
 301 cigarette taxes.
 302 2. Section 316.1935, relating to fleeing or attempting to
 303 elude a law enforcement officer and aggravated fleeing or
 304 eluding.
 305 3. Section 403.727(3)(b), relating to environmental
 306 control.
 307 4. Section 409.920 or s. 409.9201, relating to Medicaid
 308 fraud.
 309 5. Section 414.39, relating to public assistance fraud.
 310 6. Section 440.105 or s. 440.106, relating to workers'
 311 compensation.
 312 7. Section 443.071(4), relating to creation of a fictitious
 313 employer scheme to commit reemployment assistance fraud.
 314 8. Section 465.0161, relating to distribution of medicinal
 315 drugs without a permit as an Internet pharmacy.
 316 9. Section 499.0051, relating to crimes involving
 317 contraband, adulterated, or misbranded drugs.
 318 10. Part IV of chapter 501, relating to telemarketing.
 319 11. Chapter 517, relating to sale of securities and

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320 investor protection.
 321 12. Section 550.235 or s. 550.3551, relating to dogracing
 322 and horseracing.
 323 13. Chapter 550, relating to jai alai frontons.
 324 14. Section 551.109, relating to slot machine gaming.
 325 15. Chapter 552, relating to the manufacture, distribution,
 326 and use of explosives.
 327 16. Chapter 560, relating to money transmitters, if the
 328 violation is punishable as a felony.
 329 17. Chapter 562, relating to beverage law enforcement.
 330 18. Section 624.401, relating to transacting insurance
 331 without a certificate of authority, s. 624.437(4)(c)1., relating
 332 to operating an unauthorized multiple-employer welfare
 333 arrangement, or s. 626.902(1)(b), relating to representing or
 334 aiding an unauthorized insurer.
 335 19. Section 655.50, relating to reports of currency
 336 transactions, when such violation is punishable as a felony.
 337 20. Chapter 687, relating to interest and usurious
 338 practices.
 339 21. Section 721.08, s. 721.09, or s. 721.13, relating to
 340 real estate timeshare plans.
 341 22. Section 775.13(5)(b), relating to registration of
 342 persons found to have committed any offense for the purpose of
 343 benefiting, promoting, or furthering the interests of a criminal
 344 gang.
 345 23. Section 777.03, relating to commission of crimes by
 346 accessories after the fact.
 347 24. Chapter 782, relating to homicide.
 348 25. Chapter 784, relating to assault and battery.

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349 26. Chapter 787, relating to kidnapping or human
 350 trafficking.

351 27. Chapter 790, relating to weapons and firearms.

352 28. Chapter 794, relating to sexual battery, but only if
 353 such crime was committed with the intent to benefit, promote, or
 354 further the interests of a criminal gang, or for the purpose of
 355 increasing a criminal gang member's own standing or position
 356 within a criminal gang.

357 29. Former s. 796.03, former s. 796.035, s. 796.04, s.
 358 796.05, or s. 796.07, relating to prostitution.

359 30. Chapter 806, relating to arson and criminal mischief.

360 31. Chapter 810, relating to burglary and trespass.

361 32. Chapter 812, relating to theft, robbery, and related
 362 crimes.

363 33. Chapter 815, relating to computer-related crimes.

364 34. Chapter 817, relating to fraudulent practices, false
 365 pretenses, fraud generally, ~~and~~ credit card crimes, and patient
 366 brokering.

367 35. Chapter 825, relating to abuse, neglect, or
 368 exploitation of an elderly person or disabled adult.

369 36. Section 827.071, relating to commercial sexual
 370 exploitation of children.

371 37. Section 828.122, relating to fighting or baiting
 372 animals.

373 38. Chapter 831, relating to forgery and counterfeiting.

374 39. Chapter 832, relating to issuance of worthless checks
 375 and drafts.

376 40. Section 836.05, relating to extortion.

377 41. Chapter 837, relating to perjury.

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378 42. Chapter 838, relating to bribery and misuse of public
 379 office.

380 43. Chapter 843, relating to obstruction of justice.

381 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
 382 s. 847.07, relating to obscene literature and profanity.

383 45. Chapter 849, relating to gambling, lottery, gambling or
 384 gaming devices, slot machines, or any of the provisions within
 385 that chapter.

386 46. Chapter 874, relating to criminal gangs.

387 47. Chapter 893, relating to drug abuse prevention and
 388 control.

389 48. Chapter 896, relating to offenses related to financial
 390 transactions.

391 49. Sections 914.22 and 914.23, relating to tampering with
 392 or harassing a witness, victim, or informant, and retaliation
 393 against a witness, victim, or informant.

394 50. Sections 918.12 and 918.13, relating to tampering with
 395 jurors and evidence.

396 Section 9. Paragraphs (c), (d), (f), and (h) of subsection
 397 (3) of section 921.0022, Florida Statutes, are amended to read:
 398 921.0022 Criminal Punishment Code; offense severity ranking
 399 chart.-

400 (3) OFFENSE SEVERITY RANKING CHART

401 (c) LEVEL 3

402

Florida	Felony	
Statute	Degree	Description
119.10(2)(b)	3rd	Unlawful use of

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 confidential information
 from police reports.

404 316.066 3rd Unlawfully obtaining or
 (3) (b)-(d) using confidential crash
 reports.

405 316.193(2) (b) 3rd Felony DUI, 3rd conviction.

406 316.1935(2) 3rd Fleeing or attempting to
 elude law enforcement
 officer in patrol vehicle
 with siren and lights
 activated.

407 319.30(4) 3rd Possession by junkyard of
 motor vehicle with
 identification number plate
 removed.

408 319.33(1) (a) 3rd Alter or forge any
 certificate of title to a
 motor vehicle or mobile
 home.

409 319.33(1) (c) 3rd Procure or pass title on
 stolen vehicle.

410 319.33(4) 3rd With intent to defraud,

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 possess, sell, etc., a
 blank, forged, or
 unlawfully obtained title
 or registration.

411 327.35(2) (b) 3rd Felony BUI.

412 328.05(2) 3rd Possess, sell, or
 counterfeit fictitious,
 stolen, or fraudulent
 titles or bills of sale of
 vessels.

413 328.07(4) 3rd Manufacture, exchange, or
 possess vessel with
 counterfeit or wrong ID
 number.

414 376.302(5) 3rd Fraud related to
 reimbursement for cleanup
 expenses under the Inland
 Protection Trust Fund.

415 379.2431 3rd Taking, disturbing,
 (1) (e) 5. mutilating, destroying,
 causing to be destroyed,
 transferring, selling,
 offering to sell,
 molesting, or harassing

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			marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
416	379.2431	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
	(1) (e) 6.		
417	400.9935(4) (a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
418	400.9935(4) (e)	3rd	Filing a false license application or other required information or failing to report information.
419	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
420	501.001(2) (b)	2nd	Tampers with a consumer product or the container

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			using materially false/misleading information.
421	624.401(4) (a)	3rd	Transacting insurance without a certificate of authority.
422	624.401(4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
423	626.902(1) (a) & (b)	3rd	Representing an unauthorized insurer.
424	697.08	3rd	Equity skimming.
425	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
426	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
427	806.10(2)	3rd	Interferes with or assaults

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			firefighter in performance of duty.
428	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
429	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
430	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
431	815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
432	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
433	817.233	3rd	Burning to defraud insurer.
434	817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor

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			vehicle accidents.
435	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
436	817.236	3rd	Filing a false motor vehicle insurance application.
437	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
438	817.413(2)	3rd	Sale of used goods as new.
439	~~817.505(4)~~	~~3rd~~	~~Patient brokering.~~
440	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
441	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
442			

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	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
443			
	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
444			
	843.19	3rd	Injure, disable, or kill police dog or horse.
445			
	860.15(3)	3rd	Overcharging for repairs and parts.
446			
	870.01(2)	3rd	Riot; inciting or encouraging.
447			
	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
448			
	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2.,

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			(2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
449			
	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
450			
	893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
451			
	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
452			
	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.

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453 893.13(7)(a)9. 3rd Obtain or attempt to obtain
controlled substance by
fraud, forgery,
misrepresentation, etc.

454 893.13(7)(a)10. 3rd Affix false or forged label
to package of controlled
substance.

455 893.13(7)(a)11. 3rd Furnish false or fraudulent
material information on any
document or record required
by chapter 893.

456 893.13(8)(a)1. 3rd Knowingly assist a patient,
other person, or owner of
an animal in obtaining a
controlled substance
through deceptive, untrue,
or fraudulent
representations in or
related to the
practitioner's practice.

457 893.13(8)(a)2. 3rd Employ a trick or scheme in
the practitioner's practice
to assist a patient, other
person, or owner of an

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458 animal in obtaining a
controlled substance.

893.13(8)(a)3. 3rd Knowingly write a
prescription for a
controlled substance for a
fictitious person.

459 893.13(8)(a)4. 3rd Write a prescription for a
controlled substance for a
patient, other person, or
an animal if the sole
purpose of writing the
prescription is a monetary
benefit for the
practitioner.

460 918.13(1)(a) 3rd Alter, destroy, or conceal
investigation evidence.

461 944.47 3rd Introduce contraband to
(1)(a)1. & 2. correctional facility.

462 944.47(1)(c) 2nd Possess contraband while
upon the grounds of a
correctional institution.

463 985.721 3rd Escapes from a juvenile
facility (secure detention

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or residential commitment
facility).

464

465

466 (d) LEVEL 4

467

Florida
Statute

Felony
Degree

Description

468

316.1935(3) (a)

2nd

Driving at high speed or
with wanton disregard
for safety while fleeing
or attempting to elude
law enforcement officer
who is in a patrol
vehicle with siren and
lights activated.

469

499.0051(1)

3rd

Failure to maintain or
deliver transaction
history, transaction
information, or
transaction statements.

470

499.0051(5)

2nd

Knowing sale or
delivery, or possession
with intent to sell,
contraband prescription
drugs.

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471

517.07(1)

3rd

Failure to register
securities.

472

517.12(1)

3rd

Failure of dealer,
associated person, or
issuer of securities to
register.

473

784.07(2) (b)

3rd

Battery of law
enforcement officer,
firefighter, etc.

474

784.074(1) (c)

3rd

Battery of sexually
violent predators
facility staff.

475

784.075

3rd

Battery on detention or
commitment facility
staff.

476

784.078

3rd

Battery of facility
employee by throwing,
tossing, or expelling
certain fluids or
materials.

477

784.08(2) (c)

3rd

Battery on a person 65
years of age or older.

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	576-03497-17		2017788c2
478	784.081(3)	3rd	Battery on specified official or employee.
479	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
480	784.083(3)	3rd	Battery on code inspector.
481	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
482	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
483	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
484	787.04(3)	3rd	Carrying child beyond

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	576-03497-17		2017788c2
			state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
485	787.07	3rd	Human smuggling.
486	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
487	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
488	790.115(2)(c)	3rd	Possessing firearm on school property.
489	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
490	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure;

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	576-03497-17		2017788c2
			unarmed; no assault or battery.
491	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
492	810.06	3rd	Burglary; possession of tools.
493	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
494	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
495	812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
496	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
497			

	576-03497-17		2017788c2
	<u>817.505(4)(a)</u>	<u>3rd</u>	<u>Patient brokering.</u>
498	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
499	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
500	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
501	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
502	837.02(1)	3rd	Perjury in official proceedings.
503	837.021(1)	3rd	Make contradictory statements in official

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			proceedings.
504	838.022	3rd	Official misconduct.
505	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
506	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
507	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
508	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
509	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
510			

	576-03497-17		2017788c2
	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
511	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
512	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
513	914.14(2)	3rd	Witnesses accepting bribes.
514	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
515	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
516	918.12	3rd	Tampering with jurors.
517			

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934.215 3rd Use of two-way
communications device to
facilitate commission of
a crime.

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.

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499.0051(3) 2nd Knowing purchase or
receipt of prescription
drug from unauthorized
person.

499.0051(4) 2nd Knowing sale or transfer
of prescription drug to
unauthorized person.

775.0875(1) 3rd Taking firearm from law
enforcement officer.

784.021(1)(a) 3rd Aggravated assault;
deadly weapon without
intent to kill.

784.021(1)(b) 3rd Aggravated assault;
intent to commit felony.

784.041 3rd Felony battery; domestic
battery by
strangulation.

784.048(3) 3rd Aggravated stalking;
credible threat.

784.048(5) 3rd Aggravated stalking of
person under 16.

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535	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
536	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
537	784.081 (2)	2nd	Aggravated assault on specified official or employee.
538	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
539	784.083 (2)	2nd	Aggravated assault on code inspector.
540	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
541			

	576-03497-17		2017788c2
	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
542	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
543	790.164 (1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
544	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
545	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
546	794.05 (1)	2nd	Unlawful sexual activity with specified minor.

547	576-03497-17	2017788c2	
	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
548	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
549	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
550	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
551	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
552	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.

553	576-03497-17	2017788c2	
	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
554	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
555	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
556	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
557	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
558	<u>817.505(4)(b)</u>	<u>2nd</u>	<u>Patient brokering; 10 or more patients.</u>
559	825.102(1)	3rd	Abuse of an elderly person or disabled adult.

560	576-03497-17	2017788c2	
	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
561	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
562	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
563	827.03(2)(c)	3rd	Abuse of a child.
564	827.03(2)(d)	3rd	Neglect of a child.
565	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
566	836.05	2nd	Threats; extortion.
567	836.10	2nd	Written threats to kill or do bodily injury.
568			

	576-03497-17	2017788c2	
	843.12	3rd	Aids or assists person to escape.
569	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
570	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
571	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
572	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
573	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or

574	576-03497-17		2017788c2	inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
575	944.40	2nd		Escapes.
	944.46	3rd		Harboring, concealing, aiding escaped prisoners.
576	944.47(1)(a)5.	2nd		Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
577	951.22(1)	3rd		Intoxicating drug, firearm, or weapon introduced into county facility.
578				
579				
580	(h) LEVEL 8			
581	Florida	Felony		
582	Statute	Degree		Description

	576-03497-17		2017788c2	
	316.193	2nd		DUI manslaughter.
583	(3)(c)3.a.			
	316.1935(4)(b)	1st		Aggravated fleeing or attempted eluding with serious bodily injury or death.
584				
585	327.35(3)(c)3.	2nd		Vessel BUI manslaughter.
	499.0051(7)	1st		Knowing trafficking in contraband prescription drugs.
586				
	499.0051(8)	1st		Knowing forgery of prescription labels or prescription drug labels.
587				
	560.123(8)(b)2.	2nd		Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
588				
	560.125(5)(b)	2nd		Money transmitter business by unauthorized person, currency or payment instruments

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			totaling or exceeding \$20,000, but less than \$100,000.
589	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
590	777.03(2)(a)	1st	Accessory after the fact, capital felony.
591	782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
592	782.051(2)	1st	Attempted felony murder while perpetrating or

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			attempting to perpetrate a felony not enumerated in s. 782.04(3).
593	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
594	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
595	787.06(3)(a)1.	1st	Human trafficking for labor and services of a child.
596	787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
597	787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.
598	787.06(3)(e)1.	1st	Human trafficking for

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labor and services by the
transfer or transport of
a child from outside
Florida to within the
state.

599 787.06(3)(f)2. 1st Human trafficking using
coercion for commercial
sexual activity by the
transfer or transport of
any adult from outside
Florida to within the
state.

600 790.161(3) 1st Discharging a destructive
device which results in
bodily harm or property
damage.

601 794.011(5)(a) 1st Sexual battery; victim 12
years of age or older but
younger than 18 years;
offender 18 years or
older; offender does not
use physical force likely
to cause serious injury.

602 794.011(5)(b) 2nd Sexual battery; victim
and offender 18 years of

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age or older; offender
does not use physical
force likely to cause
serious injury.

603 794.011(5)(c) 2nd Sexual battery; victim 12
years of age or older;
offender younger than 18
years; offender does not
use physical force likely
to cause injury.

604 794.011(5)(d) 1st Sexual battery; victim 12
years of age or older;
offender does not use
physical force likely to
cause serious injury;
prior conviction for
specified sex offense.

605 794.08(3) 2nd Female genital
mutilation, removal of a
victim younger than 18
years of age from this
state.

606 800.04(4)(b) 2nd Lewd or lascivious
battery.

607

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608	800.04(4)(c)	1st	Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.
	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
609	810.02(2)(a)	1st, PBL	Burglary with assault or battery.
610	810.02(2)(b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
611	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
612	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.

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613	812.13(2)(b)	1st	Robbery with a weapon.
614	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
615	<u>817.505(4)(c)</u>	<u>1st</u>	<u>Patient brokering; 20 or more patients.</u>
616	817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
617	817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
618	817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
619	817.535(5)(a)	2nd	Filing false lien or other unauthorized

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			document; owner of the property incurs financial loss as a result of the false instrument.
620	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
621	817.611(2)(c)	1st	Traffic in or possess 50 or more counterfeit credit cards or related documents.
622	825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
623	825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
624	825.103(3)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$50,000 or more.
625			

	576-03497-17		2017788c2
	837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
626	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
627	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
628	860.16	1st	Aircraft piracy.
629	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
630	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
631			

	576-03497-17		2017788c2
	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
632	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
633	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
634	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
635	893.135 (1)(c)2.c.	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.
636	893.135 (1)(c)3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
637	893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than

	576-03497-17		2017788c2
			200 grams, less than 400 grams.
638	893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
639	893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
640	893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
641	893.135 (1)(h)1.b.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
642	893.135 (1)(j)1.b.	1st	Trafficking in 1,4- Butanediol, 5 kilograms or more, less than 10 kilograms.
643			

576-03497-17 2017788c2

893.135 1st Trafficking in
(1) (k) 2.b. Phenethylamines, 200
grams or more, less than
400 grams.

644 893.1351(3) 1st Possession of a place
used to manufacture
controlled substance when
minor is present or
resides there.

645 895.03(1) 1st Use or invest proceeds
derived from pattern of
racketeering activity.

646 895.03(2) 1st Acquire or maintain
through racketeering
activity any interest in
or control of any
enterprise or real
property.

647 895.03(3) 1st Conduct or participate in
any enterprise through
pattern of racketeering
activity.

648 896.101(5) (b) 2nd Money laundering,
financial transactions

576-03497-17 2017788c2

totaling or exceeding
\$20,000, but less than
\$100,000.

649 896.104(4) (a) 2. 2nd Structuring transactions
to evade reporting or
registration
requirements, financial
transactions totaling or
exceeding \$20,000 but
less than \$100,000.

650

651 Section 10. For the 2017-2018 fiscal year, the sum of
652 \$194,120 in recurring funds is appropriated from the Operating
653 Trust Fund in the Department of Legal Affairs, and two full-time
654 equivalent positions, with associated salary rate of 130,000,
655 are authorized, for the purpose of implementing this act.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Higher Education
Communications, Energy, and Public Utilities
Criminal Justice

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR JEFF CLEMENS

Democratic Whip
31st District

April 6, 2017

Senator Lizbeth Benacquisto, Chair
Senate Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Benacquisto:

I respectfully request that SB 788 – Marketing Practices for Substance Abuse Services be added to the agenda for the next Senate Committee on Rules meeting.

SB 788 will ensure that treatment and recovery support for individuals impaired by substance disorders are offered in an ethical and professional manner, including the use of ethical marketing practices, to ensure the protection of this vulnerable population. The legislation prohibits certain marketing practices, provides criminal penalties for violations of those prohibitions, and is the product of the Sober Homes task force and Grand Jury recommendations convened at the request of the Legislature.

Please feel free to contact me with any questions. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Clemens".

Senator Jeff Clemens
Florida Senate District 31

REPLY TO:

- ☐ 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
- ☐ 210 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5031

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/19/17

Meeting Date

788

Bill Number (if applicable)

Topic marketing Practices / Substance Abuse Amendment Barcode (if applicable)

Name Julie Allison

Job Title attorney

Address 225 South 21st AVE
Street

Phone 305-428-3093

Hollywood FL 33020
City State Zip

Email JulieaAllisonlaw.net

Speaking: ☐ For ☐ Against ☒ Information
+ concerns

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

Representing Association For Clear & Compassionate Governance
of Substance Abuse Treatment

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to 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 788

Bill Number (if applicable)

Topic Marketing Practices for Substance Abuse

Amendment Barcode (if applicable)

Name Rebecca DeLaRosa

Job Title Legislative Affairs Director

Address 301 N. Olive Ave, #101

Street

West Palm Beach, FL 33401

City

State

Zip

Phone 888 284.7235

Email rdelarosa@pbcgov.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

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

04/19/2017

Meeting Date

SB788

Bill Number (if applicable)

Topic Marketing Practices for Substance Abuse

Amendment Barcode (if applicable)

Name Alan Johnson

Job Title Chief Assistant State Attorney, 15th Circuit

Address 401 N. Dixie Hwy

Street

Phone 561 355 7265

West Palm Beach, FL 33414

City

State

Zip

Email AJohnson@SA15.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Office of the State Attorney, 15th Circuit

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4-19-17

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

Meeting Date

788

Bill Number (if applicable)

Topic Marketing Practices / Substance Abuse

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Policy Director

Address 8608 Mahon Dr

Phone 850-878-2196

Street

Tallahassee

City

FL

State

32308

Zip

Email jill@myflha.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Behavioral Health Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-19-17
Meeting Date

788
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Richard Pinsky

Job Title _____

Address 106 E. College Ave #1200

Phone _____

Street

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Lake Worth

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/19/18

Meeting Date

788

Bill Number (if applicable)

Topic marketing practices

Amendment Barcode (if applicable)

Name Devon West

Job Title Legislative Affairs Dir

Address 2401 SE Monterey St.

Phone 321-243-2270

Street

Stuart

City

FL

State

33406

Zip

Email dwest@martin.fl.us

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.

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)

4/19/18

Meeting Date

788

Bill Number (if applicable)

Topic marketing practices

Amendment Barcode (if applicable)

Name Nicole Fogarty

Job Title Legislative Affairs Dir.

Address 2300 Virginia Ave.

Phone 321.243.2270

Street

Ft Pierce

FL

34982

City

State

Zip

Email nfogarty@stluciegov.com

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.

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 898

INTRODUCER: Senators Simmons and Artiles

SUBJECT: Civil Remedies for Terrorism

DATE: April 20, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2. <u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
3. <u>Davis</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 898 creates a civil cause of action for a person who is injured by either an act of terrorism or a violation of a law that facilitates or furthers an act of terrorism. A successful plaintiff is entitled to a minimum of \$1,000 in damages or three times the actual damages sustained and reasonable attorney fees and court costs at the trial and appellate levels. In contrast, a defendant is entitled to recover reasonable attorney fees and court costs at the trial and appellate levels if it is determined that the claimant raised a claim that is not supported factually or legally.

When a court awards attorney fees and costs under the bill, it may not consider whether the opposing party is able to pay the fees and costs. The bill does not limit any other right to recover attorney fees or costs established in any other provision of law.

The cause of action authorized under the bill does not apply to a person who is injured while participating in an act of terrorism.

This bill has an indeterminate but likely insignificant fiscal impact on the state courts.

II. Present Situation:

Torts

A tort is an injury or civil wrong for which a harmed person may seek a remedy, generally in the form of damages. The basic purpose of tort law is to compensate the wronged person for his or her injury by the person responsible for the wrong. The loss is generally shifted from the injured person to the one who is at fault. While some acts may, at the same time, be both a crime and a

tort, a crime is committed against the public and redress is pursued by the state. A tort, however, is a private injury and redress is pursued by the injured party in a civil suit.¹

An intentional tort is committed by a person who acts with general or specific intent to harm someone² or engages in conduct that is substantially certain to bring about injury or death.³ Some general examples of intentional torts are assault, battery, false imprisonment, fraud, intentional infliction of emotional distress, and invasion of privacy. Beyond the usual economic and non-economic damages, a defendant may also be held liable for punitive damages if there is a finding that the defendant was personally guilty of intentional misconduct or gross negligence.⁴

While the statutes do not provide a specific cause of action for someone in Florida to recover for injuries sustained by terrorism, it is arguable that damages could be recovered through a cause of action for battery.

Civil Remedies for Criminal Practices in Chapter 772

Civil remedies are provided as redress for certain criminal practices enumerated in chapter 772, F.S. For example, a civil cause of action is provided for any person who proves by clear and convincing evidence that he or she has been injured by someone who has received proceeds derived from a pattern of criminal activity.⁵ The criminal activity referred to includes offenses relating to the manufacture, distribution, and use of explosives, homicide, assault and battery, kidnapping, weapons and firearms, arson, computer-related crimes, bribery, and the obstruction of justice.⁶

While punitive damages are not generally recoverable for claims arising under chapter 772, F.S., a prevailing plaintiff may recover threefold, or treble, the actual damages and a minimum of \$200 in damages, or \$1,000 under the Drug Dealer Liability Act, as well as attorney fees and court costs at trial and on appeal.⁷ A defendant, however, is entitled to recover reasonable attorney fees and court costs at the trial and appellate levels if it is determined that the claimant raised a claim that was without substantial fact or legal support. The court is precluded from considering whether the opposing party is able to pay fees and costs.⁸

If a civil remedy is applied under chapter 772, it does not preclude the application of any other remedy, whether civil or criminal, under any other provision of law.⁹ Additionally, if a defendant has been found guilty or pled guilty or nolo contendere to the same criminal act that is the basis of the plaintiff's civil cause of action under chapter 772, F.S., the defendant is estopped as if the plaintiff had been a party in the state's criminal action.¹⁰

¹ 55 FLA. JUR 2D TORTS s. 1 (2017).

² BLACK'S LAW DICTIONARY (14th ed. 2014).

³ 55 FLA. JUR 2D TORTS s. 6 (2017).

⁴ Section 768.72(2), F.S.

⁵ Sections 772.103(1) and 772.104, F.S.

⁶ Section 772.102(1), F.S. By definition, "criminal activity" means to commit, attempt to commit, conspire to commit, or solicit, coerce, or intimidate another person to commit the list of crimes in s. 772.102(1)(a).

⁷ Sections 772.104(1), 772.11(1), and 772.12, F.S.

⁸ Sections 772.104(3) and 772.11, F.S.

⁹ Section 772.18, F.S.

¹⁰ Section 772.14, F.S.

Terrorism

Terrorism is defined in the Florida Criminal Code as an activity that involves a violent act or an act dangerous to human life which is a violation of the criminal laws of the state or of the United States or involves a violation of s. 815.06, F.S., relating to offenses against users of computers and electronic devices, and is intended to:

- Intimidate, injure, or coerce a civilian population;
- Influence the policy of a government by intimidation or coercion; or
- Affect the conduct of government through the destruction of property, assassination, murder, kidnapping, or aircraft piracy.¹¹

Terrorism is not an independent crime in the statutes but is a qualifying offense for the crime of capital murder. For example, if a person unlawfully kills someone during the commission of a felony act of terrorism, the perpetrator can be prosecuted for first degree murder, a capital felony.¹²

If someone is convicted of committing a felony or misdemeanor that facilitated or furthered an act of terrorism, the court is required to reclassify the felony or misdemeanor to the next higher degree.¹³ Additionally, if the underlying crime is a first-degree misdemeanor or greater, the offense severity ranking is increased, thereby increasing the defendant's potential sentence.¹⁴

Federal Terrorism Statute

SB 898 is structured similarly to the federal Antiterrorism Act of 1990.¹⁵ The federal legislation also provides for the recovery of treble damages, cost of the suit, and attorney fees, but differs in that the injury sustained by the claimant must be for an act of international terrorism.¹⁶ The international provision requires that the act “occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished”¹⁷

Liability for Intentional Torts

Under the doctrine of joint and several liability, all of the defendants at fault for a plaintiff's damages are responsible for the total of each defendant's fault.¹⁸ With a few exceptions, s. 768.81, F.S., generally abolished the application of the doctrine. One of the exceptions allows the doctrine of joint and several liability to apply to “any action based upon an intentional tort.”¹⁹

¹¹ Section 775.30, F.S.

¹² Section 782.04(1)(a)2.r., (3)r., and (4)s., F.S.

¹³ Section 775.31(1), F.S.

¹⁴ Section 775.31(2), F.S.

¹⁵ 18 U.S.C. s. 2331 *et. seq.*

¹⁶ 18 U.S.C. s. 2333(a).

¹⁷ 18 U.S.C. s. 2331(1)(C).

¹⁸ *Louisville & N. R. Co. v. Allen*, 65 So. 8 (Fla. 1914).

¹⁹ Section 768.81(4), F.S.

Attorney Fees and Sanctions for Raising Unsupported Claims or Defenses

Section 57.105, F.S., generally authorizes a court to award reasonable attorney fees, including prejudgment interest to the prevailing party from the losing party and the losing party's attorney for unsupported claims and defenses presented to the court. The statute further provides that its remedies are supplemental to other sanctions available under law or court rules.²⁰

Similar Legislation in Other States

Private William "Andy" Long, U.S. Army, was killed in uniform outside of an Arkansas Army recruiting office on June 1, 2009. Another soldier was wounded in the shooting but survived. The defendant in the case claimed to be a terrorist and had traveled to Yemen. In 2011, he pleaded guilty to capital murder and attempted capital murder and received a life sentence with no possibility of parole.²¹ Because of this incident, legislation has been enacted in Louisiana, Arkansas, Kansas, Tennessee, and North Carolina that permits victims of terrorist acts to recover damages as proposed in this legislation.²²

III. Effect of Proposed Changes:

SB 898 creates a civil cause of action for a person who is injured by an act of terrorism or by a violation of a law that facilitates or furthers an act of terrorism. A successful plaintiff is entitled to a minimum of \$1,000 or three times the actual damages sustained and reasonable attorney fees and court costs at the trial and appellate levels. The cause of action created by the bill does not apply to a person who is injured while participating in an act of terrorism.

A defendant is entitled to recover reasonable attorney fees and court costs at the trial and appellate levels if it is determined that the claimant raised a claim that is not supported factually or legally.

When a court awards attorney fees and costs under the bill, it may not consider whether the opposing party is able to pay the fees and costs. This new remedy does not limit any other right to recover attorney fees or costs established in any other provisions of law.

Because terrorism is an intentional tort and because the doctrine of joint and several liability applies to actions based on an intentional tort, a defendant who was a minor participant in an act of terrorism may be liable for all of a plaintiff's damages.²³

The bill takes effect July 1, 2017.

²⁰ Section 57.105(6), F.S.

²¹ See *Recruitment Shooting Suspect Doesn't Think Killing was Murder*, ASSOCIATED PRESS, Jun. 9, 2009, <http://www.foxnews.com/story/2009/06/09/recruitment-shooting-suspect-doesnt-think-killing-was-murder.html>; *Family seeks recognition for soldier slain in Ark.*, ASSOCIATED PRESS, Jul. 26, 2011, <http://www.cbs8.com/story/15152640/family-seeks-recognition-for-soldier-slain-in-ark>.

²² Center for Security Policy, *Andy's Law Signed by Governor McCrory in North Carolina*, (Aug. 24, 2015) available at <https://www.centerforsecuritypolicy.org/2015/08/24/andys-law-signed-by-governor-mccrory-in-north-carolina/>.

²³ See s. 768.81(4), F.S.

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:

This bill may provide a remedy for damages caused by terrorism when an international component does not exist. An international component is required for lawsuits for damages for terrorism under federal law. Additionally, by authorizing treble damages for injuries caused by acts of terrorism, the bill authorizes more compensation than that available under existing causes of action.

C. Government Sector Impact:

The Office of the State Courts Administrator has not yet provided a Judicial Impact Statement for SB 898. However, in an analysis of a similar bill from 2016, the Office of the State Courts Administrator noted that the fiscal impact of the legislation could not be accurately determined due to the unavailability of data needed to establish the effects on judicial time and workload resulting from the bill's provisions.²⁴ It appears unlikely that the bill will result in significant workload to the court system.

VI. Technical Deficiencies:

It is not clear in subsection (1) whether there must first be a conviction for an act of terrorism before a plaintiff may bring civil charges under this act. Similar sections in chapter 772, F.S., Civil Remedies for Criminal Practices, provide that a person need only prove by clear and convincing evidence that he or she has been injured by the underlying crime before proceeding with a civil suit. Perhaps the Legislature might consider adding similar language to this subsection to clarify that there does not need to be a conviction for an act of terrorism before a plaintiff may bring a civil suit for damages.

²⁴ Office of the State Court Administrator, *2016 Judicial Impact Statement for SB 996* (Jan. 26, 2016) (on file with the Senate Committee on Judiciary).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 772.13, 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 Simmons

9-00739-17

2017898__

A bill to be entitled

An act relating to civil remedies for terrorism;
creating s. 772.13, F.S.; creating a cause of action
relating to terrorism; specifying a measure of
damages; prohibiting claims by specified individuals;
providing for attorney fees and court costs; providing
construction; providing an effective date.

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

Section 1. Section 772.13, Florida Statutes, is created to
read:

772.13 Civil remedy for terrorism or facilitating or
furthering terrorism.—

(1) A person who is injured by an act of terrorism as
defined in s. 775.30 or a violation of a law for which the
penalty is increased pursuant to s. 775.31 for facilitating or
furthering terrorism has a cause of action for threefold the
actual damages sustained and, in any such action, is entitled to
minimum damages in the amount of \$1,000 and reasonable attorney
fees and court costs in the trial and appellate courts.

(2) A person injured by reason of his or her participation
in the same act or transaction that resulted in the act of
terrorism or resulted in the defendant's penalty increase
pursuant to s. 775.31 may not bring a claim under this section.

(3) The defendant is entitled to recover reasonable
attorney fees and court costs in the trial and appellate courts
upon a finding that the claimant raised a claim that was without
support in fact or law.

Page 1 of 2

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9-00739-17

2017898__

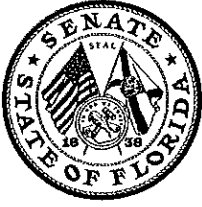
(4) In awarding attorney fees and court costs under this
section, the court may not consider the ability of the opposing
party to pay such fees and court costs.

(5) This section does not limit a right to recover attorney
fees or costs under other provisions of law.

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

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 23, 2017

I respectfully request that **Senate Bill 898**, relating to Civil Remedies for Terrorism, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons", written over a horizontal line.

Senator David Simmons
Florida Senate, District 9

✓ CB 3/23/17

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/19/2017
Meeting Date

898
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S

Phone 727/877-9291

Street

St Petersburg

FL

33705

City

State

Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 1238

INTRODUCER: Senator Bean

SUBJECT: Utility Investments in Gas Reserves

DATE: April 11, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Caldwell/Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	Favorable
2. <u>Wiehle</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

I. Summary:

SB 1238 authorizes the Public Service Commission (PSC or commission) to approve cost recovery for prudently incurred natural gas reserve investments, including a rate of return and prudently incurred expenses associated with such investments, by a public utility through an adjustment clause. To qualify, the public utility must have at least 65 percent natural gas fueled generation.

By December 31, 2017, the commission must adopt a rule containing the standards by which it will determine the prudence of natural gas reserve investments. The rule must include the following three criteria:

- Each investment is projected to generate savings for customers over the life of the investment.
- Each investment must have at least 50 percent of the wells classified as proven reserves by the Securities and Exchange Commission.
- Total volume of natural gas produced from the utility's reserves must not exceed the following percentages of the utility's average projected natural gas daily burn:
 - 7.5 percent in 2018.
 - 10 percent in 2019.
 - 12.5 percent in 2020.
 - 15 percent thereafter.

The bill would take effect July 1, 2017.

II. Present Situation:

Present Regulation of Electric Industry

Economic regulation is a substitute for market forces in an industry where those forces do not function properly. As such, economic regulation is to some extent a balancing process, assigning both the utility and its customers both benefits and obligations.

The regulated electric utility¹ gets:

- A monopoly service territory with a captive customer base;
- Recovery of all prudent and reasonable costs; and
- A rate of return on capital investments, or a profit.

The regulated utility's customers get:

- The utility's obligation to serve, which consists of an obligation to provide adequate, reliable service, in both production and delivery of electricity, and an obligation to provide that service to all paying customers within its service territory; and
- Fair and reasonable rates.

An inherent element of this arrangement is that the regulated utility is almost always limited to investments within the core of the electric industry, which prevents risks from investments in other types of businesses from having a detrimental impact on reliability and fair rates for the captive customers.

Typically, a regulated utility recovers its capital investments and fixed costs, including a rate of return on capital investments, through base rates, and recovers variable or short-term costs through a cost recovery clause proceeding.

The relevant recovery clause here is the fuel and purchased power recovery clause (fuel clause). The fuel clause was created by commission order, not statute, and the PSC policy and practice on the fuel clause was developed over decades through a series of PSC orders issued in evidentiary proceedings, not set forth in rules established through rulemaking proceedings. Fuel cost recovery is a simple pass-through charge of the costs incurred, and very rarely includes any capital investment or return on that investment. The commission has an annual docket on fuel cost recovery charges, and each public utility projects its fuel costs for the upcoming year and presents documentation on its costs for the past year for a "true-up" of projected compared to actual fuel costs for that year. The fuel charge for the next year is based on the projected costs and any necessary adjustment for overcharges or undercharges from the previous year.

Changes in fuel prices can be volatile, so utilities have fuel price hedging programs, which "promise protection against energy-market price spikes, and they can be important to the

¹ The statutes establish two classes of utilities. The first is a "public utility" which includes Florida Power & Light, Duke Energy Florida, Tampa Electric Company, Gulf Power, and Florida Utilities Company, but does not include either a municipal electric utility or a cooperative. This class of utility is subject to full economic regulation by the PSC. The second class is an "electric utility" which includes public utilities, municipal electric utilities, and rural cooperatives. This class is subject to grid regulation and rate design jurisdiction. This bill applies only to public utilities subject to full economic regulation. See, s. 366.02 and chapter 366, F.S.

regulatory goal of sustainable, lowest long-term service cost.”² Most hedges are financial and consist of options, swaps, futures, basis swaps, and fixed-price swaps involving natural gas and possibly other commodities whose price movements are known to be related to energy price movements.³ Storing natural gas provides a physical hedge against price volatility and against shortages and disruptions to pipeline operations.⁴

PSC Order on FPL Hedging Investments

On June 25, 2014, Florida Power and Light Company (FPL) filed a petition seeking PSC approval to recover through the fuel clause its costs of a joint venture with an oil and natural gas company to acquire, explore, drill, and develop natural gas wells in Oklahoma (known as the “Woodford Project”). FPL argued that the investments were permissible as a long-term physical hedge, and that, as they were capital investments, FPL was entitled to earn a rate of return on the investments. FPL also requested that the commission establish guidelines under which FPL could invest in future gas reserve projects without the commission’s prior approval and recover the costs through the fuel clause.

On January 12, 2015, in a case of first impression, the commission approved FPL’s petition for cost recovery, including a rate of return, through the fuel clause.⁵ The PSC established two conditions on the cost recovery. First, FPL had to add the appropriate subaccounts, under the FERC system of accounting, which would correspond on a one-on-one basis with the accounts used by an FPL affiliate that had originally invested in these contracts. Second, FPL had to use an independent auditor in performing audits provided in the agreement.

On July 14, 2015, the commission approved FPL’s petition requesting guidelines under which FPL could participate in future gas reserve projects without the commission’s prior approval and recover the costs through the fuel clause.⁶ One effect of this is that an FPL investment that meets the guidelines is automatically deemed to be prudent and reasonable, and so recoverable from ratepayers.

Florida Supreme Court Order on Appeal of PSC’s FPL Order

On January 15, 2015, the Florida Supreme Court (Court) consolidated appeals by the Office of Public Counsel (OPC) and the Florida Industrial Power Users Group’s of the commission’s orders approving the Woodford Project and approving guidelines.⁷ On May 19, 2016, the Court reversed the PSC orders, holding that the commission exceeded its statutory authority when approving recovery of FPL’s investment in the Woodford Project.⁸

² Stephen Maloney, When The Price Is Right: How to measure hedging effectiveness and regulatory policy, *Fortnightly Magazine* - October 2007, <https://www.fortnightly.com/fortnightly/2007/10/when-price-right> (last accessed April 10, 2017).

³ *Id.*

⁴ *Id.*

⁵ See: Order No. PSC-15-0038-FOF-EI, issued January 12, 2015, in Docket No. 150001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*.

⁶ Order No. PSC-15-0284-FOF-EI, issued July 14, 2015, in Docket No. 120005-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*.

⁷ *Id.*

⁸ *Citizens of the State of Florida v Art Graham*, 191 So. 3d 897, Fla. (May 19, 2016); Also available at <http://www.floridasupremecourt.org/decisions/2016/sc15-95.pdf>.

The Court explained this holding by addressing two possible bases for cost recovery. First, the Court found that the PSC could not approve cost recovery pursuant to its general authority over matters respecting the rates and service of public utilities. The statutes authorize the commission to set fair, just, and reasonable rates for public utilities, which are defined as owning, maintaining, or operating an electric generation, transmission, or distribution system. “Therefore, under the plain meaning of these two statutes, cost recovery is permissible only for costs arising from the “generation, transmission, or distribution” of electricity.... In other words, the exploration, drilling, and production of fuel falls outside the purview of an electric utility as defined by the Legislature.”⁹ This appears to be an application of the limitation inherent in economic regulation that a regulated entity cannot invest in a business not part of its regulated activities in order to prevent risks from investments in outside businesses and the impacts of those risks on reliability and fair rates for the monopoly business’ captive customers.

Second, the Court found that the PSC could not approve the investments as a long-term physical hedge. “Specifically, hedging involves locking in a future price to avoid the adverse effects of price fluctuations, and utilities can hedge by entering into financial arrangements to secure natural gas at a future point in time at a fixed price.”¹⁰ The Woodford Project does not involve a certain quantity of fuel for a certain price, so it cannot qualify as a hedge.¹¹ Additionally, the fuel cost recovery process is a cash flow mechanism to allow utilities to recover costs for changes in fuel costs between ratemaking proceedings, and, while it does permit utilities to recover actual costs of financial derivatives and physical hedges that help prevent price shocks from volatile fuel costs, it does not allow a rate of return on money spent to purchase fuel or costs of hedging contracts.¹² The Court closes this discussion by making the following findings.

Permitting advance recovery of FPL’s investment in the Woodford Project’s exploration and production of natural gas will not pay for the costs of actual fuel. It will provide recovery, instead, for investment, operation, and maintenance and operation of assets that will provide access to an unknown quantity of fuel in the future. It is impossible to know what the costs of the natural gas will be until it is actually produced. There is more uncertainty from this investment rather than less. Therefore, it cannot be characterized as a physical hedge.

Additionally, under FPL’s proposal for the Woodford Project, ratepayers (not FPL) bear the risk of natural gas price volatility and all of the production risks. If the production cost of extracting natural gas from the Woodford wells, including profit paid to FPL on its capital investment, is less than the natural gas market price, the ratepayers will benefit. However, if the production costs of extracting natural gas from the Woodford wells is more than the natural gas market, the ratepayers do not benefit but will instead suffer a

⁹ *Id.*, <http://www.floridasupremecourt.org/decisions/2016/sc15-95.pdf>, pages 5-8.

¹⁰ *Id.*, <http://www.floridasupremecourt.org/decisions/2016/sc15-95.pdf>, page 9, citing See Stephen Maloney, When the Price is Right, 145 No. 10 Pub. Util. Fort. 24, 25-26 (Oct. 2007).

¹¹ As is discussed above, typically the fuel cost recovery process is a simple pass-through charge of the costs incurred, with the recovery for any given year based on the projected fuel costs for that year adjusted for overcharges or undercharges from the previous year to true-up recovery to actual costs. One effect of the lack of “a certain quantity of fuel for a certain price” is that there is no basis for a true-up.

¹² *Id.*, <http://www.floridasupremecourt.org/decisions/2016/sc15-95.pdf>, pages 8-10.

loss. The monies spent on the Woodford Project are not a mere pass-through, like other fuel expenses, because FPL will earn a return on its capital expenditures. Accordingly, the Woodford Project is a guaranteed capital investment for FPL; it is not a hedge to stabilize fuel costs.

This may be a good idea, but whether advance cost recovery of speculative capital investments in gas exploration and production by an electric utility is in the public interest is a policy determination that must be made by the Legislature.¹³

Subsequent Supreme Court Decision on the Fuel Clause

The Court further addressed the PSC's use of the fuel clause in a subsequent case involving Florida Public Utilities Company (FPUC), an investor-owned electric utility located in Fernandina Beach that does not generate its own electricity, but instead relies solely on wholesale purchase power agreements with other electric utilities.¹⁴ On August 29, 2014, FPUC entered into a settlement agreement with OPC to resolve FPUC's then-pending petition for an increase in base rates. The settlement agreement, approved by the PSC on September 29, 2014, prohibited FPUC from increasing its base rates until at least December 31, 2016, but did allow FPUC to seek PSC approval for recovery of costs "of a type which traditionally and historically would be, have been, or are presently recovered through cost recovery clauses."

On September 1, 2015, FPUC petitioned the commission for approval to recover through the fuel clause its costs of constructing a new interconnection with FPL, including a return on investment. In support of its petition, FPUC argued that it was purchasing power from Jacksonville Electric Authority pursuant to a contract that would expire on December 31, 2017, and that the interconnection with FPL would give FPUC access to electricity from two sources and a better bargaining position, with any savings to be passed on to customers in the form of lower rates. OPC objected that the costs were barred by the settlement agreement. Commission staff agreed, and recommended that the petition be denied. Nonetheless, the commission voted to reject the staff recommendation and approve the recovery.

On appeal, the Court found that the PSC failed to consider and apply the settlement agreement and turned to the issue of whether the petition could be granted. The Court began by noting that the term "fuel clause" is a misnomer as the fuel clause is not a particular provision, but rather "a regulatory tool designed to pass through to utility customers the costs associated with fuel purchases."¹⁵ Its purpose is to prevent "regulatory lag" a time lag between ratemaking proceedings in which volatile prices result in under-recovery of costs. However, as the commission has recognized, regulatory lag is not as much of a problem when expenses such as capital improvements can be planned for and included in base rate calculations. The PSC has approved recovery of some capital costs through the fuel clause. For example, in 1995, it approved FPL's purchase of 462 high capacity rail cars which allowed FPL to obtain favorable transportation rate savings that exceeded the recoverable cost of the purchase, saving an estimated \$24 million in fuel costs. Turning to the issues at hand, the court stated:

¹³ *Id.*, <http://www.floridasupremecourt.org/decisions/2016/sc15-95.pdf>, pages 9-10.

¹⁴ *Citizens of the State of Florida v Art Graham*, March 16, 2017, <http://www.floridasupremecourt.org/decisions/2017/sc16-141.pdf>.

¹⁵ *Id.*, at 19.

With the purpose of the fuel clause in mind, we conclude that the Commission erred as a matter of law in determining that the construction type costs associated with the actual construction of the physical structure for the transmission interconnection are recoverable through the fuel clause pursuant to Order No. 14546. Unlike the dissent, if we were to allow recovery of these capital construction costs through the fuel clause simply because they may result in savings and are loosely linked to fuel and purchased power through transmission lines, the fuel clause exception would finally totally swallow whole the rule that capital costs should be recovered through base rates because they can be subject to adequate planning.

Indeed, in this very case the testimony of FPUC witnesses suggested that FPUC simply chose to pursue recovery through the fuel clause as a matter of convenience, rather than any necessity borne of unforeseen volatility. Moreover, tellingly, FPUC had always recovered costs for transmission assets through base rates on prior occasions. Only after a settlement agreement freezing base rates was in place did FPUC for the first time seek to recover transmission asset capital construction costs through the fuel clause.

We do not believe that the fuel clause is an end-all-be-all of cost recovery, but rather its history suggests its use should be limited to facilitating recovery of costs related to fuel and power purchases that are volatile, rendering them less than ideal for a base rates case. Today's case is certainly not the first example of utilities seeking to recover for items that are more properly base rate costs through the fuel clause in a practice that has become alarmingly frequent. Just recently we reexamined the contours of the fuel clause in reversing a commission order approving cost recovery of “ ‘exploration expense, depletion expense, operating expenses, G & A, taxes, transportation costs and a return on the unrecovered investment, including working capital’ for investments in the exploration, drilling, and production of natural gas in the Woodford Shale Gas Region in Oklahoma.” *Citizens of State v. Graham*, 191 So. 3d 897, 899 (Fla. 2016). The project was characterized as “a long-term physical hedge.” *Id.* at 901. In that case we reaffirmed the purpose of the fuel clause as a mechanism for addressing the volatility of fuel prices between ratemaking proceedings.

III. Effect of Proposed Changes:

The bill amends s. 366.04(2), F.S., to authorize the commission to approve cost recovery through an adjustment clause for a utility's prudent investments in natural gas reserves, including rate of return, and for prudently incurred expenses associated with such investments. To qualify to make these investments, a utility must have at least 65 percent natural-gas-fueled generation.¹⁶

¹⁶ The phrase “has at least 65 percent natural-gas-fueled generation” can refer either to installed power plant capacity or actual electricity generation, stated in kilowatt-hours (kWh). According to the PSC bill analysis, if the phrase refers to capacity, as of December 31, 2015, FPL was 67 percent, Duke Energy Florida, LLC, (DEF) was 62 percent, Tampa Electric Company (TECO) was 58 percent, and Gulf Power Company (GPC) was 24 percent. This data set suggests only one electric generating public utility would qualify at this time. If the phrase refers to actual kWh generated, this can vary from year to year based on a variety of factors. FPL projected sustained generation from natural gas in excess of at least 65 percent. DEF projected sustained usage in excess of 65 percent after 2016. GPC could potentially qualify during the period 2016 through 2019.

The commission must adopt by rule no later than December 31, 2017, standards by which it will determine the prudence of such gas reserve investments. The standards must require, at minimum, all of the following:

- Each natural gas reserve investment is projected to generate savings for customers over the life of the investment.
- The total volume of natural gas produced from all of the utility's natural gas reserve investments must not exceed the following percentages of the utility's average projected daily burn of natural gas:
 - 7.5 percent in 2018;
 - 10 percent in 2019;
 - 12.5 percent in 2020; and
 - 15 percent in 2021 and thereafter.
- Each investment must be made in natural gas projects that have at least 50 percent of the wells within the project classified as proved gas reserves by the Securities and Exchange Commission.

The bill takes effect July 1, 2017.

The Court noted in both cases discussed above that capital investments and the related return on investments are not usually included in an adjustment clause (recovery clause). There is, however, an argument that recovering these costs in a recovery clause is more appropriate. The Court found that:

- The costs of these investments are not related to the utility's core functions of generating and delivering electricity.
- These are not long-term physical hedging contracts as they do not involve a set amount of natural gas for a set price.
- Under the terms of the PSC order (and of this bill) "ratepayers (not FPL) bear the risk of natural gas price volatility and all of the production risks."
- "Accordingly, the Woodford Project is a guaranteed capital investment for FPL; it is not a hedge to stabilize fuel costs."

As these investments can be considered to be outside a regulated utility's regulated business practices, these costs arguably are not appropriate for inclusion in base rates and could more appropriately be included in a pass-through recovery clause.

Similar to the PSC order, the bill establishes standards which if met, constitute a binding determination of prudent and reasonable costs, with no subsequent review and no opportunity for a true-up of projected costs as compared to actual costs.

The bill requires the commission to adopt by rule no later than December 31, 2017, standards by which it will determine the prudence of gas reserve investments. The commission points out in its review of the bill that while a rule may be proposed before or by that date, the date of adoption will depend in part upon what further legal process stakeholders avail themselves of pursuant to s. 120.54, F.S.

The Securities and Exchange Commission has three classes of natural gas reserves based on the probability that the predicted quantity of gas can be commercially recovered under current technical, contractual, economic, and regulatory conditions:

- Proved reserves have reasonable certainty (90 percent probability);
- Probable reserves have some uncertainty (50 percent probability), and
- Possible reserves have high uncertainty (10 percent probability).¹⁷

Because one of the primary purposes of gas reserve projects is a physical source of supply to serve its natural gas needs, the PSC required that at least 50 percent of the wells in each gas reserve project must be classified as proved reserves, and it prohibited FPL from entering into transactions for gas reserve projects that involve wells classified as possible reserves. The bill, on the other hand, would allow up to 50 percent in possible reserves.

The bill also does not have the PSC's requirement that FPL add the appropriate subaccounts to correspond on a one-on-one basis with the accounts used by the affiliated Gas Reserve Company.

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:

Qualifying utilities will receive a rate of return on all investments. Customers should benefit if natural gas prices increase sufficiently, but could bear additional costs if natural gas prices decrease. Additionally, customers would not benefit if there is no natural gas in a well (and up to 50 percent of all projects can be possible resources with a 10 percent possibility of the projected success), if less natural gas is produced than projected, or if production costs increase.

¹⁷ Order No. PSC-15-0284-FOF-EI, issued July 14, 2015, in Docket No. 120005-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends section 366.04 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.



265888

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 12 and 13
insert:

Section 1. Paragraph (a) of subsection (13) of section
120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.—

(13) FLORIDA PUBLIC SERVICE COMMISSION.—

(a) Each agency statement meeting the definition of a rule
under s. 120.52 which relates ~~statements that relate~~ to cost-
recovery clauses, factors, or mechanisms implemented pursuant to



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chapter 366, relating to public utilities, is subject to ~~are~~
~~exempt from~~ the rulemaking requirements under provisions of s.
120.54(1)(a). Each such rule adopted before July 1, 2020, is
exempt from s. 120.541(3).

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

And the title is amended as follows:

Delete lines 2 - 3

and insert:

An act relating to the Public Service Commission;
amending s. 120.80, F.S.; providing that specified
agency statements are subject to certain rulemaking
requirements; exempting such rules from ratification
requirements if adopted before a specified date;
amending s. 366.04, F.S.; revising the



916352

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete line 27
and insert:
determine the prudence of such gas reserve investments. However,
such standards may not take effect until ratified by the
Legislature. The

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

And the title is amended as follows:

Delete line 9



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12 and insert:
13 investments; requiring legislative ratification of
14 such standards; providing requirements for such
15 standards; providing an effective date.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Latvala) recommended the following:

Senate Amendment

Delete lines 28 - 42
and insert:

standards must include, at a minimum, all of the following:

1. A requirement that each natural gas reserve investment
be projected to generate savings for customers over the life of
the investment.

2. A requirement that the total volume of natural gas
produced from all of a utility's natural gas reserve investments
not exceed the following percentages of the utility's average



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projected daily burn of natural gas:

a. 7.5 percent in 2018;

b. 10 percent in 2019;

c. 12.5 percent in 2020; and

d. 15 percent in 2021 and thereafter.

3. A requirement that each investment be made in natural gas projects that have at least 50 percent of the wells within the project classified as proved gas reserves by the Securities and Exchange Commission.

4. A prohibition against the recovery by a utility of the costs of natural gas extracted from the state by means of hydraulic fracturing.



246872

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Latvala) recommended the following:

Senate Amendment

Delete line 30
and insert:
generate at least 25 percent savings on a net present value
basis for customers over the life of the investment.



208122

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Latvala) recommended the following:

Senate Amendment

Delete line 40
and insert:
that have at least 90 percent of the wells within the project



383720

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 42 and 43
insert:

(8) Any third party with whom a public utility contracts with for oil or gas exploration, extraction, drilling, processing, storage, or other related activity for which the utility seeks ratepayer recovery shall contractually agree with the utility to make such party's pertinent records available to, and subject to audit and review by, the commission.



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D I R E C T O R Y C L A U S E A M E N D M E N T
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And the directory clause is amended as follows:

Delete lines 15 - 16

and insert:

redesignated as paragraphs (e), (f), and (g), respectively, a
new paragraph (d) is added to that subsection, and subsection
(8) is added to that section, to read:

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

Delete line 9

and insert:

investments; requiring a third party that contracts
with a public utility for oil or gas exploration,
extraction, drilling, processing, storage, or other
related activity to contractually agree with the
utility to make such party's records available to, and
subject to audit and review by, the commission under
certain conditions; providing an effective date.



310804

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Latvala) recommended the following:

Senate Amendment

Delete line 42
and insert:
Commission. The authorized return on equity for projects
authorized under this paragraph shall be 50 percent of the
qualifying utility's commission-approved return on equity.



461616

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 49 and 50
insert:

Section 2. Section 366.97, Florida Statutes, is created to
read:

366.97 Cost recovery calculations for gas reserve
investments.—

(1) The commission shall annually determine if a public
utility's natural gas reserve investments produced a savings to
customers in the previous year.



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(2) In the event that such investment does not provide a savings to the customers in the previous year, the amount of the following year's cost recovery must be adjusted to remove the amount of return the company earned in the previous year, if any.

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

And the title is amended as follows:

Delete line 9

and insert:

investments; creating s. 366.97, F.S.; requiring the Public Service Commission to annually determine whether its natural gas reserve investments provided cost savings during the previous year; providing for cost recovery adjustments for natural gas reserve investments; providing an effective date.



440944

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 49 and 50
insert:

Section 2. (1) Annually, each public utility shall file with the Public Service Commission a detailed comparison of all gas reserve projects entered into on behalf of the utility and any affiliate or subsidiary of the utility's parent company as part of its Risk Management Plan. The information must be the same for each gas reserve project entered into by any affiliate or subsidiary that was used to support or justify the



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appropriateness of each gas reserve project entered into during the reporting period. The filing must:

(a) Show all material assumptions relied upon to support each gas reserve project, including the capital investment amount;

(b) Calculate the associated revenue requirement for each gas reserve project; and

(c) Provide the net present value savings for each gas reserve project entered into by any affiliate or subsidiary of a parent company.

(2) For any gas reserve project, the utility shall use an independent third-party auditor in performing audits of the associated transactions. Subaccounts that correspond on a one-on-one basis with the oil and gas system of accounts shall be established and used by the utility for each investment in a gas reserve project.

(3) Each utility recovering its investment in a natural gas reserve project through an adjustment clause shall separately identify such clause on each customer's monthly bill. Within that line item, the utility shall explain the costs and profits being recovered and the rate of return that is used to calculate the profit. Annually, the utility shall include in each customer's bill a summary describing the annual costs and profits and any loss or gain on hedging and production costs.

(4) Annually, the commission shall prepare a report and provide it to the President of the Senate and the Speaker of the House of Representatives containing the following information:

(a) The name of each utility participating in natural gas reserve projects.



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(b) The number of projects for each utility.

(c) The amount of investment for each project.

(d) The amount of gain or loss for the year of hedging or
production.

(e) Any other information the commission deems relevant.

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

And the title is amended as follows:

Delete line 9

and insert:

investments; requiring each public utility to file
with the commission with a comparison of all gas
reserve projects entered into on behalf of the utility
and any affiliate or subsidiary of the parent company
as part of its Risk Management Plan; specifying the
requirements of the filing; specifying the use of a
third-party auditor; requiring public utilities to
separately identify certain adjustment clauses for
investments in natural gas in and annual costs and
profits on customers' bills; requiring the commission
to file a report with the Legislature; providing an
effective date.



793320

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 49 and 50
insert:

Section 2. Section 366.96, Florida Statutes, is created to
read:

366.96 Natural gas reserve investment option.—A public
utility must provide customers an option to decline to
participate in the utility's investment in natural gas reserves.
Utility rates for such customers may not reflect any cost
recovery, cost savings, or other financial impacts related to



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such utility's investments in natural gas reserves.

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

And the title is amended as follows:

Delete line 9

and insert:

investments; creating s. 366.96, F.S.; requiring
utilities to offer customers an option to decline
participation in the utilities' natural gas reserve
investments; prohibiting utility rates for customers
who decline participation from reflecting certain
costs related to such investments; providing an
effective date.

By Senator Bean

4-01107A-17

20171238__

A bill to be entitled

An act relating to utility investments in gas reserves; amending s. 366.04, F.S.; revising the jurisdiction of the Public Service Commission over public utilities to include the approval of cost recovery for certain gas reserve investments; requiring the commission to adopt, by rule, standards by which it will determine the prudence of such investments; providing an effective date.

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

Section 1. Present paragraphs (d), (e), and (f) of subsection (2) of section 366.04, Florida Statutes, are redesignated as paragraphs (e), (f), and (g), respectively, and a new paragraph (d) is added to that subsection, to read:

366.04 Jurisdiction of commission.—

(2) In the exercise of its jurisdiction, the commission shall have power over electric utilities for the following purposes:

(d) To approve cost recovery by adjustment clause for a utility's prudent investments, including rate of return, and for prudently incurred expenses associated with such investments, in natural gas reserves if the utility has at least 65 percent natural-gas-fueled generation. The commission shall adopt by rule no later than December 31, 2017, standards by which it will determine the prudence of such gas reserve investments. The standards must require, at minimum, all of the following:

1. Each natural gas reserve investment is projected to

Page 1 of 2

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

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generate savings for customers over the life of the investment.

2. The total volume of natural gas produced from all of a utility's natural gas reserve investments must not exceed the following percentages of the utility's average projected daily burn of natural gas:

a. 7.5 percent in 2018;

b. 10 percent in 2019;

c. 12.5 percent in 2020; and

d. 15 percent in 2021 and thereafter.

3. Each investment must be made in natural gas projects that have at least 50 percent of the wells within the project classified as proved gas reserves by the Securities and Exchange Commission.

No provision of this chapter shall be construed or applied to impede, prevent, or prohibit any municipally owned electric utility system from distributing at retail electrical energy within its corporate limits, as such corporate limits exist on July 1, 1974; however, existing territorial agreements shall not be altered or abridged hereby.

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

Page 2 of 2

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 420

INTRODUCER: Community Affairs Committee; Banking and Insurance Committee; and Senator Brandes

SUBJECT: Flood Insurance

DATE: April 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Fav/CS
2.	Cochran	Yeatman	CA	Fav/CS
3.	Matiyow	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 420 extends to October 1, 2025, existing law that allows insurers offering private market flood insurance under s. 627.715, F.S., to make rate filings that are not required to be reviewed by the Office of Insurance Regulation (OIR) before implementation of the rate (“file and use” review) or shortly after implementation of the rate (“use and file” review). The bill generally applies s. 627.715, F.S., to excess flood insurance. Excess coverage is exempted from the requirement of s. 627.715(1), F.S., to offer flood insurance on a standard, preferred, customized, flexible, or supplemental basis. The bill allows flood policies to be placed with a surplus lines insurer with a superior financial strength rating without the agent first receiving three declinations from admitted insurers. The bill increases the interval for the Florida Commission on Hurricane Loss Projection Methodology to revise the criteria used in calculating flood loss projection models to 4 years. Lastly, the bill requires an insured currently covered under the National Flood Insurance Program to sign an acknowledgement regarding the risk of being charged a higher rate should they choose to return at a later date.

II. Present Situation:

In 2014, the Legislature passed CS/CS/CS/SB 542, allowing an expedited process for insurers to offer a variety of private flood insurance policies. The bill created s. 627.715, F.S., governing the sale of personal lines, residential flood insurance. The statute does not apply to commercial lines

residential, commercial lines nonresidential, or excess flood insurance. Under this new section, authorized insurers can sell five different types of flood insurance products:

- Standard coverage, which covers only losses from the peril of flood as defined by the National Flood Insurance Program (NFIP). The policy must be the same as coverage offered from the NFIP regarding the definition of flood, coverage, deductibles, and loss adjustment.¹
- Preferred coverage, which includes the same coverage as standard flood insurance and also must cover flood losses caused by water intrusion from outside the structure that are not otherwise covered under the definition of flood, coverage for additional living expenses, and replacement cost coverage for personal property or contents coverage.²
- Customized coverage, which is coverage that is broader than standard flood coverage.³
- Flexible coverage, which has coverage limits at an agreed upon amount, deductibles ranging from \$500 to 10 percent of policy dwelling limits, adjusts dwelling losses on the basis of actual cash value or pursuant to s. 627.7011(3), F.S., restricts coverage to the principal building defined in the policy, excludes additional living expenses coverage, or excludes personal property or contents coverage.⁴
- Supplemental coverage, which supplements an NFIP flood policy or a standard or preferred policy from a private market insurer. Supplemental coverage may provide coverage for jewelry, art, deductibles, and additional living expenses.⁵

The law requires prominent notice on the policy declarations or face page of deductibles and any other limitations on flood coverage or policy limits. Insurance agents that receive a flood insurance application must obtain a signed acknowledgement from the applicant stating that the full risk rate for flood insurance may apply to the property if flood insurance is later obtained under the National Flood Insurance Program.⁶

Under the law an insurer may establish flood rates through the standard process in s. 627.062, F.S. Alternatively, rates filed before October 1, 2019,⁷ may be established through a rate filing with the Office of Insurance Regulation that is not required to be reviewed by the OIR before implementation of the rate (“file and use” review) or shortly after implementation of the rate (“use and file” review). Specifically, the flood rate is exempt from the “file and use” and “use and file” requirements of s. 627.062(2)(a), F.S. Such filings are also exempt from the requirement to provide information necessary to evaluate the company and the reasonableness of the rate. The OIR may, however, examine a rate filing at its discretion. To enable the OIR to conduct such examinations, insurers must maintain actuarial data related to flood coverage for 2 years after the effective date of the rate change. Upon examination, the OIR will use actuarial techniques and the standards of the rating law to determine if the rate is excessive, inadequate or unfairly discriminatory.

¹ s. 627.715(1)(a)1., F.S.

² s. 627.715(1)(a)2., F.S.

³ s. 627.715(1)(a)3., F.S.

⁴ s. 627.715(1)(a)4., F.S.

⁵ s. 627.715(1)(a)5., F.S.

⁶ s. 627.715(8), F.S.

⁷ s. 627.715(3)(b), F.S.

Insurers that write flood coverage must notify the OIR at least 30 days before doing so in this state and file a plan of operation, financial projections, and any such revisions with the OIR.⁸ The law allows surplus lines agents to export flood insurance without making a diligent effort to seek coverage from three or more authorized insurers until July 1, 2017.⁹ Section 627.715(6), F.S., prohibits Citizens Property Insurance Corporation from providing flood insurance.¹⁰ The Florida Hurricane Catastrophe Fund is prohibited from reimbursing flood losses.¹¹ The law allows projected flood losses for personal residential property insurance to be a rating factor. Flood losses may be estimated using a model or straight average of models found reliable by the Florida Commission on Hurricane Loss Projection Methodology.¹²

The law also specifies that the OIR Commissioner may provide a certification required by federal law or rule as a condition of qualifying for private flood insurance or disaster assistance. The certification is not subject to review under ch. 120, F.S.¹³

The National Flood Insurance Program (NFIP)

The NFIP was created by the passage of the National Flood Insurance Act of 1968.¹⁴ The NFIP is administered by Federal Emergency Management Agency (FEMA) and provides property owners located in flood-prone areas the ability to purchase flood insurance protection from the federal government. Flood insurance through the NFIP is only available in communities that adopt and enforce federal floodplain management criteria.¹⁵

Florida Commission on Hurricane Loss Projection Methodology (Commission)

In 1995, the Legislature established the Commission to serve as an independent body within the State Board of Administration.¹⁶ Section 627.0628, F.S., lists the 12 members who are to make up the Commission. The Commission is to adopt findings on the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane and flood losses. The Commission sets standards for loss projection methodology and examines the methods employed in proprietary loss models used by private insurers in setting rates to determine whether they meet the Commission's standards. The law requires the Commission to revise previously adopted actuarial methods, principles, standards, models, or output ranges every odd numbered year.¹⁷

⁸ s. 627.715(5), F.S.

⁹ s. 627.715(4), F.S.

¹⁰ s. 627.715(6), F.S.

¹¹ s. 627.715(7), F.S.

¹² s. 627.062(2)(b)12, F.S.

¹³ s. 627.715(10), F.S.

¹⁴ Federal Emergency Management Agency, National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973, <http://www.fema.gov/media-library/assets/documents/7277?id=2216> (last visited March 29, 2017).

¹⁵ Federal Emergency Management Agency, All-Hazard Authorities of the Federal Emergency Management Agency, https://www.fema.gov/media-library-data/20130726-1545-20490-9247/frm_acts.pdf (last visited March 29, 2017).

¹⁶ s. 627.0628, F.S.

¹⁷ s. 627.0628(3)(f), F.S.

III. Effect of Proposed Changes:

The bill requires the Florida Commission on Hurricane Loss Projection Methodology to revise previously adopted actuarial methods, principles, standards, models, or output ranges no less than every 4 years for flood loss projections. Existing law requires revisions no less than every 2 years.

The bill extends from October 1, 2019, to October 1, 2025, the time period during which personal lines residential flood insurance rates may be established through a rate filing with the Office of Insurance Regulation that is not required to be reviewed by the OIR before implementation of the rate (“file and use” review) or shortly after implementation of the rate (“use and file” review). The expedited filing also applies to commercial and commercial residential policies. After 2025, insurers offering private flood insurance will be required to make a complete rate filing with the OIR as required under s. 627.062, F.S.

The bill generally applies s. 627.715, F.S., to excess flood insurance and exempts such coverage for s. 627.715(5), F.S. Excess coverage is exempted from the requirement of s. 627.715(1), F.S., to offer flood insurance on a standard, preferred, customized, flexible, or supplemental basis. Excess coverage generally covers gaps above the NFIP limits and can also be purchased to cover gaps in private flood coverage.

The bill allows flood policies to be placed with a surplus lines insurer with a superior financial strength rating without the agent first receiving three declinations from admitted insurers. This section has a sunset date of July 1, 2022.

The bill prohibits a policy from being removed from the NFIP if the policyholder does not sign an acknowledgment at the time of expiration of the current policy. The acknowledgment provides a warning of the potential rate increase should they choose to return to the NFIP at a later date. A policy must be returned to the NFIP if the assigned agent does not receive this signed acknowledgment from the policyholder. This section has a sunset date of January 1, 2020.

The bill makes a technical correction that clarifies insurers can offer a flexible flood insurance policy as defined in s. 627.715(1)(a)4., F.S.

The effective date of the bill is 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:

Insurers can now offer excess flood insurance under s. 627.715, F.S.

The bill requires surplus lines insurers to maintain a superior, excellent, exceptional or equivalent financial strength rating by a rating agency acceptable to the Office before issuing a private flood insurance policy without obtaining three declinations from admitted insurers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.0628 and 627.715.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS/CS by Community Affairs on April 3, 2017:

- Provides a sunset date for the section that allows flood policies to be placed with a surplus lines insurer with a superior financial strength rating without the agent first receiving three declinations from admitted insurers.
- Provides that a policy is prohibited from being removed from the NFIP if the policyholder does not sign an acknowledgment at the time of expiration of the current policy. There is also a sunset date on this provision of January 1, 2020.

CS by Banking and Insurance on February 21, 2017:

- Includes excess coverage for the peril of flood under s. 627.715, F.S.
- Allows flood insurance to be placed with an eligible surplus lines insurer without making a diligent effort to seek coverage from 3 or more Florida-licensed insurers if the surplus lines insurer has a superior, excellent, exceptional or equivalent financial strength rating by a rating agency acceptable to the Office.

B. Amendments:

None.



909524

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 173 - 186
and insert:

(8) (a) When procuring a private flood insurance policy from an authorized insurer or a surplus lines insurer for a property currently insured under the National Flood Insurance Program, an agent must, at the time of expiration of the current policy, provide a written notice to be signed by the applicant, informing the applicant of the conditions under which the National Flood Insurance Program will apply:



909524

1. The full risk rate to the property if flood insurance is later obtained under the National Flood Insurance Program; or

2. A subsidized rate to the property if flood insurance is later obtained under the National Flood Insurance Program.

(b) The private flood insurance policy must be canceled and the National Flood Insurance Program policy renewed unless the agent receives the signed notice from the applicant within the earlier of:

1. Twenty-one days after expiration of the policy under the National Flood Insurance Program; or

2. Seven days before the expiration of any timeframe during which the applicant may return to the National Flood Insurance Program under a subsidized rate.

(c) Paragraphs (a) and (b) do not apply if the National Flood Insurance Program allows the subsidized rate to apply at any time a previous policyholder returns ~~An agent must, upon receiving an application for~~

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

And the title is amended as follows:

Delete lines 25 - 26

and insert:

National Flood Insurance Program; providing
applicability; providing an



960142

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Rules (Brandes) recommended the following:

Senate Substitute for Amendment (909524) (with title amendment)

Delete lines 173 - 186

and insert:

(8) (a) When procuring a private flood insurance policy from an authorized insurer or a surplus lines insurer for a property currently insured under the National Flood Insurance Program, an agent must, at the time of expiration of the current policy, provide a written notice to be signed by the applicant, informing the applicant of the conditions under which the



960142

National Flood Insurance Program will apply:

1. The full risk rate to the property if flood insurance is later obtained under the National Flood Insurance Program; or

2. A subsidized rate to the property if flood insurance is later obtained under the National Flood Insurance Program.

(b) The agent must obtain the signed written notice from the applicant within the earlier of:

1. Twenty-one days after expiration of the policy under the National Flood Insurance Program; or

2. Seven days before the expiration of any timeframe during which the applicant may return to the National Flood Insurance Program under a subsidized rate.

(c) Paragraphs (a) and (b) do not apply if the National Flood Insurance Program allows the subsidized rate to apply at any time a previous policyholder returns ~~An agent must, upon receiving an application for~~

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

And the title is amended as follows:

Delete lines 25 - 26

and insert:

National Flood Insurance Program; providing
applicability; providing an

By the Committees on Community Affairs; and Banking and Insurance; and Senator Brandes

578-03388-17

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A bill to be entitled

An act relating to flood insurance; amending s. 627.0628, F.S.; revising the intervals at which specified standards and guidelines for projecting certain rate filings must be revised by the Florida Commission on Hurricane Loss Projection Methodology; amending s. 627.715, F.S.; authorizing certain insurers to issue insurance policies, contracts, or endorsements providing certain excess coverage for the peril of flood; revising applicability; authorizing an insurer to issue flood insurance policies on a flexible basis; extending the last date of filing with the Office of Insurance Regulation of certain flood coverage rates that may be established and used by an insurer; specifying a condition for an eligible surplus lines insurer before a surplus lines agent may be excepted from a diligent-effort requirement when exporting flood insurance contracts or endorsements to the insurer; extending the expiration date of the exception; revising applicability of certain notification and filing requirements; revising a provision relating to a specified notice required before the procurement of a private flood insurance policy for property currently insured under the National Flood Insurance Program; providing an expiration date for the provision; providing an effective date.

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

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Section 1. Paragraph (f) of subsection (3) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.—

(3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

(f) The commission shall revise previously adopted actuarial methods, principles, standards, models, or output ranges every odd-numbered year for hurricane loss projections. The commission shall revise previously adopted actuarial methods, principles, standards, models, or output ranges no less than every 4 years for flood loss projections.

Section 2. Section 627.715, Florida Statutes, is amended to read:

627.715 Flood insurance.—An authorized insurer may issue an insurance policy, contract, or endorsement providing personal lines residential coverage for the peril of flood or excess coverage for the peril of flood on any structure or the contents of personal property contained therein, subject to this section. This section does not apply to commercial lines residential or commercial lines nonresidential coverage for the peril of flood. ~~This section also does not apply to coverage for the peril of flood that is excess coverage over any other insurance covering the peril of flood.~~ An insurer may issue flood insurance policies, contracts, or endorsements on a standard, preferred, customized, flexible, or supplemental basis.

(1) (a) Except for excess flood insurance policies, policies issued under this section include:

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1. Standard flood insurance, which must cover only losses from the peril of flood, as defined in paragraph (b), equivalent to that provided under a standard flood insurance policy under the National Flood Insurance Program. Standard flood insurance issued under this section must provide the same coverage, including deductibles and adjustment of losses, as that provided under a standard flood insurance policy under the National Flood Insurance Program.

2. Preferred flood insurance, which must include the same coverage as standard flood insurance but:

a. Include, within the definition of "flood," losses from water intrusion originating from outside the structure that are not otherwise covered under the definition of "flood" provided in paragraph (b).

b. Include coverage for additional living expenses.

c. Require that any loss under personal property or contents coverage that is repaired or replaced be adjusted only on the basis of replacement costs up to the policy limits.

3. Customized flood insurance, which must include coverage that is broader than the coverage provided under standard flood insurance.

4. Flexible flood insurance, which must cover losses from the peril of flood, as defined in paragraph (b), and may also include coverage for losses from water intrusion originating from outside the structure which is not otherwise covered by the definition of flood. Flexible flood insurance must include one or more of the following provisions:

a. An agreement between the insurer and the insured that the flood coverage is in a specified amount, such as coverage

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that is limited to the total amount of each outstanding mortgage applicable to the covered property.

b. A requirement for a deductible in an amount authorized under s. 627.701, including a deductible in an amount authorized for hurricanes.

c. A requirement that flood loss to a dwelling be adjusted in accordance with s. 627.7011(3) or adjusted only on the basis of the actual cash value of the property.

d. A restriction limiting flood coverage to the principal building defined in the policy.

e. A provision including or excluding coverage for additional living expenses.

f. A provision excluding coverage for personal property or contents as to the peril of flood.

5. Supplemental flood insurance, which may provide coverage designed to supplement a flood policy obtained from the National Flood Insurance Program or from an insurer issuing standard or preferred flood insurance pursuant to this section. Supplemental flood insurance may provide, but need not be limited to, coverage for jewelry, art, deductibles, and additional living expenses.

(b) "Flood" means a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties, at least one of which is the policyholder's property, from:

1. Overflow of inland or tidal waters;

2. Unusual and rapid accumulation or runoff of surface waters from any source;

3. Mudflow; or

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117 4. Collapse or subsidence of land along the shore of a lake
 118 or similar body of water as a result of erosion or undermining
 119 caused by waves or currents of water exceeding anticipated
 120 cyclical levels that result in a flood as defined in this
 121 paragraph.

122 (2) Flood coverage deductibles and policy limits pursuant
 123 to this section must be prominently noted on the policy
 124 declarations page or face page.

125 (3) (a) An insurer may establish and use flood coverage
 126 rates in accordance with the rate standards provided in s.
 127 627.062.

128 (b) For flood coverage rates filed with the office before
 129 October 1, 2025 ~~2019~~, the insurer may also establish and use
 130 such rates in accordance with the rates, rating schedules, or
 131 rating manuals filed by the insurer with the office which allow
 132 the insurer a reasonable rate of return on flood coverage
 133 written in this state. Flood coverage rates established pursuant
 134 to this paragraph are not subject to s. 627.062(2) (a) and (f).
 135 An insurer shall notify the office of any change to such rates
 136 within 30 days after the effective date of the change. The
 137 notice must include the name of the insurer and the average
 138 statewide percentage change in rates. Actuarial data with regard
 139 to such rates for flood coverage must be maintained by the
 140 insurer for 2 years after the effective date of such rate change
 141 and is subject to examination by the office. The office may
 142 require the insurer to incur the costs associated with an
 143 examination. Upon examination, the office, in accordance with
 144 generally accepted and reasonable actuarial techniques, shall
 145 consider the rate factors in s. 627.062(2) (b), (c), and (d), and

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146 the standards in s. 627.062(2) (e), to determine if the rate is
 147 excessive, inadequate, or unfairly discriminatory. If the office
 148 determines that a rate is excessive or unfairly discriminatory,
 149 the office shall require the insurer to provide appropriate
 150 credit to affected insureds or an appropriate refund to affected
 151 insureds who no longer receive coverage from the insurer.

152 (4) A surplus lines agent may export a contract or
 153 endorsement providing flood coverage to an eligible surplus
 154 lines insurer without making a diligent effort to seek such
 155 coverage from three or more authorized insurers under s.
 156 626.916(1) if the surplus lines insurer maintains a superior,
 157 excellent, exceptional, or equivalent financial strength rating
 158 by a rating agency acceptable to the office ~~s. 626.916(1) (a).~~
 159 This subsection expires July 1, 2022 ~~2017~~.

160 (5) In addition to any other applicable requirements, an
 161 insurer providing flood coverage that is not excess coverage in
 162 this state must:

163 (a) Notify the office at least 30 days before writing flood
 164 insurance in this state; and

165 (b) File a plan of operation and financial projections or
 166 revisions to such plan, as applicable, with the office.

167 (6) Citizens Property Insurance Corporation may not provide
 168 insurance for the peril of flood.

169 (7) The Florida Hurricane Catastrophe Fund may not provide
 170 reimbursement for losses proximately caused by the peril of
 171 flood, including losses that occur during a covered event as
 172 defined in s. 215.555(2) (b).

173 (8) When procuring a private flood insurance policy from an
 174 authorized insurer or a surplus lines insurer for a property

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175 currently insured under the National Flood Insurance Program, an
 176 agent must, at the time of expiration of the current policy,
 177 provide a written notice to be signed by the applicant,
 178 informing the applicant that the National Flood Insurance
 179 Program could apply the full risk rate to the property if flood
 180 insurance is later obtained under the National Flood Insurance
 181 Program. The agent must receive the signed notice from the
 182 applicant within 21 days after expiration of the policy under
 183 the National Flood Insurance Program; otherwise, the private
 184 flood insurance policy must be canceled and the National Flood
 185 Insurance Program policy renewed. This subsection expires
 186 January 1, 2020 ~~An agent must, upon receiving an application for~~
 187 ~~flood coverage from an authorized or surplus lines insurer for a~~
 188 ~~property receiving flood insurance under the National Flood~~
 189 ~~Insurance Program, obtain an acknowledgment signed by the~~
 190 ~~applicant before placing the coverage with the authorized or~~
 191 ~~surplus lines insurer. The acknowledgment must notify the~~
 192 ~~applicant that, if the applicant discontinues coverage under the~~
 193 ~~National Flood Insurance Program which is provided at a~~
 194 ~~subsidized rate, the full risk rate for flood insurance may~~
 195 ~~apply to the property if the applicant later seeks to reinstate~~
 196 ~~coverage under the program.~~

197 (9) With respect to the regulation of flood coverage
 198 written in this state by authorized insurers, this section
 199 supersedes any other provision in the Florida Insurance Code in
 200 the event of a conflict.

201 (10) If federal law or rule requires a certification by a
 202 state insurance regulatory official as a condition of qualifying
 203 for private flood insurance or disaster assistance, the

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204 Commissioner of Insurance Regulation may provide the
 205 certification, and such certification is not subject to review
 206 under chapter 120.

207 (11)(a) An authorized insurer offering flood insurance may
 208 request the office to certify that a policy, contract, or
 209 endorsement provides coverage for the peril of flood which
 210 equals or exceeds the flood coverage offered by the National
 211 Flood Insurance Program. To be eligible for certification, such
 212 policy, contract, or endorsement must contain a provision
 213 stating that it meets the private flood insurance requirements
 214 specified in 42 U.S.C. s. 4012a(b) and may not contain any
 215 provision that is not in compliance with 42 U.S.C. s. 4012a(b).

216 (b) The authorized insurer or its agent may reference or
 217 include a certification under paragraph (a) in advertising or
 218 communications with an agent, a lending institution, an insured,
 219 or a potential insured only for a policy, contract, or
 220 endorsement that is certified under this subsection. The
 221 authorized insurer may include a statement that notifies an
 222 insured of the certification on the declarations page or other
 223 policy documentation related to flood coverage certified under
 224 this subsection.

225 (c) An insurer or agent who knowingly misrepresents that a
 226 flood policy, contract, or endorsement is certified under this
 227 subsection commits an unfair or deceptive act under s. 626.9541.

228 Section 3. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto
Committee on Rules

Subject: Committee Agenda Request

Date: April 4th, 2017

I respectfully request that **Senate Bill #420**, relating to **Flood Insurance**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 926

INTRODUCER: Rules Committee; Education Committee; and Senator Flores and others

SUBJECT: Education

DATE: April 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	Fav/CS
2.	<u>Benvenisty</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 926 modifies provisions related to K-12 student assessments and the minority teacher education scholars program; and adds provisions related to early childhood development, intensive reading instruction, visitation of schools by individual school board members, exceptional student education, school board attendance policies, and teacher bonuses.

Specifically, the bill includes the following provisions related to K-12 student assessments:

- Shortening of the testing window: Requires, beginning with the 2017-2018 school year, the English Language Arts (ELA) and mathematics assessments for the specified grades to be administered no earlier than the last 3 weeks of the school year, as determined by district school board policy.
- Reporting of assessment results: Requires assessment results for the statewide, standardized ELA and mathematics assessments and Algebra I and Biology I end-of-course (EOC) assessments to be made available to the school districts as soon as practicable. Additionally, requires a school district to provide student performance results on statewide, standardized assessments to students' parents and specified teachers in an easy-to-read and understandable format, and the report must include specified information. A school district must also provide student performance results on district-required local assessments to students' teachers within one week after administering such assessments.
- Determination of alternative assessments: Requires the Commissioner of Education (commissioner) to contract for an independent study to determine nationally recognized high school assessment alternatives for Florida Standards Assessment (i.e., grade 9 and grade 10

ELA) and Algebra I EOC assessments for high school students; and to submit a report on the findings of the study to the Governor and the Legislature by January 1, 2018.

- Determination of concordant and comparative scores: Requires the commissioner to identify, by the first day of the 2017-2018 school year, concordant or comparative scores on specified articulated acceleration mechanisms, which satisfy high school graduation requirements; and requires the scores of students who pass such assessment to be incorporated into the school grade calculations.
- Elimination of certain EOC assessments: Eliminates Geometry, Algebra II, and United States History EOC assessments for purposes of meeting high school graduation requirements and earning scholar designation on the standard high school diploma except that a student must take one statewide, standardized mathematics assessment in high school, which must be Algebra I, Geometry, or Algebra II. Additionally, the bill eliminates the Civics EOC assessment for purposes of middle grades promotion.
- Provision of nonelectronic assessment option: Requires the commissioner to make available a nonelectronic option for all statewide assessments to reduce the time spent on testing, increase instructional time for students, and ensure students demonstrate a mastery of standards assessed. Additionally, a district school superintendent must notify the commissioner that the district will use a nonelectronic option for the entire district or for specific grade levels throughout the district by the beginning of the school year in which the nonelectronic option is used.
- Student achievement levels: Requires the Department of Education (DOE) to study each of the achievement levels used for statewide, standardized assessments to better communicate the meaning of such levels to students, parents, and teachers.
- Criteria for personnel evaluation: For purposes of personnel evaluations, authorizes each school district to measure student learning growth using formulas developed by the commissioner.

Additionally, the bill:

- Eliminates the cap on bonuses awarded to teachers of International Baccalaureate, Advanced International Certificate of Education, Advanced Placement, and Career and Professional Education courses, whose students earn specified score on the applicable examination.
- Expands the minority teacher education scholars program (program) to authorize a student to use the program scholarship toward a graduate degree with a major in education, leading to an initial certification.
- Creates the Committee on Early Childhood Development (committee), within the DOE, to develop a proposal for establishing and implementing a coordinated system focused on developmental milestones and outcomes for the school readiness program, the Voluntary Prekindergarten Education Program, and the Kindergarten Readiness Screener. The committee must submit a report of its findings and recommendations to the Governor and the Legislature by December 1, 2017.
- Defines a public school prekindergarten provider to include a charter school that is eligible to deliver the school year prekindergarten program or summer prekindergarten program pursuant to law.
- Authorizes a school district to provide the required intensive reading instruction for a minimum of 90 minutes daily over the course of the school day to students who are retained

in grade 3, and eliminates the requirement to provide such instruction for 90 continuous minutes daily.

- Authorizes an individual member of a district school board to visit any district or charter school in his or her school district on any day and at any time, at his or her pleasure.
- Requires each district school board to provide at least 100 minutes of supervised, safe, and unstructured free-play recess each week for students in kindergarten through grade 5.
- Deletes the requirement for students who participate in two full seasons of an interscholastic sport to pass a competency test on personal fitness in order to satisfy the physical education credit required for graduation with a standard high school diploma.
- Removes the option for the school district receiving an exceptional student with a disability, who resides in a residential facility, to decline to provide or contract for educational instruction.
- Authorizes a parent to request and be granted permission student's absence from school for treatment of autism spectrum disorder by a licensed healthcare practitioner; and:
 - Requires each district school board to adopt an attendance policy authorizing a student's absence for treatment of autism spectrum disorder.
 - Revises an exemption relating to parental responsibility for nonattendance of a student to include treatment for autism spectrum disorder.

The bill takes effect July 1, 2017.

II. Present Situation:

The present situation for the relevant portions of the bill is discussed in the Effect of Proposed Changes section of the bill analysis.

III. Effect of Proposed Changes:

K-12 Student Assessments

Present Situation

Florida's assessment program consists primarily of statewide, standardized assessments that are selected and administered by the state, and local assessments that are selected and administered by the school districts to measure students' attainment of education expectations.¹

Purpose

The purpose of Florida's student assessment program is to improve instruction; provide student academic achievement and learning gains data to students, parents, teachers, school administrators, and school district staff; and assess the cost benefit of the expenditure of taxpayer dollars.² The Commissioner of Education (commissioner) is required to design and implement a statewide, standardized assessment program that is aligned to the curricular content established in the Next Generation Sunshine State Standards and the Florida Standards.³

¹ Section 1008.22, F.S.

² *Id.* at (1).

³ *Id.* at (3).

Statewide Standardized Assessment Requirements

The statewide, standardized assessment program consists of:

- Statewide, standardized comprehensive assessments:⁴
 - English Language Arts (ELA) (grades 3 through 10);
 - Mathematics (grades 3 through 8); and
 - Science (once at the elementary grade level and once at the middle grade level).⁵
- End-of-Course (EOC) assessments:⁶
 - Civics (at the middle grade level);
 - U.S. History EOC;
 - Algebra I EOC;
 - Algebra II EOC;⁷
 - Geometry EOC; and
 - Biology I EOC.

Additionally, the statewide, standardized assessment program also includes the Florida Alternate Assessment (FAA) to assess students with disabilities in the content knowledge and skills necessary for successful grade-to-grade progression and high school graduation.⁸

Contracts

The commissioner must provide for the assessments to be developed or obtained, as appropriate, through contracts and project agreements with private vendors, public vendors, public agencies, postsecondary educational institutions, or school districts.⁹ The commissioner may enter into contracts for the continued administration of assessments that are authorized and funded by the Legislature.¹⁰ Contracts may be initiated in one fiscal year and continue into the next fiscal year and may be paid from the appropriations of either or both fiscal years.¹¹ The law authorizes the commissioner to negotiate for the sale or lease of tests, scoring protocols, test scoring services, and related materials developed in accordance with law.¹²

⁴ Section 1008.22(3)(a) F.S. Federal law requires students to be tested in reading or language arts and mathematics in each of grades 3 through 8 and not less than once in grades 10 through 12. With respect to science, students must be tested once during grades 3 through 5, grades 6 through 9, and grades 10 through 12. 20 U.S.C. s. 6311(b)(3). The Florida Department of Education posts the Statewide Assessment Schedule on its website. Florida Department of Education, *Florida Statewide Assessment Program 2016-2017 Schedule*, available at <http://info.fldoe.org/docushare/dsweb/Get/Document-7514/dps-2015-175a.pdf>.

⁵ Rule 6A-1.09422(3)(b), F.A.C., requires all eligible students in grades 5 and 8 to take the FCAT 2.0 Science.

⁶ Section 1008.22(3)(b), F.S.

⁷ Students are not required to take the Algebra II EOC assessment. However, a student who selects Algebra II must take the Algebra II EOC assessment. Section 1003.4282(3)(b), F.S.

⁸ Section 1008.22(3)(c)1. F.S. A child with medical complexity may be exempt from participating in statewide, standardized assessments, including the Florida Alternate Assessment. *Id.* at (10).

⁹ *Id.* at (3)(g)1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

Administration of Assessments and Reporting of Student Performance

Statewide Standardized Assessments

The commissioner must establish schedules for the administration of statewide, standardized assessments and the reporting of student assessment results.¹³ The commissioner must publish on the DOE's website a uniform calendar that includes the assessment and reporting schedule for a minimum of the next school years and be provided to the school districts in an electronic format that allows each school district and public school to populate the calendar with information as specified in law.

For new contracts and renewal of existing contracts for statewide, standardized assessments, a student's performance on such assessments must be provided to the student's teachers and parents by the end of the school year, unless the commissioner determines that extenuating circumstances exist and reports the extenuating circumstances to the State Board of Education (SBE or state board).¹⁴

District-Required Local Assessments

Measurement of student performance is the responsibility of the school districts except in those subjects and grade levels measured under the statewide standardized assessment program.¹⁵

A school district must provide a student's performance results on district-required local assessments to the student's teachers and parents no later than 30 days after administering such assessments, unless the superintendent determines in writing that extenuating circumstances exist and reports the extenuating circumstances to the district school board.¹⁶

Authorized Alternative Assessments

The Legislature has also authorized several alternative means for students to demonstrate competency and satisfy statewide, standardized assessment and credit requirements.

Nationally Developed Comprehensive Assessments

The commissioner has the authority to select one or more nationally developed comprehensive examinations, which may include examinations for a College Board Advanced Placement (AP) course, International Baccalaureate (IB) course, or Advanced International Certificate of Education (AICE) course, or industry-approved examinations to earn national industry certifications identified in the Career and Professional Education (CAPE) Industry Certification Funding List,¹⁷ for use as EOC assessments if the commissioner determines that the content

¹³ Section 1008.22(7)(a), F.S.

¹⁴ *Id.* at (3)(g)2.

¹⁵ *Id.* at (6).

¹⁶ *Id.* at (7)(f).

¹⁷ The State Board of Education (SBE or state board) adopts by rule, the list of industry certifications that are eligible for funding through the Florida Education Finance Program (FEFP). The list is updated annually. Sections 1008.44, F.S. Industry certifications on the "Gold Standard Career Pathways" list are incorporated by reference in the SBE rule, and articulated to Associate in Applied Science and Associate in Science degree programs. Rule 6A-10.0401, F.A.C.; *see also* Florida Department of Education, *Process for Establishing Gold Standard Career Pathways Industry Certification to AAS/AS Degree Statewide Articulation Agreements*, available at <http://www.fldoe.org/workforce/dwdframe/pdf/GSCPICprocess.pdf>.

knowledge and skills assessed by the examinations meet or exceed the grade level expectations for the curricular content established for the course in the Next Generation Sunshine State Standards.¹⁸ The state board must adopt in rule the use of such examinations as EOC assessments.¹⁹

Concordant and Comparative Scores

To fulfill statewide, standardized assessment requirements, the state board has adopted:²⁰

- Concordant scores on SAT²¹ and ACT,²² which if attained by a student satisfies the grade 10 statewide, standardized Reading²³ assessment, and
- Comparative scores on the Postsecondary Education Readiness Test (PERT), which if attained by a student satisfies the Algebra I EOC assessment requirement.

The SAT and ACT, and PERT substitutions are authorized for the two assessments in high school²⁴ that students must pass to graduate with a standard high school diploma.²⁵ The law also authorizes the commissioner to identify concordant scores on assessments other than the SAT and ACT, and one or more comparative scores for the Algebra I EOC assessment.²⁶

Use of Assessments

The Florida Legislature has established accountability mechanisms to assess the effectiveness of the state's K-20 education delivery system.²⁷ The law specifies annual educator performance evaluations²⁸ and the evaluation criteria for instructional personnel, which must include student performance, instructional practice, and professional and job responsibilities.²⁹ In addition, the Legislature has also established mechanisms to measure school performance by assigning school grades,³⁰ school improvement ratings,³¹ and district grades³² based on student performance on

¹⁸ Section 1008.22(3)(b)3., F.S.

¹⁹ *Id.*

²⁰ *Id.* at (9)-(10), F.S.; *see also* Rule 6A-1.094223, F.A.C.

²¹ The concordant passing scale score for the SAT must be equal to or greater than 430 on the 200 to 800 scale. Rule 6A-1.094223(1), F.A.C.

²² The concordant passing scale score for the ACT must be equal to or greater than 19 on the 1 to 36 scale. Rule 6A-1.094223(1), F.A.C.

²³ The English Language Arts (ELA) Florida Standards assessment, which replaced the FCAT Reading assessment, was administered for the first time during the 2014-2015 school year. Florida Department of Education, *Florida Statewide Assessment Program 2014-2015 Schedule*, available at <http://info.fldoe.org/docushare/dsweb/Get/Document-7047/dps-2014-81a.pdf>. Pursuant to law, the concordant scores on SAT and ACT will need to be adjusted to correspond to ELA assessment. Section 1008.22(8), F.S. Until such time that the new concordant scores on SAT and ACT are adopted in rule by the state board, students are allowed to use the existing concordant scores to satisfy the requirements for a standard high school diploma. Letter, Florida Department of Education (Sep. 18, 2015), on file with the Committee Education Pre-K -12, at 1.

²⁴ To fulfill the requirements for a standard high school diploma, students must pass the grade 10 ELA and Algebra I EOC assessments. Section 1003.4282(3)(a)-(b), F.S.

²⁵ *Id.* at (3).

²⁶ Section 1008.22(9)-(10), F.S.

²⁷ Section 1008.31, F.S.

²⁸ Section 1012.34, F.S.

²⁹ *Id.* at (3)(a)1., 2., and 4., F.S. School administrator evaluation criteria include instructional leadership. Section *Id.* at (3)(a)3., F.S.

³⁰ Section 1008.34, F.S.

³¹ Section 1008.341, F.S.

³² Section 1008.34(5), F.S.

statewide, standardized assessments. Student performance data are analyzed and reported to parents, the community, and the state.³³

Student Achievement Levels

All statewide, standardized assessments and EOC assessments must use scaled scores and achievement levels.³⁴ Achievement levels must range from 1 through 5, with level 1 being the lowest achievement level, level 5 being the highest achievement level, and level 3 indicating satisfactory performance on an assessment.³⁵

Personnel Evaluations

Florida law requires a district school superintendent to establish procedures for evaluation of the performance of duties and responsibilities of all instructional, administrative, and supervisory personnel employed by the school district.³⁶ Annually, the commissioner must publish on the DOE's website the status of each school district's instructional personnel and school administrator evaluation systems, which must include performance evaluation results for the prior school year using the four levels of performance³⁷ specified in law.³⁸

Evaluation of instructional personnel and school administrators must be based upon the performance of students assigned to their classrooms or schools.³⁹ The commissioner must develop a formula to measure individual student learning growth on the statewide, standardized assessments in ELA and mathematics.⁴⁰ The formula must take into consideration each student's prior academic performance.⁴¹ In practice, this is referred to the value-added model (VAM).⁴²

Effect of Proposed Changes

Statewide Standardized Assessment Requirements

The bill eliminates Geometry, Algebra II, and United States History EOC assessments for purposes of meeting high school graduation requirements and earning scholar designation on the standard high school diploma, except that a student must take one statewide, standardized mathematics assessment in high school, which must be Algebra I, Geometry, or Algebra II. Additionally, the bill eliminates the Civics EOC assessment for purposes of middle grades promotion. Accordingly, a student must take at most one EOC in mathematics. As a result, the bill reduces the number of assessments that a student must take for student progression and high school graduation.

³³ Section 1008.22(4), F.S.

³⁴ *Id.* at (3)(e) and Rule 6A-1.09422, F.A.C.

³⁵ Section 1008.22(3)(e), F.S. and Rule 6A-1.09422, F.A.C.

³⁶ Section 1012.34(1)(a), F.S.

³⁷ The four levels of performance are highly effective, effective, needs improvement or developing, and unsatisfactory. *Id.* at (2)(e).

³⁸ *Id.* at (2)(c).

³⁹ Section 1012.34(3), F.S.

⁴⁰ *Id.* at (7)(a).

⁴¹ *Id.*

⁴² Florida Department of Education, *Performance Evaluation, Florida's Value-Added Models (VAM) Frequently Asked Questions*, <http://www.fldoe.org/teaching/performance-evaluation/> (last visited April 4, 2017).

Contracts

The bill requires that beginning with any new contract for the ELA and mathematics assessments for specified grades, entered into after July 1, 2017, each new assessment must be available once per quarter for students who have been identified through competency-based education as having mastered the content and who are prepared to take the applicable assessment.

Administration of Assessments and Reporting of Student Performance**Statewide Standardized Assessments**

The bill requires the ELA assessment in grades 3 through 10 and the mathematics assessment in grades 3 through 8 to be administered no earlier than the last 3 weeks of the school year. The bill specifies that the testing window for these assessments may not be longer than 3 weeks and exempts the grade 3 “reading” assessment from the requirements of the bill. The bill does not expressly include state EOC assessments under such requirements. Compressing the testing window may result in freeing-up more time for delivering instruction, which may facilitate student success.

The bill also requires:

- The commissioner to make available and provide an alternative, nonelectronic option to the school district for successful and timely administration of statewide, standardized assessment and EOC exams, and the reporting of assessment results to the DOE.
- The district school superintendent to notify the commissioner that the district will use a nonelectronic option for the entire district or for specific grade levels throughout the district by the beginning of the school year in which the nonelectronic option is used and that the superintendent provide to the commissioner with the reasons for implementing the nonelectronic test option.

The bill requires that the results of the statewide, standardized ELA and mathematics assessments be reported in an easy-to read and understandable format to each student’s parent, current teacher of record, and to each student’s teacher of record for the subsequent school year before the start of the school year. The bill specifies that the student assessment results for the statewide, standardized ELA and mathematics assessments and the Algebra I and Biology I EOC assessments be made available to the school districts as soon as practicable, consistent with the current assessment contract.

Additionally, the bill specifies that the report must be prepared by the DOE and must include, at a minimum:

- A clear explanation of the student’s performance on the applicable assessments.
- Information identifying the student’s areas of strength and areas in need of improvement.
- Specific actions that may be taken, and the available resources that may be used, by the student’s parent to assist the student based on his or her areas of strength and areas in need of improvement.
- Longitudinal information, if available, on the student’s progress in each subject area based on previous statewide, standardized assessment data;
- Comparative information showing the student’s score compared to other students in the school district, in the state or, if available, in other states.

- Predictive information, if available, showing the linkage between the scores attained by the student on the statewide, standardized assessments and the scores he or she may potentially attain on nationally recognized college entrance examinations.

Accordingly, teachers may be able to adjust instructional strategies to improve student performance outcomes.

The bill also changes the deadline for posting the uniform assessment calendar from August to January of each year, beginning in January 2018.

District-Required Local Assessments

Additionally, the bill requires that a student's performance on a district-required local assessment be provided to the student's teacher within 1 week after such assessments are administered. This may provide teachers with the opportunity to use student assessment results to inform instructional strategies including, but not limited to, targeted individualized instructional strategies to address the specific academic needs of students.

Authorized Alternative Assessments

Nationally Developed Comprehensive Assessments

The bill requires the commissioner to contract for an independent study to determine whether a nationally recognized high school assessment may be administered in lieu of the Florida Standards Assessment (i.e., grade 9 and grade 10 ELA) and Algebra 1 end-of-course (EOC) assessment for high school students. Additionally, the commissioner must submit a report on the findings of the study and any recommendations to the Governor and the Legislature by January 1, 2018.

Concordant and Comparative Scores

The bill:

- Exempts a high school student who takes and passes an AP, IB, AICE, or national industry certification or any other articulated acceleration mechanism, or achieves the required concordant scores on the ACT or SAT examination from taking the statewide, standardized assessments in the subject areas covered by those examinations.
- Requires scores of students who pass the specified examinations or assessments to be incorporated into the school grade calculations.
- Requires the commissioner to identify concordant or comparative scores, as appropriate, on AP, IB, AICE, or national industry certification or any other articulated acceleration mechanism by the first day of the 2017-2018 school year.

Use of Assessments

Student Achievement Levels

The bill requires DOE to study each achievement level used for the statewide, standardized assessments and more specifically to define the achievement level to communicate the meaning

of such levels to students, parents, and teachers and submit the report, including recommendations, to the Governor, the Legislature, and the State Board of Education by July 1, 2018.

Personnel Evaluations

For purposes of personnel evaluations, the bill authorizes each school district to measure student learning growth using formulas developed by the commissioner. In effect, the bill authorizes, but does not require, district school boards to incorporate the Value Added Model (VAM)⁴³ in the districts, teacher evaluation system.

Teacher Bonuses for Articulated Acceleration Courses

Present Situation

Florida law requires a financial bonus to be awarded to teachers of International Baccalaureate (IB), Advanced International Certificate of Education (AICE), Advanced Placement (AP), and Career and Professional Education (CAPE) pursuant to Florida law.⁴⁴ Florida law also limits the total dollars that may be awarded for such bonuses.⁴⁵

International Baccalaureate

Each school district receives additional funding in the amount of 0.16 weighted full-time equivalent student membership (FTE) for each student enrolled in an International Baccalaureate (IB) course who receives a score of 4 or higher on the subject exam and 0.3 weighted FTE for each student who receives an IB diploma.⁴⁶ The school district receives the additional funding in the following school year. Each school district must allocate 80 percent of the additional funding to the program where the funds were generated and to programs that prepare prospective students to enroll in IB courses.⁴⁷

An IB teacher receives a \$50 bonus, from the additional FTE funds generated, for each student who scores 4 or higher on the IB examination. An IB teacher in a “D” or “F” school who has at least one student scoring 4 or higher on the IB examination receives an additional \$500 bonus.⁴⁸ The bonus awarded to a teacher may not exceed \$2,000 in any given school year; however, the maximum bonus may be \$3,000 if, in a school designated with a grade of “A,” “B” or “C,” at least 50 percent of the students enrolled in the teacher’s course earn a score of 4 or higher on the examination or if, in a school designated with a grade of “D” or “F,” at least 25 percent of the students enrolled in the teacher’s course earn a score of 4 or higher.⁴⁹

⁴³ The Value Added Model was adopted to measure student learning growth for the purpose of personnel evaluations. Florida Department of Education, *Performance Evaluation, Florida’s Value-Added Models (VAM) Frequently Asked Questions*, <http://www.fldoe.org/teaching/performance-evaluation/> (last visited April 5, 2017).

⁴⁴ Section 1011.62(1)(l)-(o), F.S.

⁴⁵ *Id.*

⁴⁶ Section 1011.62, F.S.

⁴⁷ Section 1011.62(1)(l), F.S.

⁴⁸ *Id.* at (l)(1)1.-2.

⁴⁹ *Id.* at (l)(1)2.

Advanced International Certificate of Education

Each school district receives additional funding in the amount of 0.16 weighted FTE for each student enrolled in an Advanced International Certificate of Education (AICE) course who receives a score of “E” or higher on the subject exam, 0.08 weighted FTE for each student enrolled in a half-credit AICE course who receives an “E” or higher and 0.3 weighted FTE for each student who receives an AICE diploma. The school district receives the additional funding in the following school year.⁵⁰

An AICE teacher receives a \$50 bonus, from the additional FTE funds generated, for each student in a full-credit AICE course, or \$25 bonus for a student in a half-credit AICE course, who scores “E” or higher on the AICE examination.⁵¹ An AICE teacher in a “D” or “F” school receives an additional \$500 bonus if one of the teacher’s students’ scores “E” or higher on the full-credit AICE examination, or a \$250 bonus for each half-credit AICE course taught which has at least one student scoring “E” or higher on the half-credit AICE examination, not to exceed an additional \$500 bonus.⁵² The bonus awarded to a teacher may not exceed \$2,000 in any given school year.⁵³

Advanced Placement

Each school district receives additional funding in the amount of 0.16 weighted FTE for each student enrolled in an Advanced Placement (AP) course who receives a score of 3 or higher on the College Board Advanced Placement Exam.⁵⁴ Each school district must allocate 80 percent of the additional funding to the school that generated the funds for AP instruction.⁵⁵

An AP teacher receives a \$50 bonus, from the additional FTE funds generated, for each of his or her students who scores 3 or higher on the College Board AP examination.⁵⁶ An AP teacher in a “D” or “F” school who has at least one student scoring 3 or higher on the College Board AP examination receives an additional \$500 bonus.⁵⁷ The bonus awarded to a teacher may not exceed \$2,000 in any given school year; however, the maximum bonus may be \$3,000 if, in a school designated with a grade of “A,” “B” or “C,” at least 50 percent of the students enrolled in the teacher’s course earn a score of 3 or higher on the examination or if, in a school designated with a grade of “D” or “F,” at least 25 percent of the students enrolled in the teacher’s course earn a score of 3 or higher.⁵⁸

Additional Bonuses

⁵⁰ Section 1011.62(1)(m), F.S.

⁵¹ *Id.* at (1)(m)1.

⁵² *Id.* at (1)(m)2.

⁵³ *Id.* at (1)(m)3.

⁵⁴ Section 1011.62(1)(n), F.S.

⁵⁵ *Id.*

⁵⁶ *Id.* at (1)(n)1.

⁵⁷ *Id.* at (1)(n)2.

⁵⁸ *Id.*

Teachers of courses that lead to the attainment of a Career and Professional Education (CAPE) industry certification receive an additional bonus.⁵⁹ Depending on the certification earned, a school district receives bonus funding of 0.1, 0.2, 0.3, 0.5, or 1.0 weighted FTE.⁶⁰ At least 80 percent of the additional funding received by the district must be allocated to the program that generated the funding.⁶¹ Teacher bonus funding is awarded, from the additional FTE funds generated, for each student taught by a teacher who provided instruction in a course that led to the student's attainment of a CAPE industry certification on the CAPE Industry Certification Funding List, as follows:⁶²

- A bonus in the amount of \$25 is awarded for a course with a weight of 0.1.
- A bonus in the amount of \$50 is awarded for a course with a weight of 0.2.
- A bonus in the amount of \$75 is awarded for a course with a weight of 0.3.
- A bonus in the amount of \$100 is awarded for a course with a weight of 0.5 or 1.0.

CAPE industry certification bonuses may not exceed \$3,000 to a teacher in any given school year.⁶³

Effect of Proposed Changes

The bill eliminates the following annual cap on teacher bonuses:

- The \$2,000 bonus for IB, AICE, and AP teachers whose students earn the specified score on the applicable examination.
- The \$3,000 bonus for IB and AP teachers if at least 50 percent of the students enrolled in the teachers course earn the specified score on the applicable IB or AP examination in a school designated with a grade of "A," "B," or "C."
- The \$500 additional bonus for teachers of half-credit AICE classes in a school designated with a grade of "D" or "F."
- The \$3,000 CAPE industry certification teacher bonus limit.

The bill clarifies that the bonus to an IB teacher must be awarded if at least 25 percent of students enrolled in that teacher's course earn the specified score on the IB exam.

Consistent with the IB, AP, and CAPE bonus funds, the bill requires each school district to allocate at least 80 percent of the funds received from the bonus FTE funding to the AICE program generates the funds.

Minority Teacher Education Scholars Program

Present Situation

Florida law establishes the minority teacher education scholars program, which is a collaborative performance-based scholarship program for African-American, Hispanic-American, Asian-

⁵⁹ Section 1011.62 (1)(o), F.S.

⁶⁰ *Id.* at (1)(o)1.a.

⁶¹ *Id.* at (1)(o)2.

⁶² *Id.* at (1)(o)3.a.-d.

⁶³ *Id.* at (1)(o)3.d.

American, and Native American Students.⁶⁴ The minority teacher education scholars program must provide an annual scholarship in an amount not to exceed \$4,000 for each approved student who is enrolled in one of Florida's public or private universities in the junior year and is admitted into a teacher education program.⁶⁵

A student may receive a scholarship from the program for three consecutive years if the student remains enrolled full-time in the program and makes satisfactory progress toward a baccalaureate degree with a major in education.⁶⁶ Upon graduation, a recipient is required to teach one year in a Florida public school for each year the scholarship was received.⁶⁷ If a recipient does not graduate within the two to three years of receiving scholarship funding, or if a recipient does not teach in a Florida public school, the recipient will be required to repay the total amount of the scholarship received at an annual interest rate of eight percent, paid within ten years.⁶⁸

Effect of Proposed Changes

The bill:

- Modifies student eligibility requirements for the minority teacher education scholars program (program) to:
 - Remove the requirement that students enrolled in an approved teacher education program must be in their junior year to be eligible for the award, and
 - Require that the student may not have earned more than 18 credit hours of upper-division education courses.
- Authorizes a student to use the scholarship to pursue a graduate degree with a major in education. As a result, more minority students who choose to pursue a career in education may become eligible for this program.

Early Learning

Present Situation

School Readiness

The School Readiness Program was established in 1999⁶⁹ to provide subsidies for childcare services and early childhood education for children of low-income families; children in protective services who are at risk of abuse, neglect, or abandonment; and children with disabilities.⁷⁰ The School Readiness Program offers financial assistance for child care to support working families and children to develop skills for success in school and provides developmental screening and referrals to health and education specialists where needed.⁷¹ These services are

⁶⁴ Section 1009.60, F.S.

⁶⁵ *Id.* at (1).

⁶⁶ *Id.* at (4).

⁶⁷ Section 1009.60(5), F.S.

⁶⁸ *Id.* at (6).

⁶⁹ Section 1, ch. 99-357, L.O.F.

⁷⁰ Section 1002.87, F.S.

⁷¹ Florida Office of Early Learning, *School Readiness Program*,

http://www.floridaeearlylearning.com/parents/early_learning_programs_and_services/school_readiness.aspx (last visited April 5, 2017).

provided in conjunction with other programs for young children, which includes, but is not limited to, the Voluntary Prekindergarten Education (VPK) Program.⁷²

Voluntary Prekindergarten Education

In 2004, the Legislature established the VPK Program, a voluntary, free prekindergarten program offered to eligible four-year-old children in the year before admission to kindergarten.⁷³ Florida law requires the DOE to adopt a statewide kindergarten screening (screening) that assesses the readiness of each student for kindergarten based upon the performance standards⁷⁴ adopted for the VPK program.⁷⁵ The screening must be administered to each kindergarten student in a school district within the first 30 school days of each school year.⁷⁶ Data from the screening is used to calculate the VPK provider kindergarten readiness rate.⁷⁷

Effect of Proposed Changes

The bill creates the Committee on Early Childhood Development within the DOE to develop a proposal for establishing and implementing a coordinated system focused on developmental milestones and outcomes for the school readiness program, VPK Education program, and Florida Kindergarten Readiness Screener. The bill requires the Committee to submit a report of its findings and recommendations to the Governor and the Legislature by December 1, 2017. As a result, the bill may assist with coordinating efforts to improve early childhood development.

Additionally, the bill defines a public prekindergarten provider to include a charter school that is eligible to deliver the school-year VPK education program or the summer VPK education program.

Intensive Reading Intervention

Present Situation

Each school district must provide third grade students who are retained with intensive instructional services and supports to remediate the identified areas of reading deficiency, including participation in the school district's summer reading camp and a minimum of 90 minutes of daily, uninterrupted, scientifically research-based reading instruction which includes phonemic awareness, phonics, fluency, vocabulary, and comprehension and other strategies prescribed by the school district.⁷⁸

Effect of Proposed Changes

The bill removes the requirement for school districts to provide 90 minutes of uninterrupted reading instruction daily to students retained in grade 3. As a result, the bill authorizes a school

⁷² Florida Office of Early Learning, *School Readiness Program*, http://www.floridaearlylearning.com/parents/early_learning_programs_and_services/school_readiness.aspx (last visited April 5, 2017).

⁷³ Section 1, ch. 2004-484, L.O.F.; part V, ch. 1002, F.S.

⁷⁴ Section 1002.67(1), F.S.

⁷⁵ Section 1002.69(1), F.S.

⁷⁶ *Id.*

⁷⁷ *Id.* at (5).

⁷⁸ Section 1008.25(7)(b)1., F.S.

district to provide 90 minutes of reading instruction over the course of the school day. This may provide teachers additional flexibility in planning instruction.

School Visitation

Present Situation

The district school board, acting as a board, must visit the schools, observe the management and instruction, give suggestions for improvement, and advise citizens with the view of promoting interest in education and improving the school.⁷⁹

Effect of Proposed Changes

The bill authorizes an individual school board member, acting on his or her own pleasure to fulfill statutory responsibilities, to visit any district school or charter school in his or her own school district. Accordingly, the bill may afford individual school board members, as partners in school district efforts, greater opportunity to improve teaching and student learning.

Physical Education Requirements

Present Situation

Each district school board must provide 150 minutes of physical education each week for students in kindergarten through grade 5, and for students in grade 6 who are enrolled in a school that contains one or more elementary grades, so that there are at least 30 consecutive minutes of physical education on any day during which physical education instruction is conducted.⁸⁰

Physical education must consist of physical activities of at least a moderate intensity level and for sufficient duration,⁸¹ subject to the differing capabilities of students.⁸² All physical education programs and curricula must be reviewed by a certified physical education instructor.⁸³ The Next Generation Sunshine State Standards (NGSSS) provide distinct grade level expectations for the knowledge and skills which a student is expected to acquire at each grade.⁸⁴

The requirements for physical education in public elementary schools must be waived for specified students.⁸⁵

While Florida law provides requirements related to physical education, provisions specific to unstructured free-play are not addressed.

⁷⁹ Section 1001.42(27), F.S.

⁸⁰ Section 1003.455(3), F.S. The equivalent of one class period per day of physical education for one semester of each year is required for students in grades 6 through 8. *Id.*

⁸¹ Physical education instruction must be for a period of time sufficient to provide a significant health benefit to students. Section 1003.455(1), F.S.

⁸² Section 1003.455(1), F.S.

⁸³ Section 1003.455(1), F.S.

⁸⁴ Section 1003.41(1) and (2), F.S. Physical education standards are available at CPALMS. CPALMS is the State of Florida's official source for information on standards and course descriptions. CPALMS, *Homepage*, <http://www.cpalms.org/Public/> (last visited Feb. 20, 2017).

⁸⁵ Section 1003.455(4), F.S.

Effect of Proposed Changes

The bill adds an unstructured free-play recess requirement to district school boards' responsibilities regarding physical education. Specifically, the bill requires each district school board to provide at least 100 minutes of supervised, safe, and unstructured free-play recess each week for students in kindergarten through grade 5. Such recess must involve at least 20 consecutive minutes of free-play per day.⁸⁶

According to the Florida Department of Education, the master schedules at each school containing elementary grades would need to reflect the requirement for a minimum of 20 consecutive minutes of recess daily.⁸⁷

The bill may result in additional physical activity for students in kindergarten through grade 5.

Physical Education Requirements for High School Graduation*Present Situation*

Florida law requires a student to earn one credit in physical education, of the mandatory 24 credits, to graduate with a standard high school diploma.⁸⁸ Currently, students that participate in an interscholastic sport at the junior varsity or varsity level for two full seasons can satisfy the one-credit requirement in physical education if the student passes a competency test on personal fitness with a score of "C" or better.⁸⁹ In 1998, the Legislature raised the physical education credit requirement from one to two seasons of interscholastic sports and added the personal fitness competency test.⁹⁰

Currently, students who complete one semester with a grade of "C" or better in a marching band class, in a physical activity class that requires participation in marching band activities as an extracurricular activity, or in a dance class can satisfy one-half credit in physical education.⁹¹ Additionally, students who complete 2 years in a Reserve Officer Training Corps (ROTC) class, a significant component of which is drills, satisfy the one-credit requirement in physical education and the one-credit requirement in performing arts.⁹² There is no requirement that such students complete a personal fitness competency exam.

Effect of Proposed Changes

The bill deletes the requirement for students who participate in two full seasons of an interscholastic sport to pass a competency test on personal fitness in order to satisfy the physical education credit required for graduation with a standard high school diploma.

⁸⁶ Florida Department of Education, *2017 Agency Legislative Bill Analysis for SB 78* (Dec. 8, 2016), at 2.

⁸⁷ *Id.*

⁸⁸ Section 1003.4282(9)(b)6., F.S.

⁸⁹ *Id.* at (3)(f).

⁹⁰ Chapter 1998-421, s. 40, Laws of Fla.

⁹¹ Section 1003.4383(3)(f), F.S.

⁹² *Id.*

Exceptional Student Instruction

Present Situation

Educational Student Education (ESE) is specially designed instruction and related services that are provided to students with disabilities and students who are identified as gifted.⁹³ Student enrollment in ESE programs is one of the factors considered in determining the funding a school district receives.⁹⁴

The Individuals with Disabilities Education Act (IDEA) requires school districts to make free appropriate public education (FAPE) available to such students ages 3 through 21.⁹⁵ A FAPE must include special education and related services⁹⁶ provided by the public school district at no cost to the parent, which meet the standards of the state and are in conformity with the student's Individualized Education Plan (IEP).⁹⁷

Each district school board must provide an appropriate program of special instruction, facilities and services for exceptional students.⁹⁸ Each district program must:⁹⁹

- Provide the necessary professional services for diagnosis and evaluation of exceptional students.
- Provide the special instruction, classes, and services within the district school system, in cooperation with the other district school systems or through contractual arrangements with the approved private schools or community facilities.
- Provide, on an annual basis, information describing all programs and methods of instruction available to parents of a sensory-impaired student.
- Provide instruction to homebound or hospitalized students in accordance with the law¹⁰⁰ and rules of the State Board of Education.

An exceptional student with a disability who resides in a residential facility and receives special instruction or services is considered a resident of the state in which the student's parent is a resident.¹⁰¹ The cost of such instruction, facilities and services for a nonresident student with a disability must be provided by the placing authority in the student's state of residence, such as a public school entity, other placing authority or parent.¹⁰² A nonresident student with a disability

⁹³ Section 1003.57(1)(b), F.S.; Rule 6A-6.03411(1)(m)-(n), F.A.C.

⁹⁴ See s. 1011.62(1)(c), F.S.

⁹⁵ 20 U.S.C. s. 1400(d)(1)(A); 34 C.F.R. s. 300.101; Rules 6A-6.03028(1) and 6A-6.03411(1)(p), F.A.C.

⁹⁶ "Related services" means "transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes." "Related services" also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 C.F.R. s. 300.34(a).

⁹⁷ 34 C.F.R. s. 300.17; Rule 6A-6.03411(1)(p), F.A.C. An individualized education plan means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with the IDEA. 20 U.S.C. s. 1414(d).

⁹⁸ Section 1003.57(1)(b), F.S.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at (1)(b)4.

¹⁰¹ *Id.* at (2)(a)

¹⁰² *Id.*

may not be reported by any school district for full-time equivalent student funding in the Florida Education Finance Program.¹⁰³

Within 10 business days after an exceptional student is placed in a residential care facility by an agency,¹⁰⁴ the agency or private residential care facility licensed by the agency, as appropriate, must provide written notification of the placement to the school district where the student is currently counted for funding and the receiving school district.¹⁰⁵ The exceptional student must be enrolled in school and receive a FAPE, special education, and related services while the notice and procedures regarding payment are pending.¹⁰⁶

Within 10 business days after receiving the notification, the receiving school district must review the student's IEP to determine whether it can be implemented by the receiving school district or by a provider or facility under contract with the receiving school district.¹⁰⁷ The receiving school district must:¹⁰⁸

- Provide educational instruction to the student;
- Contract with another provider or facility to provide the educational instruction;
- Contract with the private residential care facility in which the student resides to provide the educational instruction; or
- Decline to provide or contract for educational instruction.

If the receiving school district declines to provide or contract for the educational instruction, the school district in which the legal residence of the student is located must provide or contract for the educational instruction to the student.¹⁰⁹ The school district that provides educational instruction or contracts to provide educational instruction must report the student for funding purposes.¹¹⁰

Effect of Proposed Changes

The bill removes the option for the school district receiving an exceptional student with a disability, who resides in a residential facility, to decline to provide or contract for educational instruction. Accordingly, the bill facilitates a seamless transition for an exceptional student with a disability who is placed in a residential facility by requiring the receiving district to provide a free and appropriate education as required under federal law.

¹⁰³ Section 1003.57(2)(a), F.S.

¹⁰⁴ "Agency" means the Department of Children Families, the Agency for Persons with Disabilities, and the Agency for Healthcare Administration. Section 1003.57(3)(a).

¹⁰⁵ *Id.* at (3)(b).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at (3)(c).

¹⁰⁸ *Id.*

¹⁰⁹ Section 1003.57(3)(c), F.S.

¹¹⁰ *Id.*

Public School Attendance Policies

Present Situation

Florida law directs district school boards to establish attendance policies defining excused or unexcused absences or tardiness.¹¹¹ Specific criteria for determining whether an absence or tardiness is excused or unexcused are determined by the district school board.¹¹² The parent of a student who is absent from school must justify the absence, and the absence is evaluated based on the school board's attendance policies.¹¹³ If a student is continually sick and repeatedly absent from school, state law requires the student to be under a physician's supervision in order for the absences to be excused.¹¹⁴ In such cases, the physician's excuse justifies absences beyond the maximum number of days permitted under the district school board's attendance policy.¹¹⁵

State law and state board rule also authorize a public school to grant permission to students, in accordance with the school district's rules, to be absent from school for religious instruction, religious holidays or because religious tenets forbid secular activity during the school day.¹¹⁶

Effect of Proposed Changes

The bill also requires changes to school district attendance policies. Specifically, the bill:

- Requires each district school board to adopt an attendance policy authorizing a student's absence for treatment of autism spectrum disorder.
- Authorizes a parent to request and be granted permission for a student's absence from school for treatment of autism spectrum disorder by a licensed health care practitioner, which includes, but is not limited to, applied behavior analysis, speech therapy, and occupational therapy.
- Revises an exemption relating to parental responsibility for nonattendance of a student to include treatment for autism spectrum disorder.

As a result, the bill facilitates access to specialized therapy and treatment by requiring school districts to provide attendance allowances for students with autism spectrum disorder who need these services.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹¹¹ Section 1003.24, F.S.

¹¹² *Id.*

¹¹³ Section 1003.26, F.S.

¹¹⁴ Section 1003.24(4), F.S.

¹¹⁵ *Id.*

¹¹⁶ Sections 1002.20(2)(c) and 1003.21(2)(b), F.S.; Rule 6A-1.09514(1) and (2), F.A.C.

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:

The fiscal impact of CS/CS/SB 926 is indeterminate at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.20, 1002.51, 1003.21, 1003.24, 1003.4156, 1003.4282, 1003.4285, 1003.455, 1003.57, 1008.22, 1008.25, 1009.60, 1009.605, 1011.62, and 1012.34.

This bill creates the following sections of the Florida Statutes: 1001.4205 and 1008.222.

This bill creates an unnumbered section of the Florida Statutes.

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

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

CS/CS by Rules on April 19, 2017:

The committee substitute adds provisions to the bill that:

- Eliminate the cap on bonuses awarded to teachers of International Baccalaureate, Advanced International Certificate of Education, Advanced Placement, and Career

and Professional Education courses, whose students earn specified scores on the applicable examination.

- Define a public school prekindergarten provider to include a charter school that is eligible to deliver the school year VPK education program or summer VPK education program.
- Require each district school board to provide at least 100 minutes of supervised, safe, and unstructured free-play recess each week for students in kindergarten through grade 5.
- Delete the requirement for students who participate in two full seasons of an interscholastic sport to pass a competency test on personal fitness in order to satisfy the physical education credit required for graduation with a standard high school diploma.
- Remove the option for the school district receiving an exceptional student with a disability, who resides in a residential facility, to decline to provide or contract for educational instruction.
- Authorize a parent to request and be granted permission student's absence from school for treatment of autism spectrum disorder by a licensed healthcare practitioner; and:
 - Require each district school board to adopt an attendance policy authorizing a student's absence for treatment of autism spectrum disorder.
 - Revise an exemption relating to parental responsibility for nonattendance of a student to include treatment for autism spectrum disorder.

CS by Education on April 3, 2017:

The committee substitute differs from the bill in the following ways:

- Adds provisions related to K-12 student assessments to:
 - Require a school district to provide student performance results on statewide, standardized assessments to students' parents in an easy-to-read and understandable format.
 - Require the Commissioner of Education (commissioner) to contract for an independent study to determine nationally recognized high school assessment alternatives for Florida Standards Assessment (i.e., grade 9 and grade 10 ELA) and Algebra I end-of-course (EOC) assessments for high school students; and to submit a report on the findings of the study to the Governor and the Legislature by January 1, 2018.
 - Require the commissioner to identify, by the first day of the 2017-2018 school year, concordant or comparative scores on specified articulated acceleration mechanisms, which satisfy high school graduation requirements; and requires the scores of students who pass such assessments to be incorporated into the school grade calculations.
 - Eliminate the Geometry, Algebra II, and United States History EOC assessments for purposes of meeting high school graduation requirements and earning scholar designation on the standard high school diploma except that a student must take one statewide, standardized mathematics assessment in high school, which must be Algebra I, Geometry, or Algebra II. Additionally, the bill eliminates the Civics EOC assessment for purposes of middle grades promotion.

- Require the commissioner to make available a nonelectronic option for all statewide assessments to reduce the time spent on testing, increase instructional time for students, and ensure students demonstrate a mastery of standards assessed. Additionally, a district school superintendent must notify the commissioner that the district will use a nonelectronic option for the entire district or for specific grade levels throughout the district by the beginning of the school year in which the nonelectronic option is used.
- Require the Department of Education (DOE) to study each of the achievement levels used for statewide, standardized assessments to better communicate the meaning of such levels to students, parents, and teachers.
- Authorize each school district to measure student learning growth using formulas developed by the commissioner.
- Adds provisions related to:
 - Minority teacher education scholars program (program) to expand the program to authorize a student to use the program scholarship toward a graduate degree with a major in education, leading to an initial certification.
 - Committee on Early Childhood Development to create the committee within the DOE, to develop a proposal for establishing and implementing a coordinated system focused on developmental milestones and outcomes for the school readiness program, the Voluntary Prekindergarten Education Program, and the Kindergarten Readiness Screener.
 - Intensive reading instruction to authorize a school district to provide the required intensive reading instruction for the 90 minutes daily over the course of the school day to students who are retained in grade 3, and eliminates the requirement to provide such instruction for 90 continuous minutes daily.
 - School visitation to authorize an individual member of a district school board to visit any district or charter school in his or her school district on any day and at any time, at his or her pleasure.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Rules (Flores) recommended the following:

Senate Amendment (with title amendment)

Between lines 157 and 158
insert:

Section 3. Paragraph (c) of subsection (2) of section 1002.20, Florida Statutes, is amended, present paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added to that subsection, to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed



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of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights, including, but not limited to, the following:

(2) ATTENDANCE.—

(c) *Absence for religious purposes.*—A parent of a public school student may request and be granted permission for absence of the student from school for religious instruction or religious holidays, in accordance with the provisions of s. 1003.21(2)(b)1. ~~s. 1003.21(2)(b).~~

(d) *Absence for treatment of autism spectrum disorder.*—A parent of a public school student may request and be granted permission for absence of the student from school for a scheduled appointment to receive a therapy service or other medical treatment provided by a licensed health care practitioner for the treatment of autism spectrum disorder pursuant to ss. 1003.21(2)(b)2. and 1003.24(4).

Section 4. Subsection (8) is added to section 1002.51, Florida Statutes, to read:

1002.51 Definitions.—As used in this part, the term:

(8) "Public school prekindergarten provider" includes a charter school that is eligible to deliver the school-year prekindergarten program under s. 1002.63 or the summer prekindergarten program under s. 1002.61.

Section 5. Paragraph (b) of subsection (2) of section 1003.21, Florida Statutes, is amended to read:

1003.21 School attendance.—

(2)

(b) Each district school board, in accordance with rules of the State Board of Education, shall adopt policies authorizing a



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~~policy that authorizes~~ a parent to request and be granted
permission for absence of a student from school for:

1. Religious instruction or religious holidays.

2. A scheduled appointment to receive a therapy service or
other medical treatment provided by a licensed health care
practitioner for the treatment of autism spectrum disorder,
including, but not limited to, applied behavioral analysis,
speech therapy, and occupational therapy.

Section 6. Subsection (4) of section 1003.24, Florida
Statutes, is amended to read:

1003.24 Parents responsible for attendance of children;
attendance policy.—Each parent of a child within the compulsory
attendance age is responsible for the child's school attendance
as required by law. The absence of a student from school is
prima facie evidence of a violation of this section; however,
criminal prosecution under this chapter may not be brought
against a parent until the provisions of s. 1003.26 have been
complied with. A parent of a student is not responsible for the
student's nonattendance at school under any of the following
conditions:

(4) SICKNESS, INJURY, OR OTHER INSURMOUNTABLE CONDITION.—
Attendance was impracticable or inadvisable on account of
sickness or injury, as attested to by a written statement of a
licensed practicing physician, or a written statement of a
licensed health care practitioner for the treatment of autism
spectrum disorder, or was impracticable because of some other
stated insurmountable condition as defined by rules of the State
Board of Education. If a student is continually sick and
repeatedly absent from school, he or she must be under the



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supervision of a physician, or care of a licensed health care practitioner for the treatment of autism spectrum disorder, in order to receive an excuse from attendance. Such excuse provides that a student's condition justifies absence for more than the number of days permitted by the district school board.

Each district school board shall establish an attendance policy that includes, but is not limited to, the required number of days each school year that a student must be in attendance and the number of absences and tardinesses after which a statement explaining such absences and tardinesses must be on file at the school. Each school in the district must determine if an absence or tardiness is excused or unexcused according to criteria established by the district school board.

Section 7. Subsection (6) is added to section 1003.455, Florida Statutes, to read:

1003.455 Physical education; assessment.—

(6) In addition to the requirements in subsection (3), each district school board shall provide at least 100 minutes of supervised, safe, and unstructured free-play recess each week for students in kindergarten through grade 5 so that there are at least 20 consecutive minutes of free-play recess per day.

Section 8. Subsection (3) of section 1003.57, Florida Statutes, is amended to read:

1003.57 Exceptional students instruction.—

(3) (a) For purposes of this subsection and subsection (4), the term:

1. "Agency" means the Department of Children and Families or its contracted lead agency, the Agency for Persons with



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Disabilities, and the Agency for Health Care Administration.

2. "Exceptional student" means an exceptional student, as defined in s. 1003.01, who has a disability.

3. "Receiving school district" means the district in which a private residential care facility is located.

4. "Placement" means the funding or arrangement of funding by an agency for all or a part of the cost for an exceptional student to reside in a private residential care facility and the placement crosses school district lines.

(b) Within 10 business days after an exceptional student is placed in a private residential care facility by an agency, the agency or private residential care facility licensed by the agency, as appropriate, shall provide written notification of the placement to the school district where the student is currently counted for funding purposes under s. 1011.62 and the receiving school district. The exceptional student shall be enrolled in school and receive a free and appropriate public education, special education, and related services while the notice and procedures regarding payment are pending. This paragraph applies when the placement is for the primary purpose of addressing residential or other noneducational needs and the placement crosses school district lines.

(c) Within 10 business days after receiving the notification, the receiving school district must review the student's individual educational plan (IEP) to determine if the student's IEP can be implemented by the receiving school district or by a provider or facility under contract with the receiving school district. The receiving school district shall:

1. Provide educational instruction to the student;



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128 2. Contract with another provider or facility to provide
129 the educational instruction; or

130 3. Contract with the private residential care facility in
131 which the student resides to provide the educational
132 instruction; ~~or~~

133 ~~4. Decline to provide or contract for educational~~
134 ~~instruction.~~

135
136 ~~If the receiving school district declines to provide or contract~~
137 ~~for the educational instruction, the school district in which~~
138 ~~the legal residence of the student is located shall provide or~~
139 ~~contract for the educational instruction to the student. The~~
140 receiving school district providing ~~that provides~~ educational
141 instruction or contracting ~~contracts~~ to provide educational
142 instruction shall report the student for funding purposes
143 pursuant to s. 1011.62.

144 (d)1. The Department of Education, in consultation with the
145 agencies and school districts, shall develop procedures for
146 written notification to school districts regarding the placement
147 of an exceptional student in a residential care facility. The
148 procedures must:

149 a. Provide for written notification of a placement that
150 crosses school district lines; and

151 b. Identify the entity responsible for the notification for
152 each facility that is operated, licensed, or regulated by an
153 agency.

154 2. The State Board of Education shall adopt the procedures
155 by rule pursuant to ss. 120.536(1) and 120.54, and the agencies
156 shall implement the procedures.



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The requirements of paragraphs (c) and (d) do not apply to written agreements among school districts which specify each school district's responsibility for providing and paying for educational services to an exceptional student in a residential care facility. However, each agreement must require a school district to review the student's IEP within 10 business days after receiving the notification required under paragraph (b).

Section 9. Paragraphs (l) through (o) of subsection (1) of section 1011.62, Florida Statutes, are amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(1) COMPUTATION OF THE BASIC AMOUNT TO BE INCLUDED FOR OPERATION.—The following procedure shall be followed in determining the annual allocation to each district for operation:

(1) *Calculation of additional full-time equivalent membership based on International Baccalaureate examination scores of students.*—A value of 0.16 full-time equivalent student membership shall be calculated for each student enrolled in an International Baccalaureate course who receives a score of 4 or higher on a subject examination. A value of 0.3 full-time equivalent student membership shall be calculated for each student who receives an International Baccalaureate diploma. Such value shall be added to the total full-time equivalent



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student membership in basic programs for grades 9 through 12 in the subsequent fiscal year. Each school district shall allocate 80 percent of the funds received from International Baccalaureate bonus FTE funding to the school program whose students generate the funds and to school programs that prepare prospective students to enroll in International Baccalaureate courses. Funds shall be expended solely for the payment of allowable costs associated with the International Baccalaureate program. Allowable costs include International Baccalaureate annual school fees; International Baccalaureate examination fees; salary, benefits, and bonuses for teachers and program coordinators for the International Baccalaureate program and teachers and coordinators who prepare prospective students for the International Baccalaureate program; supplemental books; instructional supplies; instructional equipment or instructional materials for International Baccalaureate courses; other activities that identify prospective International Baccalaureate students or prepare prospective students to enroll in International Baccalaureate courses; and training or professional development for International Baccalaureate teachers. School districts shall allocate the remaining 20 percent of the funds received from International Baccalaureate bonus FTE funding for programs that assist academically disadvantaged students to prepare for more rigorous courses. The school district shall distribute to each classroom teacher who provided International Baccalaureate instruction:

1. A bonus in the amount of \$50 for each student taught by the International Baccalaureate teacher in each International Baccalaureate course who receives a score of 4 or higher on the



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International Baccalaureate examination.

2. An additional bonus of \$500 to each International Baccalaureate teacher in a school designated with a grade of "D" or "F" who has at least one student scoring 4 or higher on the International Baccalaureate examination, regardless of the number of classes taught or of the number of students scoring a 4 or higher on the International Baccalaureate examination.

Bonuses awarded to a teacher according to this paragraph shall be provided ~~may not exceed \$2,000 in any given school year.~~ ~~However, the maximum bonus shall be \$3,000 if at least 50 percent of the students enrolled in a teacher's course earn a score of 4 or higher on the examination in a school designated with a grade of "A," "B," or "C"; or if at least 25 percent of the students enrolled in the a teacher's course earn a score of 4 or higher on the examination. in a school designated with a grade of "D" or "F."~~ Bonuses awarded under this paragraph shall be in addition to any regular wage or other bonus the teacher received or is scheduled to receive. For such courses, the teacher shall earn an additional bonus of \$50 for each student who has a qualifying score ~~up to the maximum of \$3,000 in any given school year.~~

(m) *Calculation of additional full-time equivalent membership based on Advanced International Certificate of Education examination scores of students.*—A value of 0.16 full-time equivalent student membership shall be calculated for each student enrolled in a full-credit Advanced International Certificate of Education course who receives a score of E or higher on a subject examination. A value of 0.08 full-time



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equivalent student membership shall be calculated for each student enrolled in a half-credit Advanced International Certificate of Education course who receives a score of E or higher on a subject examination. A value of 0.3 full-time equivalent student membership shall be calculated for each student who receives an Advanced International Certificate of Education diploma. Such value shall be added to the total full-time equivalent student membership in basic programs for grades 9 through 12 in the subsequent fiscal year. Each school district shall allocate at least 80 percent of the funds received from the Advanced International Certificate of Education bonus FTE funding, in accordance with this paragraph, to the school program that generated the funds. The school district shall distribute to each classroom teacher who provided Advanced International Certificate of Education instruction:

1. A bonus in the amount of \$50 for each student taught by the Advanced International Certificate of Education teacher in each full-credit Advanced International Certificate of Education course who receives a score of E or higher on the Advanced International Certificate of Education examination. A bonus in the amount of \$25 for each student taught by the Advanced International Certificate of Education teacher in each half-credit Advanced International Certificate of Education course who receives a score of E or higher on the Advanced International Certificate of Education examination.

2. An additional bonus of \$500 to each Advanced International Certificate of Education teacher in a school designated with a grade of "D" or "F" who has at least one student scoring E or higher on the full-credit Advanced



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International Certificate of Education examination, regardless of the number of classes taught or of the number of students scoring an E or higher on the full-credit Advanced International Certificate of Education examination.

3. Additional bonuses of \$250 each to teachers of half-credit Advanced International Certificate of Education classes in a school designated with a grade of "D" or "F" which has at least one student scoring an E or higher on the half-credit Advanced International Certificate of Education examination in that class. ~~The maximum additional bonus for a teacher awarded in accordance with this subparagraph shall not exceed \$500 in any given school year.~~ Teachers receiving an award under subparagraph 2. are not eligible for a bonus under this subparagraph.

Bonuses awarded to a teacher according to this paragraph shall be provided if at least 25 percent of the students enrolled in the teacher's course earn a score of E or higher on the examination. ~~Bonuses awarded under this paragraph are not exceed \$2,000 in any given school year and shall be~~ in addition to any regular wage or other bonus the teacher received or is scheduled to receive.

(n) *Calculation of additional full-time equivalent membership based on college board advanced placement scores of students.*—A value of 0.16 full-time equivalent student membership shall be calculated for each student in each advanced placement course who receives a score of 3 or higher on the College Board Advanced Placement Examination for the prior year and added to the total full-time equivalent student membership



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in basic programs for grades 9 through 12 in the subsequent fiscal year. Each district must allocate at least 80 percent of the funds provided to the district for advanced placement instruction, in accordance with this paragraph, to the high school that generates the funds. The school district shall distribute to each classroom teacher who provided advanced placement instruction:

1. A bonus in the amount of \$50 for each student taught by the Advanced Placement teacher in each advanced placement course who receives a score of 3 or higher on the College Board Advanced Placement Examination.

2. An additional bonus of \$500 to each Advanced Placement teacher in a school designated with a grade of "D" or "F" who has at least one student scoring 3 or higher on the College Board Advanced Placement Examination, regardless of the number of classes taught or of the number of students scoring a 3 or higher on the College Board Advanced Placement Examination.

Bonuses awarded to a teacher according to this paragraph shall ~~be provided not exceed \$2,000 in any given school year. However, the maximum bonus shall be \$3,000 if at least 50 percent of the students enrolled in a teacher's course earn a score of 3 or higher on the examination in a school with a grade of "A," "B," or "C" or if at least 25 percent of the students enrolled in the~~ a teacher's course earn a score of 3 or higher on the examination. ~~in a school with a grade of "D" or "F."~~ Bonuses awarded under this paragraph shall be in addition to any regular wage or other bonus the teacher received or is scheduled to receive. For such courses, the teacher shall earn an additional



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bonus of \$50 for each student who has a qualifying score ~~up to the maximum of \$3,000 in any given school year.~~

(o) *Calculation of additional full-time equivalent membership based on successful completion of a career-themed course pursuant to ss. 1003.491, 1003.492, and 1003.493, or courses with embedded CAPE industry certifications or CAPE Digital Tool certificates, and issuance of industry certification identified on the CAPE Industry Certification Funding List pursuant to rules adopted by the State Board of Education or CAPE Digital Tool certificates pursuant to s. 1003.4203.—*

1.a. A value of 0.025 full-time equivalent student membership shall be calculated for CAPE Digital Tool certificates earned by students in elementary and middle school grades.

b. A value of 0.1 or 0.2 full-time equivalent student membership shall be calculated for each student who completes a course as defined in s. 1003.493(1)(b) or courses with embedded CAPE industry certifications and who is issued an industry certification identified annually on the CAPE Industry Certification Funding List approved under rules adopted by the State Board of Education. A value of 0.2 full-time equivalent membership shall be calculated for each student who is issued a CAPE industry certification that has a statewide articulation agreement for college credit approved by the State Board of Education. For CAPE industry certifications that do not articulate for college credit, the Department of Education shall assign a full-time equivalent value of 0.1 for each certification. Middle grades students who earn additional FTE



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membership for a CAPE Digital Tool certificate pursuant to sub-subparagraph a. may not use the previously funded examination to satisfy the requirements for earning an industry certification under this sub-subparagraph. Additional FTE membership for an elementary or middle grades student may not exceed 0.1 for certificates or certifications earned within the same fiscal year. The State Board of Education shall include the assigned values on the CAPE Industry Certification Funding List under rules adopted by the state board. Such value shall be added to the total full-time equivalent student membership for grades 6 through 12 in the subsequent year. CAPE industry certifications earned through dual enrollment must be reported and funded pursuant to s. 1011.80. However, if a student earns a certification through a dual enrollment course and the certification is not a fundable certification on the postsecondary certification funding list, or the dual enrollment certification is earned as a result of an agreement between a school district and a nonpublic postsecondary institution, the bonus value shall be funded in the same manner as other nondual enrollment course industry certifications. In such cases, the school district may provide for an agreement between the high school and the technical center, or the school district and the postsecondary institution may enter into an agreement for equitable distribution of the bonus funds.

c. A value of 0.3 full-time equivalent student membership shall be calculated for student completion of the courses and the embedded certifications identified on the CAPE Industry Certification Funding List and approved by the commissioner pursuant to ss. 1003.4203(5)(a) and 1008.44.



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d. A value of 0.5 full-time equivalent student membership shall be calculated for CAPE Acceleration Industry Certifications that articulate for 15 to 29 college credit hours, and 1.0 full-time equivalent student membership shall be calculated for CAPE Acceleration Industry Certifications that articulate for 30 or more college credit hours pursuant to CAPE Acceleration Industry Certifications approved by the commissioner pursuant to ss. 1003.4203(5)(b) and 1008.44.

2. Each district must allocate at least 80 percent of the funds provided for CAPE industry certification, in accordance with this paragraph, to the program that generated the funds. This allocation may not be used to supplant funds provided for basic operation of the program.

3. For CAPE industry certifications earned in the 2013-2014 school year and in subsequent years, the school district shall distribute to each classroom teacher who provided direct instruction toward the attainment of a CAPE industry certification that qualified for additional full-time equivalent membership under subparagraph 1.:

a. A bonus of \$25 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.1.

b. A bonus of \$50 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.2.

c. A bonus of \$75 for each student taught by a teacher who provided instruction in a course that led to the attainment of a



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CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.3.

d. A bonus of \$100 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.5 or 1.0.

Bonuses awarded pursuant to this paragraph shall be provided to teachers who are employed by the district in the year in which the additional FTE membership calculation is included in the calculation. Bonuses shall be calculated based upon the associated weight of a CAPE industry certification on the CAPE Industry Certification Funding List for the year in which the certification is earned by the student. Any bonus awarded to a teacher under this paragraph ~~may not exceed \$3,000 in any given school year and~~ is in addition to any regular wage or other bonus the teacher received or is scheduled to receive.

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

And the title is amended as follows:

Delete line 16

and insert:

restrictions; amending s. 1002.20, F.S.; authorizing a parent to request and be granted permission for a student's absence from school for treatment of autism spectrum disorder by a licensed health care practitioner; amending s. 1002.51, F.S.; defining the term "public school prekindergarten provider"; amending s. 1003.21, F.S.; requiring each district



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school board to adopt an attendance policy authorizing a student's absence for treatment of autism spectrum disorder; amending s. 1003.24, F.S.; revising an exemption relating to parental responsibility for nonattendance of a student to include treatment for autism spectrum disorder; amending s. 1003.455, F.S.; requiring each district school board to provide students in certain grades with a minimum number of minutes of free-play recess per week and with a minimum number of consecutive minutes of free-play recess per day; amending s. 1003.57, F.S.; prohibiting certain school districts from declining to provide or contract for certain students' educational instruction; providing for funding of such students; amending s. 1011.62, F.S.; deleting provisions relating to caps imposed on the amounts of bonuses awarded to teachers based on student performance on certain course examinations or student completion of certain courses; requiring that a specified amount of funds generated by a certain bonus be allocated to the school program that generated the funds; authorizing a maximum bonus of \$3,000 for Advanced International Certificate of Education teachers under certain circumstances; authorizing additional bonuses, up to a maximum of \$3,000, under certain circumstances; amending s. 1003.4156, F.S.; revising



236592

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Rules (Flores) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 246 and 247
insert:

(f) *One credit in physical education.*—Physical education must include the integration of health. Participation in an interscholastic sport at the junior varsity or varsity level for two full seasons shall satisfy the one-credit requirement in physical education ~~if the student passes a competency test on personal fitness with a score of "C" or better. The competency test on personal fitness developed by the Department of~~



236592

~~Education must be used.~~ A district school board may not require that the one credit in physical education be taken during the 9th grade year. Completion of one semester with a grade of "C" or better in a marching band class, in a physical activity class that requires participation in marching band activities as an extracurricular activity, or in a dance class shall satisfy one-half credit in physical education or one-half credit in performing arts. This credit may not be used to satisfy the personal fitness requirement or the requirement for adaptive physical education under an individual education plan (IEP) or 504 plan. Completion of 2 years in a Reserve Officer Training Corps (R.O.T.C.) class, a significant component of which is drills, shall satisfy the one-credit requirement in physical education and the one-credit requirement in performing arts. This credit may not be used to satisfy the personal fitness requirement or the requirement for adaptive physical education under an IEP or 504 plan.

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

And the directory clause is amended as follows:

Delete line 214

and insert:

Section 4. Paragraphs (b), (d), and (f) of subsection (3)

and

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

And the title is amended as follows:

Between lines 20 and 21

insert:



236592

41 removing a requirement that a student participating in
42 an interscholastic sport pass a competency test on
43 personal fitness to satisfy the physical education
44 credit requirement for high school graduation;



367714

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 690 - 700
and insert:
assessment. Beginning with any new contract for the ELA
assessment and the Mathematics assessment entered into after
July 1, 2017, achievement level 3 shall be defined as grade
level.

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

And the title is amended as follows:



367714

12 Delete lines 39 - 43
13 and insert:
14 requiring that for certain assessments, achievement
15 level 3 be defined as grade level; revising reporting
16 requirements for



662216

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Rules (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete lines 835 - 839
and insert:
as soon as practicable, consistent with the current assessment
contract no later than the week of June 8, except for results of
assessments administered in the 2014-2015 school year. School
districts shall administer statewide, standardized assessments
in accordance with the schedule established by the commissioner.
(b) By January ~~August~~ of each year, beginning in 2018 ~~2016~~,
the



662216

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

And the title is amended as follows:

Delete line 43

and insert:

board by a specified date; revising reporting
requirements for the statewide, standardized
assessments; providing requirements for

By the Committee on Education; and Senators Flores, Bradley, Perry, Baxley, and Stargel

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1 A bill to be entitled
 2 An act relating to education; requiring the
 3 Commissioner of Education to contract for an
 4 independent study to determine whether a nationally
 5 recognized high school assessment may be administered
 6 in lieu of the Florida Standards Assessment and the
 7 Algebra I end-of-course assessment; providing
 8 requirements for the assessment; requiring the
 9 commissioner and the contractor to consult with
 10 specified stakeholders; requiring the commissioner to
 11 submit a report to the Governor and the Legislature by
 12 a specified date; creating s. 1001.4205, F.S.;
 13 authorizing an individual district school board member
 14 to visit any district school or charter school in his
 15 or her school district; providing requirements and
 16 restrictions; amending s. 1003.4156, F.S.; revising
 17 the mathematics and social studies requirements for
 18 student promotion to high school and for certain high
 19 school credits; amending s. 1003.4282, F.S.; revising
 20 the requirements for a standard high school diploma;
 21 deleting provisions requiring a student or transfer
 22 student to take a statewide, standardized Algebra II
 23 assessment or a Geometry or United States History end-
 24 of-course (EOC) assessment; amending s. 1003.4285,
 25 F.S.; revising the standard high school diploma
 26 designation requirements for mathematics and social
 27 studies; amending s. 1008.22, F.S.; providing an
 28 exception to the requirement that ELA assessments be
 29 administered online; deleting requirements that a

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30 student take an EOC assessment in Geometry, Algebra
 31 II, United States History, or Civics; deleting a
 32 provision authorizing the commissioner to establish a
 33 schedule for the development and administration of
 34 additional statewide, standardized EOC assessments;
 35 requiring that Mathematics assessments be administered
 36 online; providing an exception; requiring the
 37 commissioner to make an alternative, nonelectronic
 38 assessment option available for statewide assessments;
 39 requiring the Department of Education to conduct a
 40 study regarding achievement levels for certain
 41 statewide, standardized assessments; requiring a
 42 report to the Governor, the Legislature, and the state
 43 board by a specified date; providing requirements for
 44 administration of the statewide, standardized English
 45 Language Arts and mathematics assessments in specified
 46 grades; requiring a district school superintendent to
 47 provide the commissioner with certain notifications on
 48 the use of a nonelectronic assessment option;
 49 requiring the commissioner to provide such an option
 50 to the school district; revising provisions relating
 51 to reporting requirements for local assessments
 52 required by school districts; providing reporting
 53 requirements for certain student assessment results;
 54 creating s. 1008.222, F.S.; exempting students in
 55 certain articulated acceleration mechanisms from
 56 taking certain statewide, standardized assessments;
 57 requiring the commissioner to establish certain
 58 concordant or comparative scores; providing that

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59 certain scores are included in school grade
 60 calculations; amending s. 1008.25, F.S.; revising the
 61 type of reading instruction school districts must
 62 provide for certain students; amending s. 1009.60,
 63 F.S.; revising eligibility criteria for receipt of a
 64 minority teacher education scholarship; amending s.
 65 1009.605, F.S.; revising the scholar awards on which
 66 the Florida Fund for Minority Teachers, Inc.'s budget
 67 projection must be based; amending s. 1012.34, F.S.;
 68 revising personnel evaluation procedures and criteria;
 69 authorizing the commissioner to develop a formula for
 70 measuring student learning growth on specified
 71 statewide, standardized assessments, rather than
 72 requiring the commissioner to approve such a formula;
 73 authorizing, rather than requiring, a school district
 74 to use certain formulas developed by the commissioner;
 75 creating the Committee on Early Childhood Development
 76 within the Department of Education; specifying
 77 committee purpose; requiring the committee to develop
 78 a proposal for specified purposes; providing proposal
 79 requirements; providing for membership of the
 80 committee; providing requirements for electing a
 81 committee chair and vice chair; providing committee
 82 meeting requirements; requiring the University of
 83 Florida Lastinger Center for Learning to provide
 84 necessary staff for the committee; requiring the
 85 committee to submit a report by a specified date;
 86 providing for the expiration of the committee;
 87 providing an effective date.

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

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88
 89 Be It Enacted by the Legislature of the State of Florida:
 90
 91 Section 1. Study of a nationally recognized alternate high
 92 school assessment.
 93 (1) INDEPENDENT STUDY.
 94 (a) The Commissioner of Education shall contract for an
 95 independent study to determine whether a nationally recognized
 96 high school assessment may be administered in lieu of the
 97 Florida Standards Assessment and the Algebra I and end-of-course
 98 assessment for high school students.
 99 (b) In order to be considered a nationally recognized high
 100 school assessment, the assessment must meet the following
 101 requirements:
 102 1. Be substantially aligned with the core curricular
 103 content for high school level English Language Arts (ELA) and
 104 mathematics established in the Next Generation Sunshine State
 105 Standards pursuant to s. 1003.41, Florida Statutes;
 106 2. Provide for learning gains from the grade 8 ELA and
 107 mathematics Florida Standards Assessment to the nationally
 108 recognized high school assessment;
 109 3. Provide for differentiation and comparability between
 110 schools and districts;
 111 4. Provide the same or additional accommodations to
 112 students with disabilities and other students which are provided
 113 by the Florida Standards Assessment and other statewide,
 114 standardized assessments;
 115 5. Meet the applicable assessment security requirements
 116 determined by the commissioner for the state and for school

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

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117 districts;

118 6. Meet the reasonable technical specification requirements
 119 determined by the commissioner which allow implementation by the
 120 state and by school districts; and

121 7. Satisfy any threshold legal requirements, including, but
 122 not limited to, the standard set forth in *Debra P. v.*
 123 *Turlington*, 474 F. Supp. 244 (M.D. Fla. 1979).

124 (c) The commissioner and the contractor shall consult with,
 125 and receive recommendations for alternate assessments from,
 126 education stakeholders, including district school
 127 superintendents, testing and measurement administrators,
 128 curriculum directors, principals, teachers, and other educators
 129 who have experience and expertise in the administration of high
 130 school assessments.

131 (2) REPORT.—The commissioner shall submit a report on the
 132 findings of the study and any recommendations to the Governor,
 133 the President of the Senate, and the Speaker of the House of
 134 Representatives by January 1, 2018.

135 Section 2. Section 1001.4205, Florida Statutes, is created
 136 to read:

137 1001.4205 Visitation of schools by an individual school
 138 board member.—An individual member of a district school board
 139 may, on any day and at any time at his or her pleasure, visit
 140 any district school or charter school in his or her school
 141 district. The school board member must sign in and sign out at
 142 the school's main office and wear his or her school board
 143 identification badge at all times while present on school
 144 premises. The school board, the school, or any other person or
 145 entity, including, but not limited to, the principal of the

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146 school, the school superintendent, or any other school board
 147 member, may not require the visiting school board member to
 148 provide notice before visiting the school. The school may offer,
 149 but may not require, an escort to accompany a visiting school
 150 board member during the visit. Another school board member or a
 151 district employee, including, but not limited to, the
 152 superintendent, the school principal, or his or her designee,
 153 may not limit the duration or scope of the visit or direct a
 154 visiting school board member to leave the premises. A school
 155 board, district, or school administrative policy or practice may
 156 not prohibit or limit the authority granted to a school board
 157 member under this section.

158 Section 3. Paragraphs (b) and (c) of subsection (1) of
 159 section 1003.4156, Florida Statutes, are amended to read:

160 1003.4156 General requirements for middle grades
 161 promotion.—

162 (1) In order for a student to be promoted to high school
 163 from a school that includes middle grades 6, 7, and 8, the
 164 student must successfully complete the following courses:

165 (b) Three middle grades or higher courses in mathematics.
 166 Each school that includes middle grades must offer at least one
 167 high school level mathematics course for which students may earn
 168 high school credit. Successful completion of a high school level
 169 Algebra I ~~or Geometry~~ course is not contingent upon the
 170 student's performance on the statewide, standardized Algebra I
 171 end-of-course (EOC) assessment. To earn high school credit for
 172 Algebra I, a middle grades student must take the statewide,
 173 standardized Algebra I EOC assessment and pass the course, and,
 174 in addition, ~~beginning with the 2013-2014 school year and~~

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thereafter, a student's performance on the Algebra I EOC assessment constitutes 30 percent of the student's final course grade. ~~To earn high school credit for a Geometry course, a middle grades student must take the statewide, standardized Geometry EOC assessment, which constitutes 30 percent of the student's final course grade, and earn a passing grade in the course.~~

(c) Three middle grades or higher courses in social studies. ~~Beginning with students entering grade 6 in the 2012-2013 school year,~~ One of these courses must be at least a one-semester civics education course that includes the roles and responsibilities of federal, state, and local governments; the structures and functions of the legislative, executive, and judicial branches of government; and the meaning and significance of historic documents, such as the Articles of Confederation, the Declaration of Independence, and the Constitution of the United States. ~~Beginning with the 2013-2014 school year, each student's performance on the statewide, standardized EOC assessment in civics education required under s. 1008.22 constitutes 30 percent of the student's final course grade.~~ A middle grades student who transfers into the state's public school system from out of country, out of state, a private school, or a home education program after the beginning of the second term of grade 8 is not required to meet the civics education requirement for promotion from the middle grades if the student's transcript documents passage of three courses in social studies or two year-long courses in social studies that include coverage of civics education.

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Each school must inform parents about the course curriculum and activities. Each student shall complete a personal education plan that must be signed by the student and the student's parent. The Department of Education shall develop course frameworks and professional development materials for the career and education planning course. The course may be implemented as a stand-alone course or integrated into another course or courses. The Commissioner of Education shall collect longitudinal high school course enrollment data by student ethnicity in order to analyze course-taking patterns.

Section 4. Paragraphs (b) and (d) of subsection (3) and subsections (7) and (9) of section 1003.4282, Florida Statutes, are amended to read:

1003.4282 Requirements for a standard high school diploma.—

(3) STANDARD HIGH SCHOOL DIPLOMA; COURSE AND ASSESSMENT REQUIREMENTS.—

(b) *Four credits in mathematics.*—A student must earn one credit in Algebra I and one credit in Geometry. A student's performance on the statewide, standardized Algebra I end-of-course (EOC) assessment constitutes 30 percent of the student's final course grade. A student must pass the statewide, standardized Algebra I EOC assessment, or earn a comparative score, in order to earn a standard high school diploma. A student must take one statewide, standardized mathematics assessment in high school which must be Algebra I, Geometry, or Algebra II. A student's performance on the statewide, standardized assessment ~~Geometry EOC assessment~~ constitutes 30 percent of the student's final course grade. ~~If the state administers a statewide, standardized Algebra II assessment, a~~

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233 ~~student selecting Algebra II must take the assessment, and the~~
 234 ~~student's performance on the assessment constitutes 30 percent~~
 235 ~~of the student's final course grade.~~ A student who earns an
 236 industry certification for which there is a statewide college
 237 credit articulation agreement approved by the State Board of
 238 Education may substitute the certification for one mathematics
 239 credit. Substitution may occur for up to two mathematics
 240 credits, except for Algebra I and Geometry.

241 (d) *Three credits in social studies.*—A student must earn
 242 one credit in United States History; one credit in World
 243 History; one-half credit in economics, which must include
 244 financial literacy; and one-half credit in United States
 245 Government. ~~The United States History EOC assessment constitutes~~
 246 ~~30 percent of the student's final course grade.~~

247 (7) UNIFORM TRANSFER OF HIGH SCHOOL CREDITS.—~~Beginning with~~
 248 ~~the 2012-2013 school year,~~ If a student transfers to a Florida
 249 public high school from out of country, out of state, a private
 250 school, or a home education program and the student's transcript
 251 shows a credit in Algebra I, the student must pass the
 252 statewide, standardized Algebra I EOC assessment in order to
 253 earn a standard high school diploma unless the student earned a
 254 comparative score, passed a statewide assessment in Algebra I
 255 administered by the transferring entity, or passed the statewide
 256 Mathematics assessment the transferring entity uses to satisfy
 257 the requirements of the Elementary and Secondary Education Act,
 258 20 U.S.C. s. 6301. If a student's transcript shows a credit in
 259 high school reading or English Language Arts II or III, in order
 260 to earn a standard high school diploma, the student must take
 261 and pass the statewide, standardized grade 10 Reading assessment

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262 or, when implemented, the grade 10 ELA assessment, or earn a
 263 concordant score. If a transfer student's transcript shows a
 264 final course grade and course credit in Algebra I ~~or, Geometry,~~
 265 ~~Biology I, or United States History,~~ the transferring course
 266 final grade and credit shall be honored without the student
 267 taking the requisite statewide, standardized EOC assessment and
 268 without the assessment result ~~results~~ constituting 30 percent of
 269 the student's final course grade.

270 (9) COHORT TRANSITION TO NEW GRADUATION REQUIREMENTS.—The
 271 requirements of this section, in addition to applying to
 272 students entering grade 9 in the 2013-2014 school year and
 273 thereafter, shall also apply to students entering grade 9 before
 274 the 2013-2014 school year, except as otherwise provided in this
 275 subsection.

276 (a) A student entering grade 9 before the 2010-2011 school
 277 year must earn:

278 1. Four credits in English/ELA. A student must pass the
 279 statewide, standardized grade 10 Reading assessment, or earn a
 280 concordant score, in order to graduate with a standard high
 281 school diploma.

282 2. Four credits in mathematics, which must include Algebra
 283 I. A student must pass grade 10 FCAT Mathematics, or earn a
 284 concordant score, in order to graduate with a standard high
 285 school diploma. A student who takes Algebra I ~~or Geometry~~ after
 286 the 2010-2011 school year must take the statewide, standardized
 287 EOC assessment for the course but is not required to pass the
 288 assessment in order to earn course credit. A student's
 289 performance on the Algebra I ~~or Geometry~~ EOC assessment is not
 290 required to constitute 30 percent of the student's final course

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291 grade. A student who earns an industry certification for which
 292 there is a statewide college credit articulation agreement
 293 approved by the State Board of Education may substitute the
 294 certification for one mathematics credit. Substitution may occur
 295 for up to two mathematics credits, except for Algebra I.

296 3. Three credits in science, two of which must have a
 297 laboratory component. A student who takes Biology I after the
 298 2010-2011 school year must take the statewide, standardized
 299 Biology I EOC assessment but is not required to pass the
 300 assessment in order to earn course credit. A student's
 301 performance on the assessment is not required to constitute 30
 302 percent of the student's final course grade. A student who earns
 303 an industry certification for which there is a statewide college
 304 credit articulation agreement approved by the State Board of
 305 Education may substitute the certification for one science
 306 credit.

307 4. Three credits in social studies of which one credit in
 308 World History, one credit in United States History, one-half
 309 credit in United States Government, and one-half credit in
 310 economics are required. ~~A student who takes United States~~
 311 ~~History after the 2011-2012 school year must take the statewide,~~
 312 ~~standardized United States History EOC assessment, but the~~
 313 ~~student's performance on the assessment is not required to~~
 314 ~~constitute 30 percent of the student's final course grade.~~

315 5. One credit in fine or performing arts, speech and
 316 debate, or practical arts as provided in paragraph (3)(e).

317 6. One credit in physical education as provided in
 318 paragraph (3)(f).

319 7. Eight credits in electives.

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320 (b) A student entering grade 9 in the 2010-2011 school year
 321 must earn:

322 1. Four credits in English/ELA. A student must pass the
 323 statewide, standardized grade 10 Reading assessment, or earn a
 324 concordant score, in order to graduate with a standard high
 325 school diploma.

326 2. Four credits in mathematics, which must include Algebra
 327 I and Geometry. The statewide, standardized Algebra I EOC
 328 assessment constitutes 30 percent of the student's final course
 329 grade. A student who takes Algebra I ~~or Geometry~~ after the 2010-
 330 2011 school year must take the statewide, standardized EOC
 331 assessment for the course but is not required to pass the
 332 assessment in order to earn course credit. ~~A student's~~
 333 ~~performance on the Geometry EOC assessment is not required to~~
 334 ~~constitute 30 percent of the student's final course grade.~~ A
 335 student who earns an industry certification for which there is a
 336 statewide college credit articulation agreement approved by the
 337 State Board of Education may substitute the certification for
 338 one mathematics credit. Substitution may occur for up to two
 339 mathematics credits, except for Algebra I and Geometry.

340 3. Three credits in science, two of which must have a
 341 laboratory component. A student who takes Biology I after the
 342 2010-2011 school year must take the statewide, standardized
 343 Biology I EOC assessment but is not required to pass the
 344 assessment in order to earn course credit. A student's
 345 performance on the assessment is not required to constitute 30
 346 percent of the student's final course grade. A student who earns
 347 an industry certification for which there is a statewide college
 348 credit articulation agreement approved by the State Board of

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Education may substitute the certification for one science credit, except for Biology I.

4. Three credits in social studies of which one credit in World History, one credit in United States History, one-half credit in United States Government, and one-half credit in economics are required. ~~A student who takes United States History after the 2011-2012 school year must take the statewide, standardized United States History EOC assessment, but the student's performance on the assessment is not required to constitute 30 percent of the student's final course grade.~~

5. One credit in fine or performing arts, speech and debate, or practical arts as provided in paragraph (3)(e).

6. One credit in physical education as provided in paragraph (3)(f).

7. Eight credits in electives.

(c) A student entering grade 9 in the 2011-2012 school year must earn:

1. Four credits in English/ELA. A student must pass the statewide, standardized grade 10 Reading assessment, or earn a concordant score, in order to graduate with a standard high school diploma.

2. Four credits in mathematics, which must include Algebra I and Geometry. A student who takes Algebra I after the 2010-2011 school year must pass the statewide, standardized Algebra I EOC assessment, or earn a comparative score, in order to earn a standard high school diploma. A student who takes Algebra I ~~or Geometry~~ after the 2010-2011 school year must take the statewide, standardized EOC assessment but is not required to pass the Algebra I ~~or Geometry~~ EOC assessment in order to earn

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course credit. A student's performance on the Algebra I ~~or Geometry~~ EOC assessment is not required to constitute 30 percent of the student's final course grade. A student who earns an industry certification for which there is a statewide college credit articulation agreement approved by the State Board of Education may substitute the certification for one mathematics credit. Substitution may occur for up to two mathematics credits, except for Algebra I and Geometry.

3. Three credits in science, two of which must have a laboratory component. One of the science credits must be Biology I. A student who takes Biology I after the 2010-2011 school year must take the statewide, standardized Biology I EOC assessment but is not required to pass the assessment in order to earn course credit. A student's performance on the assessment is not required to constitute 30 percent of the student's final course grade. A student who earns an industry certification for which there is a statewide college credit articulation agreement approved by the State Board of Education may substitute the certification for one science credit, except for Biology I.

4. Three credits in social studies of which one credit in World History, one credit in United States History, one-half credit in United States Government, and one-half credit in economics are required. ~~A student who takes United States History after the 2011-2012 school year must take the statewide, standardized United States History EOC assessment, but the student's performance on the assessment is not required to constitute 30 percent of the student's final course grade.~~

5. One credit in fine or performing arts, speech and debate, or practical arts as provided in paragraph (3)(e).

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6. One credit in physical education as provided in paragraph (3)(f).

7. Eight credits in electives.

8. One online course as provided in subsection (4).

(d) A student entering grade 9 in the 2012-2013 school year must earn:

1. Four credits in English/ELA. A student must pass the statewide, standardized grade 10 Reading assessment, or earn a concordant score, in order to graduate with a standard high school diploma.

2. Four credits in mathematics, which must include Algebra I and Geometry. A student who takes Algebra I after the 2010-2011 school year must pass the statewide, standardized Algebra I EOC assessment, or earn a comparative score, in order to earn a standard high school diploma. ~~A student who takes Geometry after the 2010-2011 school year must take the statewide, standardized Geometry EOC assessment.~~ A student is not required to pass the statewide, standardized EOC assessment in Algebra I ~~or Geometry~~ in order to earn course credit. A student's performance on the Algebra I ~~or Geometry~~ EOC assessment is not required to constitute 30 percent of the student's final course grade. A student who earns an industry certification for which there is a statewide college credit articulation agreement approved by the State Board of Education may substitute the certification for one mathematics credit. Substitution may occur for up to two mathematics credits, except for Algebra I and Geometry.

3. Three credits in science, two of which must have a laboratory component. One of the science credits must be Biology I. A student who takes Biology I after the 2010-2011 school year

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must take the statewide, standardized Biology I EOC assessment but is not required to pass the assessment to earn course credit. A student's performance on the assessment is not required to constitute 30 percent of the student's final course grade. A student who earns an industry certification for which there is a statewide college credit articulation agreement approved by the State Board of Education may substitute the certification for one science credit, except for Biology I.

4. Three credits in social studies of which one credit in World History, one credit in United States History, one-half credit in United States Government, and one-half credit in economics are required. ~~The statewide, standardized United States History EOC assessment constitutes 30 percent of the student's final course grade.~~

5. One credit in fine or performing arts, speech and debate, or practical arts as provided in paragraph (3)(e).

6. One credit in physical education as provided in paragraph (3)(f).

7. Eight credits in electives.

8. One online course as provided in subsection (4).

(e) Policy adopted in rule by the district school board may require for any cohort of students that performance on a statewide, standardized EOC assessment constitute 30 percent of a student's final course grade.

(f) This subsection is repealed July 1, 2020.

Section 5. Paragraph (a) of subsection (1) of section 1003.4285, Florida Statutes, is amended to read:

1003.4285 Standard high school diploma designations.—

(1) Each standard high school diploma shall include, as

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applicable, the following designations if the student meets the criteria set forth for the designation:

(a) *Scholar designation*.—In addition to the requirements of s. 1003.4282, in order to earn the Scholar designation, a student must satisfy the following requirements:

1. Mathematics.—Earn one credit in Algebra II and one credit in statistics or an equally rigorous course. ~~Beginning with students entering grade 9 in the 2014-2015 school year, pass the Algebra II and Geometry statewide, standardized assessments.~~

2. Science.—Pass the statewide, standardized Biology I EOC assessment and earn one credit in chemistry or physics and one credit in a course equally rigorous to chemistry or physics. However, a student enrolled in an Advanced Placement (AP), International Baccalaureate (IB), or Advanced International Certificate of Education (AICE) Biology course who takes the respective AP, IB, or AICE Biology assessment and earns the minimum score necessary to earn college credit as identified pursuant to s. 1007.27(2) meets the requirement of this subparagraph without having to take the statewide, standardized Biology I EOC assessment.

3. Social studies. ~~Pass the statewide, standardized United States History EOC assessment. However,~~ A student enrolled in an AP, IB, or AICE course that includes United States History topics who takes the respective AP, IB, or AICE assessment and earns the minimum score necessary to earn college credit as identified pursuant to s. 1007.27(2) meets the requirement of this subparagraph ~~without having to take the statewide, standardized United States History EOC assessment.~~

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4. Foreign language.—Earn two credits in the same foreign language.

5. Electives.—Earn at least one credit in an Advanced Placement, an International Baccalaureate, an Advanced International Certificate of Education, or a dual enrollment course.

Section 6. Subsections (3) and (4) and paragraphs (a) and (b) of subsection (7) of section 1008.22, Florida Statutes, are amended, present paragraphs (c) through (f) and present paragraph (g) of that subsection are redesignated as paragraphs (e) through (h) and paragraph (j), respectively, present paragraphs (e) and (f) of that subsection are amended, and new paragraphs (c), (d), and (i) are added to subsection (7) of that section, to read:

1008.22 Student assessment program for public schools.—

(3) STATEWIDE, STANDARDIZED ASSESSMENT PROGRAM.—The Commissioner of Education shall design and implement a statewide, standardized assessment program aligned to the core curricular content established in the Next Generation Sunshine State Standards. The commissioner also must develop or select and implement a common battery of assessment tools that will be used in all juvenile justice education programs in the state. These tools must accurately measure the core curricular content established in the Next Generation Sunshine State Standards. Participation in the assessment program is mandatory for all school districts and all students attending public schools, including adult students seeking a standard high school diploma under s. 1003.4282 and students in Department of Juvenile Justice education programs, except as otherwise provided by law.

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If a student does not participate in the assessment program, the school district must notify the student's parent and provide the parent with information regarding the implications of such nonparticipation. The statewide, standardized assessment program shall be designed and implemented as follows:

(a) *Statewide, standardized comprehensive assessments.*—The statewide, standardized Reading assessment shall be administered annually in grades 3 through 10. The statewide, standardized Writing assessment shall be administered annually at least once at the elementary, middle, and high school levels. When the Reading and Writing assessments are replaced by English Language Arts (ELA) assessments, ELA assessments shall be administered to students in grades 3 through 10. Retake opportunities for the grade 10 Reading assessment or, upon implementation, the grade 10 ELA assessment must be provided. Students taking the ELA assessments may shall not take the statewide, standardized assessments in Reading or Writing. ELA assessments shall be administered online unless the provisions of paragraph (d) are implemented. The statewide, standardized Mathematics assessments shall be administered annually in grades 3 through 8, and shall be administered online unless the provisions of paragraph (d) are implemented. Students taking a revised Mathematics assessment may shall not take the discontinued assessment. The statewide, standardized Science assessment shall be administered annually at least once at the elementary and middle grades levels. In order to earn a standard high school diploma, a student who has not earned a passing score on the grade 10 Reading assessment or, upon implementation, the grade 10 ELA assessment must earn a passing score on the assessment retake or

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earn a concordant score as authorized under subsection (8).

(b) *Algebra I and Biology I End-of-course (EOC) assessments.*—The Algebra I and Biology I EOC assessments must be statewide, standardized, and developed or approved by the Department of Education. ~~as follows:~~

1. EOC assessments for Algebra I and, Geometry, Algebra II, Biology I, United States History, and Civics shall be administered to students enrolled in such courses as specified in the course code directory.

2. Students enrolled in Algebra I and Biology I ~~a course, as specified in the course code directory, with an associated statewide, standardized EOC assessment~~ must take the EOC assessment for such course and may not take the corresponding subject or grade-level statewide, standardized assessment pursuant to paragraph (a). Sections 1003.4156 and 1003.4282 govern the use of statewide, standardized EOC assessment results for students.

3. The commissioner may select one or more nationally developed comprehensive examinations, which may include examinations for a College Board Advanced Placement course, International Baccalaureate course, or Advanced International Certificate of Education course, or industry-approved examinations to earn national industry certifications identified in the CAPE Industry Certification Funding List, for use as the Algebra I and Biology I EOC assessments under this paragraph if the commissioner determines that the content knowledge and skills assessed by the examinations meet or exceed the grade-level expectations for the core curricular content established for Algebra I and Biology I ~~the course~~ in the Next Generation

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Sunshine State Standards. Use of any such examination as an EOC assessment must be approved by the state board in rule.

~~4. Contingent upon funding provided in the General Appropriations Act, including the appropriation of funds received through federal grants, the commissioner may establish an implementation schedule for the development and administration of additional statewide, standardized EOC assessments that must be approved by the state board in rule. If approved by the state board, student performance on such assessments constitutes 30 percent of a student's final course grade.~~

4.5- The Algebra I and Biology I All statewide,
standardized EOC assessments must be administered online except as otherwise provided in paragraph (c).

(c) *Students with disabilities; Florida Alternate Assessment.*—

1. Each district school board must provide instruction to prepare students with disabilities in the core content knowledge and skills necessary for successful grade-to-grade progression and high school graduation.

2. A student with a disability, as defined in s. 1007.02, for whom the individual education plan (IEP) team determines that the statewide, standardized assessments under this section cannot accurately measure the student's abilities, taking into consideration all allowable accommodations, shall have assessment results waived for the purpose of receiving a course grade and a standard high school diploma. Such waiver shall be designated on the student's transcript. The statement of waiver shall be limited to a statement that performance on an

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assessment was waived for the purpose of receiving a course grade or a standard high school diploma, as applicable.

3. The State Board of Education shall adopt rules, based upon recommendations of the commissioner, for the provision of assessment accommodations for students with disabilities and for students who have limited English proficiency.

a. Accommodations that negate the validity of a statewide, standardized assessment are not allowed during the administration of the assessment. However, instructional accommodations are allowed in the classroom if identified in a student's IEP. Students using instructional accommodations in the classroom that are not allowed on a statewide, standardized assessment may have assessment results waived if the IEP team determines that the assessment cannot accurately measure the student's abilities.

b. If a student is provided with instructional accommodations in the classroom that are not allowed as accommodations for statewide, standardized assessments, the district must inform the parent in writing and provide the parent with information regarding the impact on the student's ability to meet expected performance levels. A parent must provide signed consent for a student to receive classroom instructional accommodations that would not be available or permitted on a statewide, standardized assessment and acknowledge in writing that he or she understands the implications of such instructional accommodations.

c. If a student's IEP states that online administration of a statewide, standardized assessment will significantly impair the student's ability to perform, the assessment shall be

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administered in hard copy.

4. For students with significant cognitive disabilities, the Department of Education shall provide for implementation of the Florida Alternate Assessment to accurately measure the core curricular content established in the Next Generation Sunshine State Standards.

(d) Nonelectronic option.—The commissioner shall make available an alternative, nonelectronic option for all statewide assessments, including the statewide, standardized ELA assessment, including the Writing assessment; the statewide, standardized Mathematics assessment; the statewide, standardized Science assessment; and the statewide, standardized EOC assessments. The nonelectronic option shall be made available to reduce the time spent on assessments; increase instructional time for students; and ensure that students demonstrate more successfully a mastery of the standards being measured, that students have the time to develop the word processing and computer skills necessary to take any statewide, standardized assessment, and that school districts have the capacity at both the school and district levels to administer the assessments online.

(e)-(d) Implementation schedule.—

1. The Commissioner of Education shall establish and publish on the department's website an implementation schedule to transition from the statewide, standardized Reading and Writing assessments to the ELA assessments and to the revised Mathematics assessments, including the Algebra I ~~and Geometry~~ EOC ~~assessment assessments~~. The schedule must take into consideration funding, sufficient field and baseline data,

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access to assessments, instructional alignment, and school district readiness to administer the assessments online. All such assessments must be delivered through computer-based testing, however, the following assessments must be delivered in a computer-based format, as follows: the grade 3 ELA assessment, beginning in the 2017-2018 school year; the grade 3 Mathematics assessment beginning in the 2016-2017 school year; the grade 4 ELA assessment, beginning in the 2015-2016 school year; and the grade 4 Mathematics assessment, beginning in the 2016-2017 school year.

2. The Department of Education shall publish minimum and recommended technology requirements that include specifications for hardware, software, networking, security, and broadband capacity to facilitate school district compliance with the requirement that assessments be administered online.

(f)-(e) Assessment scores and achievement levels.—

1. The ~~All~~ statewide, standardized Algebra I EOC assessment assessments and ELA, mathematics, and Science assessments shall use scaled scores and achievement levels. Achievement levels shall range from 1 through 5, with level 1 being the lowest achievement level, level 5 being the highest achievement level, and level 3 indicating satisfactory performance on an assessment. The department shall study each of the achievement levels used for the statewide, standardized assessments and more specifically define the achievement levels in order to communicate the meaning of such levels to students, parents and teachers. As part of the study, the department shall review existing assessment reports and recommend changes that better communicate the meaning of the achievement levels and their

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relationship to student performance and success. The department shall submit the report with its recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the state board by July 1, 2018.

2. The state board shall designate by rule a passing score for each statewide, standardized assessment.

3. If the commissioner seeks to revise a statewide, standardized assessment and the revisions require the state board to modify performance level scores, including the passing score, the commissioner shall provide a copy of the proposed scores and implementation plan to the President of the Senate and the Speaker of the House of Representatives at least 90 days before submission to the state board for review. Until the state board adopts the modifications by rule, the commissioner shall use calculations for scoring the assessment that adjust student scores on the revised assessment for statistical equivalence to student scores on the former assessment. The state board shall adopt by rule the passing score for the revised assessment that is statistically equivalent to the passing score on the discontinued assessment for a student who is required to attain a passing score on the discontinued assessment. The commissioner may, with approval of the state board, discontinue administration of the former assessment upon the graduation, based on normal student progression, of students participating in the final regular administration of the former assessment. If the commissioner revises a statewide, standardized assessment and the revisions require the state board to modify the passing score, only students taking the assessment for the first time after the rule is adopted are affected.

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(g) ~~(f)~~ *Prohibited activities.*—A district school board shall prohibit each public school from suspending a regular program of curricula for purposes of administering practice assessments or engaging in other assessment-preparation activities for a statewide, standardized assessment. However, a district school board may authorize a public school to engage in the following assessment-preparation activities:

1. Distributing to students sample assessment books and answer keys published by the Department of Education.

2. Providing individualized instruction in assessment-taking strategies, without suspending the school's regular program of curricula, for a student who scores Level 1 or Level 2 on a prior administration of an assessment.

3. Providing individualized instruction in the content knowledge and skills assessed, without suspending the school's regular program of curricula, for a student who scores Level 1 or Level 2 on a prior administration of an assessment or a student who, through a diagnostic assessment administered by the school district, is identified as having a deficiency in the content knowledge and skills assessed.

4. Administering a practice assessment or engaging in other assessment-preparation activities that are determined necessary to familiarize students with the organization of the assessment, the format of assessment items, and the assessment directions or that are otherwise necessary for the valid and reliable administration of the assessment, as set forth in rules adopted by the State Board of Education with specific reference to this paragraph.

(h) ~~(g)~~ *Contracts for assessments.*—

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1. The commissioner shall provide for the assessments to be developed or obtained, as appropriate, through contracts and project agreements with private vendors, public vendors, public agencies, postsecondary educational institutions, or school districts.

2. The commissioner may enter into contracts for the continued administration of the assessments authorized and funded by the Legislature. Contracts may be initiated in 1 fiscal year and continue into the next fiscal year and may be paid from the appropriations of either or both fiscal years. The commissioner may negotiate for the sale or lease of tests, scoring protocols, test scoring services, and related materials developed pursuant to law.

3.2- A student's performance results on statewide, standardized assessments, Algebra I and Biology I EOC assessments, and Florida Alternative Assessments administered pursuant to this subsection must be provided to the student's teachers and parents by the end of the school year, unless the commissioner determines that extenuating circumstances exist and reports the extenuating circumstances to the State Board of Education and to school districts. This subparagraph does not apply to existing contracts for such assessments, but applies ~~shall apply~~ to new contracts and any renewal of existing contracts for such assessments.

4.3- If liquidated damages are applicable, the department shall collect liquidated damages that are due in response to the administration of the spring 2015 computer-based assessments of the department's Florida Standards Assessment contract with American Institutes for Research, and expend the funds to

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reimburse parties that incurred damages.

(4) SCHOOL PARTICIPATION IN THE STATEWIDE, STANDARDIZED ASSESSMENT PROGRAM.—Each public school shall participate in the statewide, standardized assessment program in accordance with the assessment and reporting schedules and the minimum and recommended technology requirements published by the Commissioner of Education. A district school superintendent must notify the commissioner that the district will use a nonelectronic option for the entire district or for specific grade levels throughout the district by the beginning of the school year in which the nonelectronic option is used. The district school superintendent shall provide the commissioner with the reasons for implementing the nonelectronic option, which may include, but need not be limited to, reducing time spent on assessments; increasing instructional time for students; or needing additional time for students to master the computer skills necessary to be successful on the statewide, standardized assessments. The commissioner shall provide the alternative, nonelectronic option to the school district for the successful and timely administration of the statewide, standardized assessments and end-of-course exams and for the reporting of assessment and exam results to the Department of Education, as specified in paragraph (3)(d). District school boards ~~may shall~~ not establish school calendars that conflict with or jeopardize implementation of the assessment program. All district school boards shall report assessment results using the state management information system. Performance data shall be analyzed and reported to parents, the community, and the state. Student performance data shall be used by districts in

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developing objectives for the school improvement plan, evaluating instructional personnel and administrative personnel, assigning staff, allocating resources, acquiring instructional materials and technology, implementing performance-based budgeting, and promoting and assigning students to educational programs. The analysis of student performance data must also identify strengths and needs in the educational program and trends over time. The analysis must be used in conjunction with the budgetary planning processes developed pursuant to s. 1008.385 and the development of remediation programs.

(7) ASSESSMENT SCHEDULES AND REPORTING OF RESULTS.—

(a) The Commissioner of Education shall establish schedules for the administration of statewide, standardized assessments and the reporting of student assessment results. The commissioner shall consider the observance of religious and school holidays when developing the schedules. The assessment and reporting schedules must provide the earliest possible reporting of student assessment results to the school districts, consistent with the requirements of paragraph (3)(h) ~~(3)(g)~~. Assessment results for the statewide, standardized ELA and Mathematics assessments and the all statewide, standardized Algebra I and Biology I EOC assessments must be made available no later than the week of June 8, except for results of assessments administered in the 2014-2015 school year. School districts shall administer statewide, standardized assessments in accordance with the schedule established by the commissioner.

(b) By August of each year, beginning in 2016, the commissioner shall publish on the department's website a uniform calendar that includes the assessment and reporting schedules

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for, at a minimum, the next 2 school years. The uniform calendar must be provided to school districts in an electronic format that allows each school district and public school to populate the calendar with, at minimum, the following information for reporting the district assessment schedules under paragraph (e) ~~(e)~~:

1. Whether the assessment is a district-required assessment or a state-required assessment.

2. The specific date or dates that each assessment will be administered.

3. The time allotted to administer each assessment.

4. Whether the assessment is a computer-based assessment or a paper-based assessment.

5. The grade level or subject area associated with the assessment.

6. The date that the assessment results are expected to be available to teachers and parents.

7. The type of assessment, the purpose of the assessment, and the use of the assessment results.

8. A glossary of assessment terminology.

9. Estimates of average time for administering state-required and district-required assessments, by grade level.

(c) Beginning with the 2017-2018 school year, the ELA assessment in grades 3 through 10 and the mathematics assessment in grades 3 through 8 shall be administered:

1. With the exception of the grade 3 Reading assessment, no earlier than during the last 3 weeks of the school year as determined by a district school board's policy pursuant to s. 1001.42(4)(f).

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871 2. Within a testing window not to exceed 3 weeks.
 872 (d) Beginning with any new contract for the ELA assessment
 873 in grades 3 through 10 and the mathematics assessment in grades
 874 3 through 8 entered into after July 1, 2017, each new assessment
 875 shall be made available once per quarter for students who the
 876 school district has identified through competency-based
 877 education as having mastered the content and who are prepared to
 878 take the applicable assessment.
 879 (g)(e) The Algebra I and Biology I A statewide,
 880 standardized EOC assessments assessment must be used as the
 881 final cumulative examination for its associated course. No
 882 additional final assessment may be administered in an Algebra I
 883 or Biology I a course with a statewide, standardized EOC
 884 assessment. A district-required local assessment may be used as
 885 the final cumulative examination for its associated course in
 886 accordance with the school district's policy.
 887 (h)(f) A school district must provide a student's
 888 performance results on district-required local assessments to
 889 the student's teachers within 1 week and to the student's
 890 parents no later than 30 days after administering such
 891 assessments, unless the superintendent determines in writing
 892 that extenuating circumstances exist and reports the extenuating
 893 circumstances to the district school board.
 894 (i) A school district must provide a student's performance
 895 results on statewide, standardized ELA and mathematics
 896 assessments in an easy-to-read and understandable format to each
 897 student's parent, current teacher of record, and teacher of
 898 record for the subsequent school year before the start of that
 899 school year. A report of student assessment results, prepared by

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900 the Department of Education, must, at a minimum, contain:
 901 1. A clear explanation of the student's performance on the
 902 applicable statewide, standardized assessments.
 903 2. Information identifying the student's areas of strength
 904 and areas in need of improvement.
 905 3. Specific actions that may be taken, and the available
 906 resources that may be used, by the student's parent to assist
 907 his or her child based on the student's areas of strength and
 908 areas in need of improvement.
 909 4. Longitudinal information, if available, on the student's
 910 progress in each subject area based on previous statewide,
 911 standardized assessment data.
 912 5. Comparative information showing the student's score
 913 compared to other students in the school district, in the state,
 914 or, if available, in other states.
 915 6. Predictive information, if available, showing the
 916 linkage between the scores attained by the student on the
 917 statewide, standardized assessments and the scores he or she may
 918 potentially attain on nationally recognized college entrance
 919 examinations.
 920 Section 7. Section 1008.222, Florida Statutes, is created
 921 to read:
 922 1008.222 Student assessments for students of articulated
 923 acceleration mechanisms.—
 924 (1) Notwithstanding any other provision of law, a student
 925 who takes and passes an advanced placement, International
 926 Baccalaureate, Advanced International Certificate of Education,
 927 or national industry certification examination; takes and passes
 928 any other articulated acceleration mechanism authorized under s.

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929 1007.27; or achieves the required concordant scores on the ACT
 930 or SAT examinations pursuant to s. 1008.22(8), is exempt from
 931 taking the statewide, standardized assessments in the subject
 932 areas covered by those examinations.

933 (2) By the first day of the 2017-2018 school year, the
 934 Commissioner of Education shall identify concordant scores or
 935 comparative scores, as appropriate, so that those scores satisfy
 936 the high school graduation requirements under s. 1003.4282 for
 937 an examination or assessment identified in subsection (1).

938 (3) The scores of students who pass the examinations or
 939 assessments identified in subsection (1) shall be incorporated
 940 into the school grade calculations under s. 1008.34.

941 Section 8. Paragraph (b) of subsection (7) of section
 942 1008.25, Florida Statutes, is amended to read:

943 1008.25 Public school student progression; student support;
 944 reporting requirements.—

945 (7) SUCCESSFUL PROGRESSION FOR RETAINED THIRD GRADE
 946 STUDENTS.—

947 (b) Each school district shall:

948 1. Provide third grade students who are retained under the
 949 provisions of paragraph (5)(b) with intensive instructional
 950 services and supports to remediate the identified areas of
 951 reading deficiency, including participation in the school
 952 district's summer reading camp as required under paragraph (a)
 953 and a minimum of 90 minutes of daily, ~~uninterrupted~~,
 954 scientifically research-based reading instruction which includes
 955 phonemic awareness, phonics, fluency, vocabulary, and
 956 comprehension and other strategies prescribed by the school
 957 district, which may include, but are not limited to:

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958 a. Integration of science and social studies content within
 959 the 90-minute block.

960 b. Small group instruction.

961 c. Reduced teacher-student ratios.

962 d. More frequent progress monitoring.

963 e. Tutoring or mentoring.

964 f. Transition classes containing 3rd and 4th grade
 965 students.

966 g. Extended school day, week, or year.

967 2. Provide written notification to the parent of a student
 968 who is retained under the provisions of paragraph (5)(b) that
 969 his or her child has not met the proficiency level required for
 970 promotion and the reasons the child is not eligible for a good
 971 cause exemption as provided in paragraph (6)(b). The
 972 notification must comply with the provisions of s. 1002.20(15)
 973 and must include a description of proposed interventions and
 974 supports that will be provided to the child to remediate the
 975 identified areas of reading deficiency.

976 3. Implement a policy for the midyear promotion of a
 977 student retained under the provisions of paragraph (5)(b) who
 978 can demonstrate that he or she is a successful and independent
 979 reader and performing at or above grade level in reading or,
 980 upon implementation of English Language Arts assessments,
 981 performing at or above grade level in English Language Arts.
 982 Tools that school districts may use in reevaluating a student
 983 retained may include subsequent assessments, alternative
 984 assessments, and portfolio reviews, in accordance with rules of
 985 the State Board of Education. Students promoted during the
 986 school year after November 1 must demonstrate proficiency levels

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in reading equivalent to the level necessary for the beginning of grade 4. The rules adopted by the State Board of Education must include standards that provide a reasonable expectation that the student's progress is sufficient to master appropriate grade 4 level reading skills.

4. Provide students who are retained under the provisions of paragraph (5)(b) with a highly effective teacher as determined by the teacher's performance evaluation under s. 1012.34.

5. Establish at each school, when applicable, an Intensive Acceleration Class for retained grade 3 students who subsequently score Level 1 on the required statewide, standardized assessment identified in s. 1008.22. The focus of the Intensive Acceleration Class shall be to increase a child's reading and English Language Arts skill level at least two grade levels in 1 school year. The Intensive Acceleration Class shall:

a. Be provided to a student in grade 3 who scores Level 1 on the statewide, standardized English Language Arts assessment and who was retained in grade 3 the prior year because of scoring Level 1.

b. Have a reduced teacher-student ratio.

c. Provide uninterrupted reading instruction for the majority of student contact time each day and incorporate opportunities to master the grade 4 Next Generation Sunshine State Standards in other core subject areas.

d. Use a reading program that is scientifically research-based and has proven results in accelerating student reading achievement within the same school year.

e. Provide intensive language and vocabulary instruction

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using a scientifically research-based program, including use of a speech-language therapist.

Section 9. Subsections (1) and (4) of section 1009.60, Florida Statutes, are amended to read:

1009.60 Minority teacher education scholars program.—There is created the minority teacher education scholars program, which is a collaborative performance-based scholarship program for African-American, Hispanic-American, Asian-American, and Native American students. The participants in the program include Florida's Florida College System institutions and its public and private universities that have teacher education programs.

(1) The minority teacher education scholars program shall provide an annual scholarship in an amount that shall be prorated based on available appropriations and may not exceed \$4,000 for each approved minority teacher education scholar who is enrolled in one of Florida's public or private colleges or universities, ~~in the junior year and~~ is admitted into a teacher education program, and has not earned more than 18 credit hours of upper-division-level courses in education.

(4) A student may receive a scholarship from the program for 3 consecutive years if the student remains enrolled full-time in the program and makes satisfactory progress toward a baccalaureate degree with a major in education or a graduate degree with a major in education, leading to initial certification.

Section 10. Paragraph (a) of subsection (2) of section 1009.605, Florida Statutes, is amended to read:

1009.605 Florida Fund for Minority Teachers, Inc.—

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(2) (a) The corporation shall submit an annual budget projection to the Department of Education to be included in the annual legislative budget request. The projection must be based on the cost to award up to 350 scholarships to new scholars ~~in the junior year~~ and up to 350 renewal scholarships ~~to the 350 rising seniors~~.

Section 11. Paragraph (c) of subsection (1), paragraph (a) of subsection (3), and subsections (7), (8), and (9) of section 1012.34, Florida Statutes, are amended to read:

1012.34 Personnel evaluation procedures and criteria.—

(1) EVALUATION SYSTEM APPROVAL AND REPORTING.—

(c) Annually, by February 1, the Commissioner of Education shall publish on the department's website the status of each school district's instructional personnel and school administrator evaluation systems. This information must include:

~~1-~~ performance evaluation results for the prior school year for instructional personnel and school administrators using the four levels of performance specified in paragraph (2) (e). The performance evaluation results for instructional personnel shall be disaggregated by classroom teachers, as defined in s. 1012.01(2) (a), excluding substitute teachers, and all other instructional personnel, as defined in s. 1012.01(2) (b)-(d).

~~2. An analysis that compares performance evaluation results calculated by each school district to indicators of performance calculated by the department using the standards for performance levels adopted by the state board under subsection (8).~~

~~3. Data reported under s. 1012.341.~~

(3) EVALUATION PROCEDURES AND CRITERIA.—Instructional personnel and school administrator performance evaluations must

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be based upon the performance of students assigned to their classrooms or schools, as provided in this section. Pursuant to this section, a school district's performance evaluation system is not limited to basing unsatisfactory performance of instructional personnel and school administrators solely upon student performance, but may include other criteria to evaluate instructional personnel and school administrators' performance, or any combination of student performance and other criteria. Evaluation procedures and criteria must comply with, but are not limited to, the following:

(a) A performance evaluation must be conducted for each employee at least once a year, except that a classroom teacher, as defined in s. 1012.01(2) (a), excluding substitute teachers, who is newly hired by the district school board must be observed and evaluated at least twice in the first year of teaching in the school district. The performance evaluation must be based upon sound educational principles and contemporary research in effective educational practices. The evaluation criteria must include:

1. Performance of students.—At least one-third of a performance evaluation must be based upon data and indicators of student performance, as determined by each school district ~~in accordance with subsection (7)~~. This portion of the evaluation must include growth or achievement data of the teacher's students or, for a school administrator, the students attending the school over the course of at least 3 years. If less than 3 years of data are available, the years for which data are available must be used. The proportion of growth or achievement data may be determined by instructional assignment.

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2. Instructional practice.—For instructional personnel, at least one-third of the performance evaluation must be based upon instructional practice. Evaluation criteria used when annually observing classroom teachers, as defined in s. 1012.01(2)(a), excluding substitute teachers, must include indicators based upon each of the Florida Educator Accomplished Practices adopted by the State Board of Education. For instructional personnel who are not classroom teachers, evaluation criteria must be based upon indicators of the Florida Educator Accomplished Practices and may include specific job expectations related to student support.

3. Instructional leadership.—For school administrators, at least one-third of the performance evaluation must be based on instructional leadership. Evaluation criteria for instructional leadership must include indicators based upon each of the leadership standards adopted by the State Board of Education under s. 1012.986, including performance measures related to the effectiveness of classroom teachers in the school, the administrator's appropriate use of evaluation criteria and procedures, recruitment and retention of effective and highly effective classroom teachers, improvement in the percentage of instructional personnel evaluated at the highly effective or effective level, and other leadership practices that result in student learning growth. The system may include a means to give parents and instructional personnel an opportunity to provide input into the administrator's performance evaluation.

4. Other indicators of performance.—For instructional personnel and school administrators, the remainder of a performance evaluation may include, but is not limited to,

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

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professional and job responsibilities as recommended by the State Board of Education or identified by the district school board and, for instructional personnel, peer reviews, objectively reliable survey information from students and parents based on teaching practices that are consistently associated with higher student achievement, and other valid and reliable measures of instructional practice.

(7) MEASUREMENT OF STUDENT PERFORMANCE.—

(a) The Commissioner of Education may develop ~~shall approve~~ a formula to measure individual student learning growth on the statewide, standardized assessments in English Language Arts and mathematics administered under s. 1008.22. The formula must take into consideration each student's prior academic performance. The formula must not set different expectations for student learning growth based upon a student's gender, race, ethnicity, or socioeconomic status. In the development of the formula, the commissioner shall consider other factors such as a student's attendance record, disability status, or status as an English language learner. The commissioner may select additional formulas to measure student performance as appropriate for the remainder of the statewide, standardized assessments included under s. 1008.22 and continue to select formulas as new assessments are implemented in the state system. ~~After the commissioner approves the formula to measure individual student learning growth, the State Board of Education shall adopt these formulas in rule.~~

(b) Each school district may, but is not required to, shall measure student learning growth using the formulas developed ~~approved~~ by the commissioner under paragraph (a) ~~and the~~

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~~standards for performance levels adopted by the state board under subsection (8) for courses associated with the statewide, standardized assessments administered under s. 1008.22 no later than the school year immediately following the year the formula is approved by the commissioner. For grades and subjects not assessed by statewide, standardized assessments, each school district shall measure student performance using a methodology determined by the district.~~

~~(8) RULEMAKING. No later than August 1, 2015, The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54 which establish uniform procedures and format for the submission, review, and approval of district evaluation systems and reporting requirements for the annual evaluation of instructional personnel and school administrators, specify, discrete standards for each performance level required under subsection (2), based on student learning growth models approved by the commissioner, to ensure clear and sufficient differentiation in the performance levels and to provide consistency in meaning across school districts, the measurement of student learning growth and associated implementation procedures required under subsection (7); and a process for monitoring school district implementation of evaluation systems in accordance with this section.~~

~~(9) TRANSITION TO NEW STATEWIDE, STANDARDIZED ASSESSMENTS. Standards for each performance level required under subsection (2) shall be established by the State Board of Education beginning with the 2015-2016 school year.~~

Section 12. Committee on Early Childhood Development.—The Committee on Early Childhood Development, a committee as defined

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in s. 20.03, Florida Statutes, is created within the Department of Education to develop a proposal for establishing and implementing a coordinated system focused on developmental milestones and outcomes for the school readiness program, the Voluntary Prekindergarten Education Program, and the Florida Kindergarten Readiness Screener and, except as otherwise provided in this section, shall operate consistent with s. 20.052, Florida Statutes.

(1) The committee's proposal must include legislative recommendations for the design and implementation of a coordinated system for tracking children's development, including:

(a) The purpose of tracking children's development, with a focus on developmentally appropriate learning gains.

(b) Attributes for tool selection that provide guidance on procurement policies.

(c) An implementation schedule and protocols, including the frequency of data collection and a timeline for training to ensure reliability of the system.

(d) The methodology for collecting and analyzing data that defines reporting requirements.

(e) A budget for the system, including cost analyses for purchasing materials and necessary technology, training to ensure reliability, and data system management.

(f) Considerations for student privacy and tracking child development over time.

(2) The committee is composed of 14 members, with 7 members appointed by the President of the Senate and 7 members appointed by the Speaker of the House of Representatives. The members must

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1219 be residents of this state. Seven of the members must be
1220 representatives from or subject matter experts for early
1221 learning and seven members must be representatives from or
1222 subject matter experts for kindergarten through grade 3.

1223 (3) The committee shall elect a chair and vice chair.
1224 Members of the committee shall serve without compensation but
1225 are entitled to reimbursement for per diem and travel expenses
1226 pursuant to s. 112.061, Florida Statutes.

1227 (4) The committee must meet at least three times and shall
1228 meet by teleconference or other electronic means, if possible,
1229 to reduce costs.

1230 (5) A majority of the members constitutes a quorum.

1231 (6) The University of Florida Lastinger Center for Learning
1232 shall provide the committee with staff necessary to assist the
1233 committee in the performance of its duties.

1234 (7) The committee shall submit a report of its findings and
1235 recommendations to the Governor, the President of the Senate,
1236 and the Speaker of the House of Representatives by December 1,
1237 2017. Upon submission of the report, the committee shall expire.

1238 Section 13. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 4, 2017

I respectfully request that **Senate Bill #926**, relating to K-12 Student Assessments, be placed on the:

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

Anitere Flores

Senator Anitere Flores
Florida Senate, District 39

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

926
Bill Number (if applicable)

903014
Amendment Barcode (if applicable)

Topic Assessments

Name Catherine Baer

Job Title Chair

Address 1421 Woodgate Way

Street

Tallahassee

City

FL

State

32308

Zip

Phone 850-345-1114

Email flybaer@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/19/17
Meeting Date

926

Bill Number (if applicable)

903014

Amendment Barcode (if applicable)

Topic Support Amendment →

Name John Cerra

Job Title Lobbyist

Address 206 South Monroe St #104

Phone 786-525-6233

Street
Tallahassee FL 32301
City State Zip

Email Cerra.j@comcast.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida League of International Baccalaureate Schools

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/19/17
Meeting Date

CS/ SB 926
Bill Number (if applicable)
→ 903014
Amendment Barcode (if applicable)

Topic Education

Name Nancy Lawther

Job Title _____

Address 9140 SW 59 Ave

Street

Miami, FL 33156

City

State

Zip

Phone 305 607-3837

Email nllawther@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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APPEARANCE RECORD

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

4/19/17
Meeting Date

~~903014~~
Bill Number (if applicable)

903014

Amendment Barcode (if applicable)

Topic School Recess

Name Coleye Woody

Job Title Director of Legislative and Congressional Relations

Address 445 W. Amelia St.
Street

Phone (407) 317-3200 ext 2002966

Orlando
City

FL
State

32801
Zip

Email coleye.woody@ocps.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Orange County Public Schools

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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4/19/17

Meeting Date

926

Bill Number (if applicable)

236592

Amendment Barcode (if applicable)

Topic Assessment

Name Fely Curva, Ph.D.

Job Title Partner, Curva & Associates LLC

Address 1212 Piedmont Dr.

Phone (858) 508-2256

Street

Tallahassee

City

FL

State

32312

Zip

Email Curva@mindspring.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Society of Health & Physical Educators
(SHAPE) FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/19/17

Meeting Date

926

Bill Number (if applicable)

Topic Education

Amendment Barcode (if applicable)

Name Alli Liby-Schoonover

Job Title _____

Address 215 S Monroe St

Street

Phone 850-321-4799

Tallahassee

FL

32301

City

State

Zip

Email alliliby@schonover.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Seminole County Public Schools

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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4-

Meeting Date

926

Bill Number (if applicable)

Topic

Testing

Amendment Barcode (if applicable)

Name

Catherine Baer

Job Title

Chair

Address

1421 Woodgate Way

Phone

850-345-1116

Street

Tallahassee

FL

32308

Email

flybaer@gmail

City

State

Zip

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

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

Representing

The Tea Party Network / Common Ground

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

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

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4/19

Meeting Date

924

Bill Number (if applicable)

Topic Education

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title Legislative Advocate

Address 540 Beverly Ct
Street

Phone 772 204 1792

Tallahassee FL 32301
City State Zip

Email lwvfvadwocacy@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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4.19.17

Meeting Date

926

Bill Number (if applicable)

Topic Assessments

Amendment Barcode (if applicable)

Name Shan Goff

Job Title Policy Director

Address 215 S Monroe

Street

FLA

City

FL

State

32301

Zip

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Foundation for Florida's Future

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/19/17
Meeting Date

CS/SB 926
Bill Number (if applicable)

Topic Education

Amendment Barcode (if applicable)

Name Nancy Lawther

Job Title _____

Address 9140 SW 59 Ave.
Street

Phone 305 607-3837

Miami, FL 33156
City State Zip

Email nllawther@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (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

926

Bill Number (if applicable)

Topic Education

Amendment Barcode (if applicable)

Name Beth Overholt

Job Title _____

Address 4130 Faulkner Lane

Street

Phone 728-0587

Tallahassee

City

FL 32311

State

Zip

Email overholthetha@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Opt Out Leon

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4/19/2017

Meeting Date

926

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S

Street

Phone 727/897-4291

St Petersburg

City

FL

State

33705

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1582

INTRODUCER: Appropriations Committee and Senator Bradley

SUBJECT: Workers' Compensation Insurance

DATE: April 20, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Johnson	Knudson	BI	Favorable
2. Sanders/Johnson	Hansen	AP	Fav/CS
3. Johnson	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1582 amends several provisions in chapter 440, F.S., Florida's workers' compensation law, and chapter 627, F.S.s, the Insurance Code, which governs the rate making approval process for many, but not all, providers of workers' compensation coverage. The bill:

- Codifies *Westphal v. City of St. Petersburg*,¹ by increasing temporary total disability benefits and temporary partial disability benefits from 104 weeks to 260 weeks.
- Amends the attorney fee provision to require the Judge of Compensation Claims (JCC) to consider certain factors in determining if the attorney fees should be increased or decreased, based on a maximum hourly rate of \$250. The bill removes the criminal penalty for claimant attorneys receiving fees that are not approved by the JCCs, thereby allowing claimants to enter into retainer agreements. The bill eliminates the attorney fee cap of \$1,500 on medical-only claims.
- Requires greater specificity in the information that must be provided in petitions for benefits filed with the Office of Judges of Compensation Claims (OJCC), such as the specific date of maximum medical improvement and the specific date that such permanent benefits are claimed to begin.
- Clarifies that deadlines within multiple provisions relating to medical care are based on business days, not calendar days. For example, the bill requires carriers to authorize or deny medical authorization requests within three business days.

¹ *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. 2016).

- Revises the workers' compensation rating law. Currently, Florida law requires carriers, or rating organization filing on their behalf, to file an administered rate or full rate. The bill implements loss costs rating, which requires each insurer to seek approval for rates based on aggregate claim information filed by a rating organization with individual company data (loss costs multipliers), being used for the final rate, subject to approval by the Office of Insurance Regulation (OIR).
- Limits defense and cost containment expenses of insurers to 15 percent of incurred losses, and provides that excessive defense and cost containment fees must be returned to policyholders.
- Creates a presumption that firefighters who have multiple myeloma or non-Hodgkin's lymphoma are presumed to have contracted one of these occupational diseases in the course and scope of employment. This provision will extend workers' compensation benefits to firefighters who have either of these conditions.

To cover the costs associated with the bill, an appropriation of \$823,118, which includes staffing needs and information technology enhancements to implement the provisions of this bill, is provided to the OIR.² In addition, the bill appropriates the Office of Judges of Compensation Claims \$24,720 for reprogramming and temporary staffing needs. On the other hand, the Division of Risk Management, the state's self-insurance pool, which includes workers' compensation claims, may experience cost savings like other workers' compensation carriers. See Section V. Fiscal Impact Statement.

Except as otherwise expressly provided in this act, the bill has an effective date of July 1, 2017.

II. Present Situation:

Florida's Workers' Compensation Trends

In 2015, 242 commercial insurers actively wrote workers' compensation insurance in Florida. In total, these private sector insurers wrote \$2.6 billion in premium.³ In 2014, Florida rates were ranked 28th highest in the United States. In 2016, Florida rates were ranked even lower at 33.⁴

Medical-Only and Indemnity Claims⁵

Approximately 75 percent of claims in Florida are medical-only and the average cost is \$1,378. Medical-only claims represent ten percent of losses. In contrast, 25 percent of the claims in Florida are lost-time claims and the average cost is \$39,296. Lost time claims represent 90 percent of total losses.

² Email from Richard Fox, Budget Director, Office of Insurance Regulation (April 10, 2017) (on file with Senate Appropriations Committee).

³ OIR, *2016 Workers' Compensation Annual Report*, pg. 6 (Jan. 2017).

<http://floir.com/siteDocuments/2016WorkersCompensationAnnualReport.pdf> (last accessed April 4, 2017) (on file with Senate Banking and Insurance Committee).

⁴ Oregon Department of Consumer and Business Services, *2016 Oregon Workers' Compensation Premium Rate Ranking Summary* (Oct. 2016) http://www.cbs.state.or.us/external/dir/wc_cost/files/report_summary.pdf (last accessed on April 4, 2017) (on file with Senate Banking and Insurance Committee).

⁵ NCCI, *Workers' Compensation October 1, 2016, Law-Only Rate Filing Overview* (On file with Senate Banking and Insurance Committee).

Cost Drivers

According to the OIR, there are several cost drivers in the Florida workers' compensation system that the Legislature could address to induce cost savings.⁶ The OIR noted that NCCI compared the medical cost distributions for Florida versus 37 states combined to show that based on recent experience Florida has a higher portion of cost paid for drugs, hospital inpatient, and ambulatory surgical centers.⁷

Attorney Involvement

Attorney involvement is approximately 25 percent on lost-time claims.⁸ Since claimant attorney involvement is reported to NCCI as indemnity, a medical-only claim with claimant attorney involvement would be reported as a lost-time claim.⁹ For lost-time claims with attorney involvement, the cost on average is approximately three times more than lost-time claims without attorney involvement.¹⁰

Section 440.34, F.S., requires the reporting of all fees paid to attorneys for services rendered to the OJCC. The OJCC reported¹¹ that during 2015-2016, a total of \$378,573,902 was incurred on combined claimant attorneys' fees and defense attorneys' fees in the Florida system. This represents a small increase, about two percent, from the 2014-2015 aggregate fee total of \$370,772,783. The 2015-2016 aggregate fee total is also very similar to the 2013-2014 aggregate total of \$379,222,337. Both claimant and defense fees decreased in 2014-2015, more significantly on the claimant side. Both figures increased in 2015-2016, more significantly on the defense side. The following OJCC table provides a snapshot of fees for the period of 2002-2016.

Fiscal Year	Claimant Attorney Fees	Percent Change	Defense Attorney Fees	Percent Change
2002-03	\$210,660,738		\$216,698,474	
2003-04	\$215,322,360	2.21%	\$226,585,434	4.56%
2004-05	\$211,157,073	-1.93%	\$259,021,415	14.32%
2005-06	\$208,369,260	-1.32%	\$290,172,000	12.03%
2006-07	\$191,197,443	-8.24%	\$277,286,580	-4.41%
2007-08	\$188,701,256	-1.31%	\$260,160,496	-6.21%
2008-09	\$181,660,686	-3.73%	\$269,280,414	3.51%
2009-10	\$176,996,765	-2.57%	\$269,657,104	0.14%
2010-11	\$157,081,084	-11.25%	\$259,323,175	-3.83%
2011-12	\$152,848,003	-2.69%	\$242,446,703	-6.51%
2012-13	\$151,889,627	-0.63%	\$240,894,494	-0.64%
2013-14	\$141,858,184	-6.60%	\$237,364,154	-1.47%

⁶ See OIR fn. 1 at pg. 15.

⁷ See *id.*

⁸ See NCCI fn. 3 at pg. 9.

⁹ See *id.*

¹⁰ See *id.*

¹¹ OJCC, *2015-2016 Annual Report*, available at

<https://www.jcc.state.fl.us/JCC/publications/reports/2016AnnualReport/Index.html#> (last viewed Mar. 30, 2017).

2014-15	\$136,180,202	-4.00%	\$234,592,581	-1.17%
2015-16	\$136,461,404	0.21%	\$242,112,498	3.21%

Underwriting Performance of Carriers¹²

According to the OIR, “an important measure of the health of an insurance market is the underwriting performance of the insurers in the market; that is, the combination of pricing, risk management, and application of effective underwriting guidelines contributing to a viable and sustainable market.” Commonly used measures employed by the OIR in the 2016 Workers’ Compensation Annual Report include the loss ratio (defined as direct losses incurred divided by direct premiums earned) and a broader measure that includes direct losses incurred and defense cost containment expenses (DCCE) incurred as a percentage of direct premiums earned. Ratios approaching or exceeding 100 for either measure are not considered profitable. For the Florida workers’ compensation market in 2015, these aggregate ratios based on National Association of Insurance Commissioners (NAIC) Annual Statement data are:

- Direct Loss Ratio 57.76 percent; and
- Direct plus DCCE Ratio 65.32 percent.

While there is year-to-year variation in these ratios, both of these measures are fairly consistent with the ratios (57.90 percent and 66.14 percent, respectively) based on 2014 NAIC Annual Statement data.

The combined ratio is another common measure of underwriting performance. Combined ratios measure underwriting profitability and are generally defined as the sum of losses and expenses divided by earned premium. Typically, dividend payments are included as an expense item in quantifying combined ratios. The NCCI’s presentation at its 2016 State Advisory Forum shows that the Florida workers’ compensation combined ratio for private carriers and self-insureds has been trending down for the past several years.

The Accident Year Combined Ratios for Florida

Accident Year	Combined Ratio
2010	124%
2011	115%
2012	106%
2013	98%
2014	96%

A combined ratio less than 100 percent indicates that insurers are achieving an underwriting gain for workers’ compensation. When the combined ratio is greater than 100 percent, insurers are paying out more in losses and expenses than they are collecting in premiums. Insurers may profit in years where the combined ratio is greater than 100 percent because the ratio does not include investment income.

¹² See OIR fn. 1 at pgs. 9-10.

Recent Florida Supreme Cases

Recent Florida court decisions have found multiple parts of the workers' compensation law unconstitutional. They are *Castellanos v. Next Door Company*,¹³ involving attorney fees; *Westphal v. City of St. Petersburg*,¹⁴ relating to temporary wage replacement benefits (i.e., indemnity); and *Miles v. City of Edgewater Police Department*,¹⁵ which addresses the right of an injured worker to pay for their own attorney.

Castellanos v. Next Door Company

In April 2016, the Florida Supreme Court (Court) rendered its decision in *Castellanos v. Next Door Company*. The Court concluded that:

The right of an injured worker to recover a reasonable prevail party attorney's fee has been a key feature of the state's workers' compensation law since 1941. Through the enactment of a mandatory fee schedule, however, the Legislature has created an irrebutable presumption that every fee calculated in accordance with the fee schedule will be reasonable to compensate the attorney for his or her services. The \$1.53 hourly rate in this case clearly demonstrates that not to be true. We conclude that the mandatory fee schedule is unconstitutional as a violation of due process under both the Florida and United States Constitutions.

As a result of this ruling, judges may deviate from the statutory fee schedule if it results in an unreasonable fee.

Westphal v. City of St. Petersburg

Subsequently, in June 2016, the Court, in the case of *Westphal v. City of St. Petersburg*, found the 104-week statutory limitation on temporary total disability benefits unconstitutional because it causes a statutory gap in benefits in violation of an injured worker's constitutional right of access to courts. The Court reinstated the 260-week limitation in effect prior to the 1994 law change.

Miles v. City of Edgewater Police Department

The First District Court of Appeals (1DCA) held that statutes governing payment of attorney's fees in workers' compensation proceedings violated the claimant's First Amendment rights, and thus were unconstitutional. In *Miles*, the 1DCA invalidated a limitation on attorneys accepting payment directly from the injured worker or others on the injured worker's behalf. Before this case, an injured worker, and anyone paying on their behalf, was prohibited from directly paying for their own attorney.¹⁶ The attorney was only paid by the employer/carrier¹⁷ and only if they

¹³ *Castellanos v. Next Door Company*, 192 So.3d 431 (Fla. 2016).

¹⁴ *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. 2016).

¹⁵ *Miles v. City of Edgewater Police Department*, 190 So.3d 171 (Fla. 1st DCA 2016).

¹⁶ Sections 440.105(2)(c) and 440.34(1), F.S.

¹⁷ Workers' compensation insurers are referred to as carriers. Section 440.02(4), F.S., provides that the term "carrier" means any person or fund authorized under s. 440.38, F.S., to insure under this chapter and includes a self-insurer and a commercial self-insurance fund authorized under s. 624.462. .

won the case. The 1DCA found that the right to freedom of speech requires that the injured worker be able to choose to speak to the courts through an attorney and the right to freedom of contract permits the worker to retain an attorney.

Recent Rate Filing by the National Council on Compensation Insurance

In response to the two 2016 Court opinions, on May 27, 2016, the National Council on Compensation Insurance (NCCI), the rating organization that files rates on behalf of workers' compensation insurers, submitted a rate filing with the Office of Insurance Regulation (OIR) requesting a 17.1 percent increase in rates.¹⁸ As part of the filing, the NCCI requested a 15 percent increase as the first-year impact attributable to the 2016 *Castellanos* case and a 1.8 percent increase caused by updates in the medical provider fee schedule enacted during the 2016 Session.¹⁹ The combined estimated impact of the two components on premiums is an increase of \$623 million in premiums.²⁰ However, on June 30, 2016, NCCI amended its rate filing to include the estimated 2.2 percent impact of the *Westphal* decision, resulting in a filing requesting a 19.6 percent increase in rates or an estimated \$714 million increase in premiums.²¹

On September 27, 2016, the OIR issued its order disapproving the pending 19.6 percent rate filing and advised NCCI it would approve a 14.5 percent rate increase or \$528 million increase in premiums if NCCI submitted an amended filing within one week.²² The NCCI complied and on October 5, 2016, the OIR approved a 14.5 percent increase in rates effective December 1, 2016, applicable to both new and renewal workers' compensation insurance policies.²³

On November 23, 2016, a court order invalidated the 14.5 percent overall combined statewide average rate increase approved by the OIR,²⁴ due to NCCI's violations of the Sunshine Laws relating to public records and meetings, as required under ch. 119, F.S., and s. 627.291, F.S. The appeal is pending in the 1DCA. The order is stayed pursuant to an order issued by the 1DCA on December 12, 2016.²⁵ Oral argument was held on February 22, 2017.²⁶ The 1DCA has not rendered an opinion.²⁷

¹⁸ NCCI, *Analysis of Florida Workers Compensation Rate Filing Proposed Effective 8/1/2016* (May 27, 2016). <http://floir.com/Sections/PandC/NCCIHearing.aspx> (last accessed April 4, 2017).

¹⁹ See NCCI fn. 17 at pg. 1.

²⁰ See NCCI, *NCCI Proposes Florida Workers Compensation Rate Increase Effective August 1, 2016* (May 27, 2016). http://floir.com/siteDocuments/NCCI-FL_Filing_Release-8-1-16.pdf (last accessed Apr. 14, 2017) (on file with the Senate Committee on Banking and Insurance).

²¹ NCCI, *NCCI Amends Pending Florida Workers Compensation Rate Filing to +19.6% Proposed Effective October 1, 2016* (July 1, 2016) (On file with the Senate Committee on Banking and Insurance).

²² OIR, *Order on Rate Filing Case No. 191880-16* (Sept. 27, 2016).

²³ OIR, *Final Order on Rate Filing Case No. 191880-16* (Oct. 5, 2016).

²⁴ Order on Non-Jury Trial and Final Judgement Providing Declaratory and Injunctive Relief, *James F. Fee, Jr., v. the National Council on Compensation Insurance, Inc., etc., The Office of Insurance Regulation etc., and David Altmaier*, Case No. 2016 CA 2159 (Fla. 2nd Jud. Cir. 2016).

²⁵ Order of the Court December 12, 2016, *National Council on Compensation Insurance v. James F. Fee, Jr.*, Case Nos. 1D16-5408 & 1D16-5416 (Fla 1st DCA 2016).

²⁶ Oral Argument, February 22, 2017, *Nat'l Council on Compensation Insur. v. James F. Fee, Jr.*, Case Nos. 1D16-5408 & 1D16-5416 (Fla 1st DCA 2016), <http://oavideo.1dca.org/OAPlayer.aspx?ID=2293&CaseID=68332&File=165408.smil>

²⁷ Conversation with 1st DCA Clerk's Office (April 7, 2017) (Senate Committee on Appropriations).

2003 Reforms

In 2000, Florida had the highest premiums in the country, and was ranked second highest in 2002.²⁸ In response to a downturn in the Florida economy and uncertainties in the marketplace, some insurers were not issuing new policies or renewing policies, or significantly tightening their underwriting requirements. Many small employers were forced to secure significantly more expensive coverage in the Florida Workers' Compensation Joint Underwriting Association ("insurer of last resort") due to availability issues.

In 2003, the Workers' Compensation Research Institute and the NCCI identified major cost drivers in Florida's workers' compensation system and compared Florida with national averages. These cost drivers included higher medical costs for types of claims, higher frequency of permanent total disability claims, and relatively high hospital costs as compared to national averages. The NCCI noted that attorney involvement in Florida was significant and helped explain the major cost drivers. When attorneys were not involved, the difference in claims costs between Florida and the national average was minimal. However, when attorneys were involved, Florida's claim size was nearly 40 percent higher than the national average. Prior to 2003, the average Florida claim cost was \$39,000. In contrast, the countrywide average was \$29,000.

Prior to the 2003 reforms, the JCCs used a three-tier fee schedule to award attorney's fees based upon the amount of benefits secured. Generally, the fees would equal 20 percent of the first \$5,000 of the amount of benefits secured; 15 percent of the next \$5,000 of the amount of benefits secured, ten percent of the remaining amount of the benefits secured and to be provided during the first ten years, and five percent of the benefits secured after ten years. However, the JCCs had the discretion to increase or decrease the attorney's fee without any dollar limitation, based on the following factors:

- Time and labor involved;
- Fee customarily charged in the locality for similar services;
- Amount involved in controversy and the benefits resulting;
- Time limitation imposed by claimant or circumstances;
- Experience, reputation, and the ability of the attorney; and
- Contingency or certainty of a fee.

In 2003, the Florida Legislature enacted significant reforms intended to address the availability and affordability of coverage for employers. These reforms were designed to reduce the overall costs to the system by expediting the dispute resolution process, reducing attorney fees, providing greater enforcement tools to combat fraud, revising standards for compensability and benefits, and changing medical services and reimbursements. The 2003 reforms continued the use of the contingency fee schedule in awarding attorney's fee. However, any additional hourly fees were eliminated and the JCCs were prohibited from approving any agreement related to benefits, which provided for an attorney's fee in excess of the amount permitted under the fee schedule.²⁹ As an alternative to the contingency fee schedule, the JCC were authorized to approve an attorney's fee not to exceed \$1,500 once per accident if the JCC determined that the

²⁸ See Oregon Department of Consumer and Business Services fn 2.

²⁹ Sections 440.34 and 440.105, F.S.

contingency fee schedule, based on benefits secured, fails to compensate fairly the attorney for a disputed medical-only claim.

In late 2003, in response to the passage of the reforms, the OIR approved a rate filing submitted by the NCCI that resulted in a 14 percent rate decrease, which represented a \$420 million decrease in workers' compensation insurance costs for employers.³⁰ Since the implementation of the reforms, the Office of Insurance Regulation (OIR) has approved workers' compensation rate decreases totaling over 60 percent.

Administration of the Workers Compensation System in Florida

The Division of Workers' Compensation within the Department of Financial Services is responsible for administering ch. 440, F.S. These functions include the enforcement of coverage requirements,³¹ administration of workers' compensation health care delivery system,³² data collection,³³ and assisting injured workers, employers, insurers, and providers in fulfilling their responsibilities under ch. 440, F.S.³⁴ Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.³⁵ Employees generally cannot sue a covered employer for workplace injuries.³⁶

Medical Benefits

Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.³⁷ Medical services must be provided by a health care provider authorized by the carrier prior to being provided (except for emergency care).³⁸ When the carrier has knowledge of a work-related injury, it will refer the injured employee to an authorized workers' compensation provider.

Authorized medical services and treatment are provided at no cost to the injured employee, except employees are required to pay a \$10 co-payment for medical services provided after they have reached "maximum medical improvement."³⁹ Injured employees are entitled to one change of physician during the course of treatment for any one accident.⁴⁰ After the initial examination

³⁰ OIR, Final Order on Rate Filing (Aug. 12, 2003) available at <http://www.floir.com/siteDocuments/NCCI.pdf> (last viewed Mar. 30, 2017).

³¹ Section 440.107(3), F.S.

³² Section 440.13, F.S.

³³ Section 440.185 and 440.593, F.S.

³⁴ Section 440.191, F.S.

³⁵ "Compensable" means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment. s. 440.13(1)(d), F.S.

³⁶ Section 440.11(1), F.S. Employers who fail to obtain required workers' compensation coverage may be sued by an injured worker in civil court. Likewise, an employee who is either exempt or excluded from workers' compensation coverage requirements may sue their employer in civil court for work-related injuries, even if the employer has coverage for their other employees.

³⁷ Section 440.13(2)(a), F.S.

³⁸ Section 440.13(3)(a), F.S.

³⁹ The date of maximum medical improvement is the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated, based upon reasonable medical probability. Section 440.02(10), F.S.

⁴⁰ Section 440.13(2)(f), F.S.

and diagnosis, the workers' compensation health care provider is required to submit a proposed course of treatment to the carrier to determine whether such treatment would be recognized as reasonably prudent.⁴¹

Indemnity Benefits

Indemnity benefits⁴² only become payable to employees who are disabled for at least eight days due to a compensable workplace injury.⁴³ The first seven days of lost earnings may be paid retroactively to employees who are disabled for more than 21 days.⁴⁴ These benefits are generally payable at 66 2/3 percent of the employee's average weekly wage (AWW),⁴⁵ up to the maximum weekly benefit established by law.⁴⁶ For 2016, this amount is \$863, which is the statewide average weekly wage (SAWW).⁴⁷ Payments are due every two weeks.⁴⁸ Indemnity benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, and permanent total disability.

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks.⁴⁹
- Permanent partial disability benefits are payable as impairment income benefits that are provided for a variable number of weeks depending upon the value of the injured worker's permanent impairment rating pursuant to a statutory formula.⁵⁰
- Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70th birthday, then the benefit is paid for five years.⁵¹

⁴¹ Section 440.13(2)(e), F.S.

⁴² Workers' compensation benefits received for an "occupational sickness or injury are fully exempt from [federal income] tax if they are paid under a workers' compensation act or a statute in the nature of a workers' compensation act." Internal Revenue Service, *Publication 525 (2016), Taxable and NonTaxable Income*, available at <https://www.irs.gov/pub/irs-pdf/p525.pdf> (last visited April 17, 2017).

⁴³ Section 440.12(1), F.S.

⁴⁴ *Id.*

⁴⁵ An injured workers' average weekly wage is an amount equal to one-thirteenth of the total amount of wages earned during the 13 weeks immediately preceding the compensable accident. s. 440.14(1), F.S.

⁴⁶ Section 440.15(1)-(4), F.S.

⁴⁷ "Statewide average weekly wage" means the average weekly wage paid by employers subject to the Florida Reemployment Assistance Program Law as reported to the Department of Economic Opportunity (DEO) for the four calendar quarters ending each June 30, which average weekly wage shall be determined by the DEO on or before November 30 of each year and shall be used in determining the maximum weekly compensation rate with respect to injuries occurring in the calendar year immediately following. s. 440.12(b), F.S. See DFS website at <http://www.myfloridacfo.com/division/wc/Insurer/awwrate.htm#.WOPgOMHr2Uk> (last viewed Apr. 4, 2017).

⁴⁸ Section 440.20(2)(a), F.S.

⁴⁹ Section 440.15(2) and (4), F.S. Section 440.15(2)(a), F.S., specifies that temporary total disability benefits are payable for 104 weeks; however, the Florida Supreme Court has found this provision unconstitutional and the statute has reverted to 260 weeks of temporary total disability benefits pursuant to this case law. *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. Jun. 9, 2016). Section 440.15(4)(e), F.S., provides that temporary partial disability benefits; however, the 1st DCA applied the holding in *Westphal* to these benefits finding the limitation unconstitutional and reverted the limitation to the 260 weeks previously allowed. *Jones v. Food Lion, Inc.*, No. 1D15-3488, 2016 Fla. App. LEXIS 16710 (Fla. 1st DCA Nov. 9, 2016).

⁵⁰ Section 440.15(3), F.S.

⁵¹ Section 440.15(1), F.S.

Office of the Judges of Compensation Claims

The OJCC is responsible for resolving workers' compensation benefit disputes.⁵² Injured employees may file a petition for benefits with the OJCC for any benefit that is ripe, due, and owing.⁵³ Within 14 days of receipt of the petition, the carrier is required to either pay the requested benefits or file a response to the petition.⁵⁴ Forty days after the petition for benefits has been filed, the OJCC will notify the parties that a mediation conference has been scheduled. The mediation will take place within 130 days after the filing of the petition.⁵⁵ If mediation is unsuccessful in resolving the claim, a final hearing must be held within 90 days of the mediation. The overall time limit for dispute resolution from the date of the petition for benefits to the issuance of a final order is 240 days. Generally, an injured worker that prevails on a petition for benefits is entitled to an award for a reasonable attorney's fee payable by the carrier.⁵⁶

Workers' Compensation Coverage

Generally, employers may secure coverage from an authorized carrier or qualify as a self-insurer.⁵⁷ Employers that are not self-insured and are unable to secure coverage from a carrier may purchase coverage from the Workers' Compensation Joint Underwriting Association (WCJUA).⁵⁸ The (WCJUA) is the insurer of last resort for workers' compensation insurance, also known as the residual market.

Florida Workers Compensation Rating System

The OIR regulates workers' compensation rates pursuant to authority granted under part I of ch. 627, F.S. Florida uses a full rate system, which requires the rate to include benefits, loss adjustment expenses, commissions, taxes, general administrative expenses and profits and contingencies. Seven states use an administered pricing or full rate system.

The insurance rate is the "unit charge by which the measure of exposure or the amount of insurance specified in a policy of insurance or coverage there under is multiplied to determine the premium."⁵⁹ A manual rate per \$100 of payroll is developed for each of the 600 classification codes that reflects the potential for loss associated with a group of employers engaged in the same type of business or industry. This rate is multiplied by the employer's payroll to determine the unadjusted premium. Then, the unadjusted premium is multiplied by the employer's experience modification factor to determine the adjusted premium. An experience rating compares an employer's actual losses and the losses that would be expected to occur for an average employer with a similar business.

⁵² Section 440.192, F.S.

⁵³ Section 440.192(1), F.S.

⁵⁴ Section 440.192(8), F.S.

⁵⁵ Section 440.25, F.S.

⁵⁶ Section 440.34, F.S., and *Castellanos v. Next Door Company*, 192 So.3d 431 (Fla. Apr. 28, 2016).

⁵⁷ Section 440.38, F.S.

⁵⁸ Section 627.311(5)(a), F.S.

⁵⁹ Section 627.091, F.S.

The OIR must approve or disapprove rates in the voluntary market prior to becoming effective.⁶⁰ In determining whether to approve or disapprove a workers' compensation rate filing, the OIR considers certain statutory standards and factors specified in ss. 627.062 and 627.072, F.S.⁶¹ The standard for approving insurance rates in Florida and most states is that the rate may not be excessive, inadequate, or unfairly discriminatory.

Florida law requires every workers' compensation insurer to file with the OIR its rates and classifications that the insurer proposes to use.⁶² However, the law allows an insurer to satisfy this obligation by becoming a member of a licensed rating organization, which makes such filings on its behalf.⁶³ All workers' compensation insurers in Florida have chosen to become members of the NCCI.

The law and the rating plans approved by OIR allow for mechanisms for insurers to vary premiums. Insurers may use the following pricing tools to compete on price, as described below:⁶⁴

- Consent to Rate – The insurer and employer agree to a rate in excess of the approved rate. The insurer must limit this option to no more than 10 percent of policies written or renewed in each calendar year.
- Deviations – An insurer is allowed to file a uniform percentage increase or decrease applicable to all rates an insurer charges or to rates for a particular class or group of classes of insurance.
- Intermediate Deductibles – For a reduced premium, the employer agrees to reimburse the insurer for each claim up to the deductible amount. Intermediate deductibles range from \$5,000 to \$75,000. Similar to small deductible policies the insurer is responsible from first dollar of loss (i.e. losses below the deductible).
- Large Deductibles – Large deductible policies operate similarly to the small and intermediate deductible, but have a deductible amount of \$100,000 and above. In order to qualify for the large deductible program, an employer must have a standard premium of at least \$500,000.
- Large Risk Alternative Rating Option (LRARO) – In most states, LRARO is defined as a flexible retrospective rating plan mutually agreed to by the employer and carrier. In Florida, LRARO is a provision within the currently approved retrospective rating plan that allows for negotiation of a premium between the employer and the insurer.
- Policyholder Dividends – Insurers reward their policyholders by returning some of their profit at the expiration of the policy by issuing policyholder dividends, which may be based on the policyholder's experience, the carrier's experience, and other factors.

In contrast to Florida's full rate system, approximately 38 states use a loss costs system.⁶⁵ Generally, loss costs are all of the components of a full rate, excluding expenses and profits. The loss costs represent the rate an insurer must charge in order to cover the losses associated with covering all claims for the year. Depending on the state, loss costs may or may not include all

⁶⁰ Section 627.101, F.S.

⁶¹ Section 627.151, F.S.

⁶² Section 627.211, F.S.

⁶³ Section 627.091, F.S.

⁶⁴ OIR fn. 1 at pg. 30-31. .

⁶⁵ NCCI Correspondence (Dec. 6, 2016) (on file with Senate Banking and Insurance Committee).

expenses associated with loss adjustment. In the majority of states where an advisory or rating organization makes a loss costs filing, an individual insurer may base their rates on their individual loss costs or the advisory loss costs modified by a loss costs multiplier. The loss costs multiplier is a factor that represents an individual insurer's profit and expense portion of the full workers' compensation rate.⁶⁶

Occupational Diseases and Presumptive Coverage

In 2007, the Legislature enacted significant changes in workers' compensation benefits that provide benefits and standards for determining benefits for employment-related accidents and injuries of first responders. A "first responder" is a law enforcement officer, as defined in s. 943.10, F.S., a firefighter as defined in s. 633.102, F.S., or an emergency medical technician or paramedic as defined in s. 401.23, F.S., employed by state or local government.⁶⁷ Further, a volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or a local government is considered a first responder of the state or local government.⁶⁸

For purposes of determining compensability for exposure to toxic substances involving a first responder, s. 112.1815, F.S.: provides that an injury or disease caused by the exposure to a toxic substance is not an injury by accident arising out of employment unless there is a preponderance of the evidence establishing that exposure to the specific substance involved, at the levels to which the first responder was exposed, can cause the injury or disease sustained by the employee. Further, the section provides that in first responder cases involving occupational disease, both causation and sufficient exposure to a specific harmful substance shown to be present in the workplace to support causation must be proven by a preponderance of the evidence.

The types of diseases defined as occupational diseases for which the firefighter or other first responder presumptive coverage applies most often fall into the following categories: cancer, lung, respiratory conditions, blood, and infectious diseases, and heart and vascular conditions. At least 21 states have a workers' compensation presumption available to firefighters diagnosed with various types of cancer.⁶⁹

The Centers for Disease Control (CDC) reports 12.7 million people are diagnosed with cancer every year, around the world. Furthermore, the CDC states, "[c]ancer is the leading cause of death in developed countries and the second leading cause of death in developing countries."⁷⁰ The CDC reports that there is a direct link between occupational exposure and cancer and estimates 3-6% of all cancers worldwide are caused by exposure to carcinogens in the workplace.⁷¹

⁶⁶ *Id.*

⁶⁷ Ch. 2007-1, Laws of Fla.

⁶⁸ Section 112.1815, F.S.

⁶⁹ Alabama, Arkansas, Arizona, Colorado, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Missouri, Nevada, New Mexico, Oklahoma, Oregon, South Dakota, Texas, Utah, Vermont, and Virginia. NCCI *White Paper on Firefighter Presumptive Coverage* (2016) (on file with Senate Banking and Insurance Committee).

⁷⁰ Centers for Disease Control and Prevention, *Occupational Cancer*, <https://www.cdc.gov/niosh/topics/cancer/> (last visited April 17, 2017).

⁷¹ *Id.*

During the course of fighting fires, firefighters are exposed to known carcinogens⁷². The National Institute for Occupational Safety and Health (NIOSH) conducted a multi-year study of 30,000 firefighters from San Francisco, Chicago and Philadelphia Fire Departments.⁷³ The study concluded firefighters are at “increased risk of certain types of cancer as a result of occupational exposure.”⁷⁴ The NIOSH found that the firefighters studied had a greater number of cancer related deaths and cancer diagnoses.⁷⁵

III. Effect of Proposed Changes:

Section 1 amends s. 440.02, F.S., to revise the definition of the term “specificity,” thereby requiring additional information to be provided in the petition for benefits filed with the Office of Judges of Compensation Claims (OJCC). This includes specific information for each requested benefit, the specific amount of each requested benefit, and the calculation used for computing the requested benefits.

Section 2 amends s. 440.105, F.S., to eliminate the provision that prohibits an attorney or other person from receiving any fee from a person because of services rendered for a person in connection with any proceeding arising under ch. 440, F.S., unless such fee is approved by the JCCs.

Section 3 amends s. 440.13, F.S., to define a business day and to clarify deadlines for carriers to respond to requests for medical care. This section requires a carrier to respond to a request for a change in physician within five business days, excluding certain holidays, rather than five days. The section clarifies that a carrier must respond to a request for authorization from an authorized health care provider by either authorizing or declining the request by the close of the third business day after receipt of the request. Other provisions are amended to require responses to requests in the context of business days instead of calendar days.

Section 4 amends s. 440.15, F.S., to codify the *Westphal* decision by increasing temporary total disability benefits and temporary partial disability benefits to 260 weeks instead of 104 weeks.

Section 5 amends s. 440.151, F.S., to provide that for purposes of firefighters, as defined in s. 112.81, F.S.,⁷⁶ multiple myeloma and non-Hodgkin’s lymphoma are deemed to be occupational diseases that arise out of work performed in the course and scope of employment.

Section 6 amends s. 440.192, F.S., relating to the OJCC, to require the Judge of Compensation Claims (JCC) to review each petition for benefits and dismiss any petition or portion of a petition that does meet on its face the requirements of s. 440.192, F.S., and the definition of “specificity”

⁷² Centers for Disease Control and Prevention, *Occupational Cancer: Carcinogen List*, <https://www.cdc.gov/niosh/topics/cancer/npotocca.html> (last visited April 17, 2017).

⁷³ National Institute for Occupational Safety and Health (NIOSH), *Findings from a Study of Cancer among U.S. Fire Fighters*, <https://www.cdc.gov/niosh/pgms/worknotify/pdfs/ff-cancer-factsheet-final.pdf> (last visited April 17, 2017).

⁷⁴ *Id* at p. 1.

⁷⁵ *Id* at p. 1.

⁷⁶ Section 112.81, F.S., provides that “firefighter” means a person who is certified in compliance with s. 633.408 and who is employed solely within the fire department or public safety department of an employing agency as a full-time firefighter whose primary responsibility is the prevention and extinguishment of fires; the protection of life and property; and the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires.

under s. 440.02, F.S. Further, the petition must specify additional information regarding the location of the injury, such as Florida county, or the state, if outside of Florida. A claim for permanent benefits must include the specific date of maximum medical improvement and the specific date that such permanent benefits are claimed to begin. Additionally, the greater specificity is required for disputes regarding the calculation of average weekly wage.

Dismissal of any petition or portion of a petition under subsection (5)(a) is without prejudice. Upon a motion that a petition or portion of a petition be dismissed for lack of specificity, the JCC is required to enter an order on the motion, unless stipulated in writing by the parties, within ten days after the motion is filed, or if good cause for a hearing is shown, within 20 days after hearing on the motion.

Section 7 amends s. 440.34, F.S., to revise provisions relating to attorney fees. The bill requires the JCC to consider certain factors in each case and may increase or decrease the attorney fees, based on a maximum hourly rate of \$250 per hour, if the JCC in his or her judgment finds that the circumstances of the particular case warrant such action. The JCC must use the following factors in determining attorney fees:

- The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
- The fee customarily charged in the locality for similar legal services;
- The amount involved in the controversy and the benefits resulting to the claimant;
- The time limitation imposed by the claimant or the circumstances;
- The experience, reputation, and ability of the attorney or attorneys performing services; and
- The contingency or certainty of a fee.

This section eliminates the \$1,500 cap on medical-only claims.

Sections 8 through 16 and 19 through 22 amend ss. 624.482, 627.041, 627.0612, 627.062, 627.072, 627.091, 627.093, 627.101, 627.211, 627.291, 627.318, 627.361, and 627.371, F.S., respectively, to revise the current rating system in Florida by implementing a loss costs system. Each insurer will be required to file its own proposed rates. An insurer may satisfy this requirement by adopting the Office of Insurance Regulation's (OIR) approved loss costs and complying with the other provisions in this part. The bill authorizes a licensed rating organization to develop and file for approval with the OIR reference filings containing prospective loss costs and the underlying loss data, and other documentation. Once the loss cost filing is approved, the rating organization would provide its member subscribers with a copy of the approved reference filing. A rating organization may file supplementary rating information and an insurer may use such information approved by the OIR. An insurer may use the approved prospective loss costs filed by a rating organization in combination with the insurer's own approved loss cost multiplier and loss cost modifier. The bill provides technical, conforming changes. The sections relating to the implementation of the loss cost rating system are effective July 1, 2018. **Section 17** also revises the scope of the annual report by the OIR to include information about insurer solvency.

Section 14 amends s. 627.091, F.S., to define the following terms within this section:

- “Expenses” means the portion or a rate which is attributable to acquisition, field supervision, collection expenses, taxes, assessments, and general expenses;
- “Lost cost modifier” means an adjustment to, or a deviation from, the approved prospective loss costs filed by a licensed rating organization;
- “Lost cost multiplier” means the profit and expense factor, expressed as a single nonintegral number to be applied to the prospective loss costs other than loss adjustment expenses, which is associated with writing workers’ compensation and employer’s liability insurance and which is approved by the office [OIR] in making rates for each classification of risks used by that insurer; and
- “Prospective loss costs” means the portion of a rate that reflects historical industry average aggregate losses and loss adjustment expenses projected through development to their ultimate value and through trending to a future point in time. The term does not include provisions for profit or expenses other than loss adjustment expense.

Section 16 amends s. 627.101, F.S., to require OIR to review all required filings as to workers’ compensation and employer’s liability insurance. If the OIR determines part of the required filing does not meet applicable requirements, it may reject the portion that does not meet the requirements and approve the remainder of the filing.

Section 18 creates s. 627.2151, F.S., to define the term “defense and cost containment expenses” or “DCCE” to include the following Florida expenses of an insurer group or insurer writing workers’ compensation insurance:

- Insurance company attorney fees;
- Expert witnesses;
- Medical examinations and autopsies;
- Medical fee review panels;
- Bill auditing;
- Treatment utilization network expenses; and
- Vocational rehabilitation.

The bill establishes a cap on defense and cost containment expenses. Excessive DCCE occurs when the Florida defense and cost containment expenses for workers’ compensation exceed 15 percent of Florida workers’ compensation incurred losses by the insurer or insurer group for the three most recent calendar years for which data is to be filed with the OIR. Any excess DCCE must be returned to the policyholders in the form of cash or credit toward the future purchase of coverage on a pro rata basis. Refunds must be completed in one of the following ways:

- A cash refund must be completed within 60 days after entry of a final order indicating that excessive DCCE has been realized; and
- A credit to renewal policies must be applied to policy renewal premium notices that are forwarded to insureds more than 60 calendar days after entry of a final order indicating that excessive DCCE has been realized. If the insured thereafter cancels a policy or otherwise allows the policy to terminate, the insurer or insurer group must make a cash refund not later than 60 days after coverage termination. The insurer shall immediately certify to the OIR that renewal of renewal credits or refunds have been made.

For purposes of reporting, any refund or renewal credit made is treated as a policyholder dividend applicable to the year immediately succeeding the compilation period giving refund to the refund or credit.

Section 23 appropriates, effective July 1, 2017, the sums of \$723,118 in recurring funds and \$100,000 in nonrecurring funds from the Insurance Regulatory Trust Fund are appropriated to the Office of Insurance Regulation, and eight full-time equivalent positions with associated salary rate of 460,000 are authorized, for the purpose of implementing this act.

Section 24 appropriates, effective July 1, 2017, the sum of \$24,720 in nonrecurring funds from the Operating Trust Fund is appropriated to the Office of Judges of Compensation Claims within the Division of Administrative Hearings for the purposes of implementing this act.

Section 25 provides, as except as otherwise provided, the act will take effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides, in pertinent part, that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and unless:

- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; or
- The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments.

Although the bill does not contain an express finding that the law fulfills an important state interest, the bill does appear to apply to all persons similarly situated, including state agencies, school boards, community colleges, counties, municipalities, special districts, and private entities.

If this exception (similarly situated) does not apply, the bill must be approved by two-thirds vote of each chamber to be binding upon the counties and municipalities.

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:

This bill will provide greater guidance and clarity in the administration of various provisions of ch. 440, F.S.

Carriers may incur additional, indeterminate costs associated with revising their systems to accommodate loss cost filings.

The bill will extend workers' compensation benefits to firefighters who have multiple myeloma or non-Hodgkin's lymphoma since these occupational diseases will be presumed to have been contracted while the firefighters was performing work in the course and scope of employment. A 2014 and 2016⁷⁷ study by the National Council on Compensation Insurance (NCCI) indicated the costs of enacting cancer presumption benefits to firefighters "would increase workers' compensation costs, but...the extent of the increase was difficult to estimate due to significant data limitations."⁷⁸ Furthermore, a 2009 study by the National League of Cities (NLC) determined it is impossible to create "a reasonable and supportable estimate of the number of firefighters who qualify for workers' compensation under a cancer presumption."⁷⁹ According to the NCCI, there are two elements that affect cost: the diseases covered; and the restrictions that apply to the presumptions.⁸⁰ The NCCI also indicates judicial environment, shifting from voluntary to residual market and unfunded liability applied retroactively may impact workers' compensation rates and system.⁸¹

Placing caps on hourly claimant attorney fees may reduce costs to the workers' compensation system for employers and carriers.

NCCI estimates that the combination of the changes provided in the bill relating to attorney's fees, will result in a small to moderate decrease on overall workers

⁷⁷ State of Vermont, National Council on Compensation Insurance, *White Paper on Firefighter Presumptive Coverage*, <http://legislature.vermont.gov/assets/Documents/2018/WorkGroups/House%20Commerce/Bills/H.197/H.197~Laura%20Bachus%20Hall~NCCI%20White%20Paper%20on%20Firefighter%20Presumptive%20Coverage~3-16-2017.pdf> (last visited April 17, 2017).

⁷⁸ State of California, OLR Research Report, *Questions on Firefighter Cancer Presumption Laws*, <https://www.cga.ct.gov/2016/rpt/2016-R-0018.htm> (last visited April 17, 2017).

⁷⁹ *Id.*

⁸⁰ State of Vermont, National Council on Compensation Insurance, *White Paper on Firefighter Presumptive Coverage*, <http://legislature.vermont.gov/assets/Documents/2018/WorkGroups/House%20Commerce/Bills/H.197/H.197~Laura%20Bachus%20Hall~NCCI%20White%20Paper%20on%20Firefighter%20Presumptive%20Coverage~3-16-2017.pdf> at p. 13 (last visited April 17, 2017).

⁸¹ *Id.* at p. 14.

compensation system costs in Florida.⁸² The NCCI defines small as less than one percent and moderate as between one to three percent of system costs. According to NCCI,

- One percent impact = \$36,450,000;
- Three percent impact = \$109,350,000; and
- Five percent impact = \$182,250,000.

C. Government Sector Impact:

As indicated in the Private Sector Impact, above, NCCI estimates that the combination of the changes provided in the bill will result in a small to moderate decrease on overall workers compensation system costs in Florida.

Department of Financial Services

Division of Risk Management

The Division of Risk Management (DRM) is a provider of workers' compensation benefits to state and public university employees. The DRM may be impacted in the following manner:⁸³

- Requiring the claimant to show the calculation for the benefits requested has the potential to increase efficiency of claim management. Frequently petitions are filed that are not definitive on the specific time or amount of benefit alleged to be unpaid. The carrier may be unable to double check or determine if an error in payment has occurred. Failure to correct this error within 30 days of the petition for benefits being filed may result in payment of attorney fees and litigation costs that exceed the amount of the unpaid benefit.
- Clarifying the number of days in terms of business days for many responsive deadlines related to medical care will provide more opportunities for the DRM to respond within statutory requirements since days DRM staff are not at work are not included.
- Limiting attorney fee awards to \$250 per hour may reduce the amount of claimant paid attorney fees paid by the DRM. Current hourly awards frequently exceed \$250. A cost reduction will only occur if the hours awarded by JCCs are not impacted by the statutory cap.
- Requiring specificity in pleadings may result in avoidance of employer/carrier paid claimant fees and enhance claim processing efficiencies.
- Changing the rating law would not affect the DRM since the DRM funds claim expenses.

The fiscal impact of the firefighter' occupational disease presumption relating to myeloma and non-Hodgkin's lymphoma, on the costs of workers' compensation claims is indeterminate.

⁸² NCCI, *Preliminary Cost Impact Analysis, SB 1582* (Mar. 3, 2017) (on file with Senate Banking and Insurance Committee).

⁸³ Department of Financial Services, *Analysis of SB 1582* (Mar. 17, 2017) (on file with Senate Banking and Insurance Committee).

Division of Workers' Compensation

The Division of Workers' Compensation (DWC) assists injured workers, employers, health care providers, and insurers in following the Florida workers' compensation rules and laws.⁸⁴ The DWC is the sole authority responsible for processing and approving workers' compensation exemption applications.⁸⁵ The DWC indicates a negligible cost of implementing rules associated with the bill; however, those costs can be absorbed within existing resources.⁸⁶

Office of Insurance Regulation⁸⁷

The bill makes a substantial change in the manner workers' compensation rates are set in Florida, and therefore, it will have a significant impact on OIR's regulatory process for reviewing rates. The OIR provided the following estimate of staffing needs and costs that would be necessary to implement the bill. The total estimated fiscal impact on the OIR is \$883,118, which includes eight full time equivalent positions at a cost of \$783,118 annually and \$100,000 in nonrecurring funds for information technology enhancements.⁸⁸

Office of Judges of Compensation Claims (OJCC)

According to the OJCC,⁸⁹ the estimated nonrecurring programming costs and OPS staffing expenses associated with the implementation of the bill are \$18,000 and \$6,720, respectively, for a total estimate of \$24,720.

Local Governments

The fiscal impact of the firefighter's occupational disease presumption, relating to myeloma and non-Hodgkin's lymphoma, on local governments' workers' compensation claims is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Assessment provisions relating to the Special Disability Trust Fund (s. 440.49, F.S.), the Workers' Compensation Administration Trust Fund (s. 440.51, F.S.), and the Florida Self-

⁸⁴ Division of Workers' Compensation, *About Us*, <http://www.myfloridacfo.com/division/wc/contactUs.htm> (last visited April 7, 2017).

⁸⁵ Division of Workers' Compensation, *Notice of Election to be Exempt*, <https://apps.fldfs.com/bocexempt/> (last visited April 7, 2017).

⁸⁶ Division of Workers' Compensation, *Analysis of SB 1582* (March 17, 2017) (on file with Senate Appropriations Committee).

⁸⁷ Email from the Office of Insurance Regulation (Mar. 31, 2017) (on file with Senate Banking and Insurance Committee).

⁸⁸ Email from Richard Fox, Budget Director, Office of Insurance Regulation (April 10, 2017) (on file with Senate Appropriations Committee).

⁸⁹ Office of Judges of Compensation Claims of the Division of Administrative Hearings, *Analysis of SB 1582* (Mar. 22, 2017) (on file with Senate Banking and Insurance Committee).

Insurers Guaranty Association, Inc., (s. 440.385, F.S.), may need to be amended to reflect the changes in the rating law and terminology provided in the bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 440.02, 440.102, 440.105, 440.13, 440.15, 440.151, 440.192, 440.34, 624.482, 627.041, 627.0612, 627.062, 627.072, 627.091, 627.093, 627.101, 627.211, 627.291, 627.318, 627.361, and 627.371.

This bill creates section 627.2151 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 Appropriations on April 13, 2017:

The committee substitute:

- Creates a presumption that firefighters who have multiple myeloma or non-Hodgkin's lymphoma are presumed to have contracted one of these occupational diseases in the course and scope of employment. This provision will extend workers' compensation benefits to firefighters who have either of these conditions.
- Provides an appropriation of \$823,118 and eight full-time equivalent positions with associated salary rate of 460,000 to the Office of Insurance Regulation;
- Provides an appropriation of \$24,720 to the Office of Judges of Compensation Claims; and
- Provides technical, conforming changes.

B. Amendments:

None.

By the Committee on Appropriations; and Senator Bradley

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1 A bill to be entitled
 2 An act relating to workers' compensation insurance;
 3 amending s. 440.02, F.S.; redefining the term
 4 "specificity"; amending s. 440.105, F.S.; revising a
 5 prohibition against receiving certain fees,
 6 consideration, or gratuities under certain
 7 circumstances; amending s. 440.13, F.S.; specifying
 8 certain timeframes in terms of business days, rather
 9 than days; requiring carriers to authorize or deny,
 10 rather than respond to, certain requests for
 11 authorization within a specified timeframe; revising
 12 construction; revising a specified interval for
 13 certain notices furnished by treating physicians to
 14 employers or carriers; amending s. 440.15, F.S.;
 15 revising the maximum period of specified temporary
 16 disability benefits; amending s. 440.151, F.S.;
 17 providing that specified cancers of firefighters are
 18 deemed occupational diseases arising out of work
 19 performed in the course and scope of employment;
 20 amending s. 440.192, F.S.; revising conditions under
 21 which the Office of the Judges of Compensation Claims
 22 must dismiss petitions for benefits; revising
 23 requirements for such petitions; revising construction
 24 relating to dismissals of petitions or portions of
 25 such petitions; requiring judges of compensation
 26 claims to enter orders on certain motions to dismiss
 27 within specified timeframes; amending s. 440.34, F.S.;
 28 prohibiting the payment of certain consideration by
 29 carriers or employers, rather than prohibiting such

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30 payment for claimants, in connection with certain
 31 proceedings under certain circumstances; requiring
 32 judges of compensation claims to consider specified
 33 factors in increasing or decreasing attorney fees;
 34 specifying a maximum hourly rate for attorney fees;
 35 revising provisions that prohibit such judges from
 36 approving certain agreements and that limit attorney
 37 fees in retainer agreements; providing construction;
 38 deleting a provision authorizing such judges to
 39 approve alternative attorney fees under certain
 40 circumstances; conforming a cross-reference; amending
 41 s. 624.482, F.S.; conforming a provision to changes
 42 made by the act; amending s. 627.041, F.S.; redefining
 43 terms; amending s. 627.0612, F.S.; adding prospective
 44 loss costs to a list of reviewable matters in certain
 45 proceedings by appellate courts; amending s. 627.062,
 46 F.S.; prohibiting loss costs for specified classes of
 47 insurance from being excessive, inadequate, or
 48 unfairly discriminatory; amending s. 627.0645, F.S.;
 49 deleting an annual base rate filing requirement
 50 exception relating to workers' compensation and
 51 employer's liability insurance for certain rating
 52 organizations; amending s. 627.072, F.S.; requiring
 53 certain factors to be used in determining and fixing
 54 loss costs; deleting a specified methodology that may
 55 be used by the Office of Insurance Regulation in rate
 56 determinations; amending s. 627.091, F.S.; defining
 57 terms; requiring insurers or insurer groups writing
 58 workers' compensation and employer's liability

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59 insurances to independently and individually file
 60 their proposed final rates; specifying requirements
 61 for such filings; deleting a requirement that such
 62 filings contain certain information; revising
 63 requirements for supporting information required to be
 64 furnished to the office under certain circumstances;
 65 deleting a specified method for insurers to satisfy
 66 filing obligations; specifying requirements for a
 67 licensed rating organization that elects to develop
 68 and file certain reference filings and certain other
 69 information; authorizing insurers to use supplementary
 70 rating information approved by the office; revising
 71 applicability of public meetings and records
 72 requirements to certain meetings of recognized rating
 73 organization committees; requiring certain insurer
 74 groups to file underwriting rules not contained in
 75 rating manuals; amending s. 627.093, F.S.; revising
 76 applicability of public meetings and records
 77 requirements to prospective loss cost filings or
 78 appeals; amending s. 627.101, F.S.; conforming a
 79 provision to changes made by the act; amending s.
 80 627.211, F.S.; deleting provisions relating to
 81 deviations; requiring that the office's annual report
 82 to the Legislature relating to the workers'
 83 compensation insurance market evaluate insurance
 84 company solvency; creating s. 627.2151, F.S.; defining
 85 the term "defense and cost containment expenses" or
 86 "DCCE"; requiring insurer groups or insurers writing
 87 workers' compensation insurance to file specified

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88 schedules with the office at specified intervals;
 89 providing construction relating to excessive DCCE;
 90 requiring the office to order returns of excess
 91 amounts of DCCE, subject to certain hearing
 92 requirements; providing requirements for, and an
 93 exception from, the return of excessive DCCE amounts;
 94 providing construction; amending s. 627.291, F.S.;
 95 providing applicability of certain disclosure and
 96 hearing requirements for rating organizations filing
 97 prospective loss costs; amending s. 627.318, F.S.;
 98 providing applicability of certain recordkeeping
 99 requirements for rating organizations or insurers
 100 filing or using prospective loss costs, respectively;
 101 amending s. 627.361, F.S.; providing applicability of
 102 a prohibition against false or misleading information
 103 relating to prospective loss costs; amending s.
 104 627.371, F.S.; providing applicability of certain
 105 hearing procedures and requirements relating to the
 106 application, making, or use of prospective loss costs;
 107 providing appropriations; providing effective dates.

108
 109 Be It Enacted by the Legislature of the State of Florida:

110
 111 Section 1. Subsection (40) of section 440.02, Florida
 112 Statutes, is amended to read:

113 440.02 Definitions.—When used in this chapter, unless the
 114 context clearly requires otherwise, the following terms shall
 115 have the following meanings:

116 (40) "Specificity" means information on the petition for

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benefits sufficient to put the employer or carrier on notice of the exact statutory classification and outstanding time period for each requested benefit, the specific amount of each requested benefit, the calculation used for computing the requested benefit, of benefits being requested and ~~includes~~ a detailed explanation of any benefits received that should be increased, decreased, changed, or otherwise modified. If the petition is for medical benefits, the information must ~~shall~~ include specific details as to why such benefits are being requested, why such benefits are medically necessary, and why current treatment, if any, is not sufficient. Any petition requesting alternate or other medical care, including, but not limited to, petitions requesting psychiatric or psychological treatment, must specifically identify the physician, as defined in s. 440.13(1), who is recommending such treatment. A copy of a report from such physician making the recommendation for alternate or other medical care must ~~shall~~ also be attached to the petition. A judge of compensation claims may ~~shall~~ not order such treatment if a physician is not recommending such treatment.

Section 2. Paragraph (c) of subsection (3) of section 440.105, Florida Statutes, is amended to read:

440.105 Prohibited activities; reports; penalties; limitations.—

(3) Whoever violates any provision of this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Except for an attorney who is retained by or for an injured worker and who receives a fee or other consideration

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from or on behalf of such worker, it is unlawful for any ~~attorney or other~~ person, in his or her individual capacity or in his or her capacity as a public or private employee, or for any firm, corporation, partnership, or association to receive any fee or other consideration or any gratuity from a person on account of services rendered for a person in connection with any proceedings arising under this chapter, unless such fee, consideration, or gratuity is approved by a judge of compensation claims or by the Deputy Chief Judge of Compensation Claims.

Section 3. Paragraph (f) of subsection (2), paragraphs (d) and (i) of subsection (3), paragraph (a) of subsection (4), paragraphs (a) and (c) of subsection (5), and paragraphs (c) and (d) of subsection (9) of section 440.13, Florida Statutes, are amended, to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

(2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.—

(f) Upon the written request of the employee, the carrier shall give the employee the opportunity for one change of physician during the course of treatment for any one accident. Upon the granting of a change of physician, the originally authorized physician in the same specialty as the changed physician shall become deauthorized upon written notification by the employer or carrier. The carrier shall authorize an alternative physician who shall not be professionally affiliated with the previous physician within 5 business days after receipt of the request. If the carrier fails to provide a change of physician as requested by the employee, the employee may select

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the physician and such physician shall be considered authorized if the treatment being provided is compensable and medically necessary.

Failure of the carrier to timely comply with this subsection shall be a violation of this chapter and the carrier shall be subject to penalties as provided for in s. 440.525.

(3) PROVIDER ELIGIBILITY; AUTHORIZATION.—

(d) A carrier ~~must respond~~, by telephone or in writing, must authorize or deny to a request for authorization from an authorized health care provider by the close of the third business day after receipt of the request. A carrier authorizes the request if it ~~who~~ fails to respond to a written request for authorization for referral for medical treatment by the close of the third business day after receipt of the request ~~consents to the medical necessity for such treatment~~. All such requests must be made to the carrier. Notice to the carrier does not include notice to the employer.

(i) Notwithstanding paragraph (d), a claim for specialist consultations, surgical operations, physiotherapeutic or occupational therapy procedures, X-ray examinations, or special diagnostic laboratory tests that cost more than \$1,000 and other specialty services that the department identifies by rule is not valid and reimbursable unless the services have been expressly authorized by the carrier, unless the carrier has failed to respond within 10 business days to a written request for authorization, or unless emergency care is required. The insurer shall authorize such consultation or procedure unless the health care provider or facility is not authorized, unless such

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treatment is not in accordance with practice parameters and protocols of treatment established in this chapter, or unless a judge of compensation claims has determined that the consultation or procedure is not medically necessary, not in accordance with the practice parameters and protocols of treatment established in this chapter, or otherwise not compensable under this chapter. Authorization of a treatment plan does not constitute express authorization for purposes of this section, except to the extent the carrier provides otherwise in its authorization procedures. This paragraph does not limit the carrier's obligation to identify and disallow overutilization or billing errors.

(4) NOTICE OF TREATMENT TO CARRIER; FILING WITH DEPARTMENT.—

(a) Any health care provider providing necessary remedial treatment, care, or attendance to any injured worker shall submit treatment reports to the carrier in a format prescribed by the department. A claim for medical or surgical treatment is not valid or enforceable against such employer or employee, unless, by the close of the third business day following the first treatment, the physician providing the treatment furnishes to the employer or carrier a preliminary notice of the injury and treatment in a format prescribed by the department and, within 15 business days thereafter, furnishes to the employer or carrier a complete report, and subsequent thereto furnishes progress reports, if requested by the employer or insurance carrier, at intervals of not less than 15 business days ~~3 weeks~~ apart or at less frequent intervals if requested in a format prescribed by the department.

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233 (5) INDEPENDENT MEDICAL EXAMINATIONS.—
 234 (a) In any dispute concerning overutilization, medical
 235 benefits, compensability, or disability under this chapter, the
 236 carrier or the employee may select an independent medical
 237 examiner. If the parties agree, the examiner may be a health
 238 care provider treating or providing other care to the employee.
 239 An independent medical examiner may not render an opinion
 240 outside his or her area of expertise, as demonstrated by
 241 licensure and applicable practice parameters. The employer and
 242 employee shall be entitled to only one independent medical
 243 examination per accident and not one independent medical
 244 examination per medical specialty. The party requesting and
 245 selecting the independent medical examination shall be
 246 responsible for all expenses associated with said examination,
 247 including, but not limited to, medically necessary diagnostic
 248 testing performed and physician or medical care provider fees
 249 for the evaluation. The party selecting the independent medical
 250 examination shall identify the choice of the independent medical
 251 examiner to all other parties within 15 business days after the
 252 date the independent medical examination is to take place.
 253 Failure to timely provide such notification shall preclude the
 254 requesting party from submitting the findings of such
 255 independent medical examiner in a proceeding before a judge of
 256 compensation claims. The independent medical examiner may not
 257 provide followup care if such recommendation for care is found
 258 to be medically necessary. If the employee prevails in a medical
 259 dispute as determined in an order by a judge of compensation
 260 claims or if benefits are paid or treatment provided after the
 261 employee has obtained an independent medical examination based

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262 upon the examiner's findings, the costs of such examination
 263 shall be paid by the employer or carrier.
 264 (c) The carrier may, at its election, contact the claimant
 265 directly to schedule a reasonable time for an independent
 266 medical examination. The carrier must confirm the scheduling
 267 agreement in writing with the claimant and the claimant's
 268 counsel, if any, at least 7 business days before the date upon
 269 which the independent medical examination is scheduled to occur.
 270 An attorney representing a claimant is not authorized to
 271 schedule the self-insured employer's or carrier's independent
 272 medical evaluations under this subsection. Neither the self-
 273 insured employer nor the carrier shall be responsible for
 274 scheduling any independent medical examination other than an
 275 employer or carrier independent medical examination.
 276 (9) EXPERT MEDICAL ADVISORS.—
 277 (c) If there is disagreement in the opinions of the health
 278 care providers, if two health care providers disagree on medical
 279 evidence supporting the employee's complaints or the need for
 280 additional medical treatment, or if two health care providers
 281 disagree that the employee is able to return to work, the
 282 department may, and the judge of compensation claims shall, upon
 283 his or her own motion or within 15 business days after receipt
 284 of a written request by either the injured employee, the
 285 employer, or the carrier, order the injured employee to be
 286 evaluated by an expert medical advisor. The injured employee and
 287 the employer or carrier may agree on the health care provider to
 288 serve as an expert medical advisor. If the parties do not agree,
 289 the judge of compensation claims shall select an expert medical
 290 advisor from the department's list of certified expert medical

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advisors. If a certified medical advisor within the relevant medical specialty is unavailable, the judge of compensation claims shall appoint any otherwise qualified health care provider to serve as an expert medical advisor without obtaining the department's certification. The opinion of the expert medical advisor is presumed to be correct unless there is clear and convincing evidence to the contrary as determined by the judge of compensation claims. The expert medical advisor appointed to conduct the evaluation shall have free and complete access to the medical records of the employee. An employee who fails to report to and cooperate with such evaluation forfeits entitlement to compensation during the period of failure to report or cooperate.

(d) The expert medical advisor must complete his or her evaluation and issue his or her report to the department or to the judge of compensation claims within 15 business days after receipt of all medical records. The expert medical advisor must furnish a copy of the report to the carrier and to the employee.

Section 4. Paragraph (a) of subsection (2) and paragraph (e) of subsection (4) of section 440.15, Florida Statutes, are amended to read:

440.15 Compensation for disability.—Compensation for disability shall be paid to the employee, subject to the limits provided in s. 440.12(2), as follows:

(2) TEMPORARY TOTAL DISABILITY.—

(a) Subject to subsection (7), in case of disability total in character but temporary in quality, 66 2/3 or 66.67 percent of the average weekly wages shall be paid to the employee during the continuance thereof, not to exceed 260 ~~104~~ weeks except as

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provided in this subsection, s. 440.12(1), and s. 440.14(3). Once the employee reaches the maximum number of weeks allowed, or the employee reaches the date of maximum medical improvement, whichever occurs earlier, temporary disability benefits shall cease and the injured worker's permanent impairment shall be determined.

(4) TEMPORARY PARTIAL DISABILITY.—

(e) Such benefits shall be paid during the continuance of such disability, not to exceed a period of 260 ~~104~~ weeks, as provided by this subsection and subsection (2). Once the injured employee reaches the maximum number of weeks, temporary disability benefits cease and the injured worker's permanent impairment must be determined. If the employee is terminated from postinjury employment based on the employee's misconduct, temporary partial disability benefits are not payable as provided for in this section. The department shall by rule specify forms and procedures governing the method and time for payment of temporary disability benefits for dates of accidents before January 1, 1994, and for dates of accidents on or after January 1, 1994.

Section 5. Subsection (2) of section 440.151, Florida Statutes, is amended to read:

440.151 Occupational diseases.—

(2) Whenever used in this section the term "occupational disease" shall be construed to mean only a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment, and to exclude all ordinary diseases of life to which the general public is exposed, unless the incidence of the

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disease is substantially higher in the particular trade, occupation, process, or employment than for the general public. "Occupational disease" means only a disease for which there are epidemiological studies showing that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee. Notwithstanding any provision of this chapter, for firefighters, as defined in s. 112.81, multiple myeloma and non-Hodgkin's lymphoma are deemed to be occupational diseases that arise out of work performed in the course and scope of employment.

Section 6. Subsections (2) and (5) of section 440.192, Florida Statutes, are amended to read:

440.192 Procedure for resolving benefit disputes.—

(2) Upon receipt, the Office of the Judges of Compensation Claims shall review each petition and shall dismiss each petition or any portion of such a petition that does not on its face meet the requirements of this section and the definition of specificity under s. 440.02, and specifically identify or itemize the following:

(a) The name, address, and telephone number,~~and social security number~~ of the employee.

(b) The name, address, and telephone number of the employer.

(c) A detailed description of the injury and cause of the injury, including the Florida county or, if outside of Florida, the state location of the occurrence and the date or dates of the accident.

(d) A detailed description of the employee's job, work

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responsibilities, and work the employee was performing when the injury occurred.

(e) The specific time period for which compensation and the specific classification of compensation were not timely provided.

(f) The specific date of maximum medical improvement, character of disability, and specific statement of all benefits or compensation that the employee is seeking. A claim for permanent benefits must include the specific date of maximum medical improvement and the specific date that such permanent benefits are claimed to begin.

(g) All specific travel costs to which the employee believes she or he is entitled, including dates of travel and purpose of travel, means of transportation, and mileage and including the date the request for mileage was filed with the carrier and a copy of the request filed with the carrier.

(h) A specific listing of all medical charges alleged unpaid, including the name and address of the medical provider, the amounts due, and the specific dates of treatment.

(i) The type or nature of treatment care or attendance sought and the justification for such treatment. If the employee is under the care of a physician for an injury identified under paragraph (c), a copy of the physician's request, authorization, or recommendation for treatment, care, or attendance must accompany the petition.

(j) The specific amount of compensation claimed to be accurate and the methodology claimed to accurately calculate the average weekly wage, if the average weekly wage calculated by the employer or carrier is disputed. If the petition does not

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include a claim under this paragraph, the average weekly wage and corresponding compensation calculated by the employer or carrier are presumed to be accurate.

~~(k)(j)~~ A specific explanation of any other disputed issue that a judge of compensation claims will be called to rule upon.

The dismissal of any petition or portion of such a petition under this subsection ~~section~~ is without prejudice and does not require a hearing.

(5) (a) All motions to dismiss must state with particularity the basis for the motion. The judge of compensation claims shall enter an order upon such motions without hearing, unless good cause for hearing is shown. Dismissal of any petition or portion of a petition under this subsection is without prejudice.

(b) Upon motion that a petition or portion of a petition be dismissed for lack of specificity, the judge of compensation claims shall enter an order on the motion, unless stipulated in writing by the parties, within 10 days after the motion is filed or, if good cause for hearing is shown, within 20 days after hearing on the motion. When any petition or portion of a petition is dismissed for lack of specificity under this subsection, the claimant must be allowed 20 days after the date of the order of dismissal in which to file an amended petition. Any grounds for dismissal for lack of specificity under this section which are not asserted within 30 days after receipt of the petition for benefits are thereby waived.

Section 7. Section 440.34, Florida Statutes, is amended to read:

440.34 Attorney ~~Attorney's~~ fees; costs.—

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(1) (a) A fee, gratuity, or other consideration may not be paid by a carrier or employer ~~for a claimant~~ in connection with any proceedings arising under this chapter, unless approved by the judge of compensation claims or court having jurisdiction over such proceedings. Any ~~attorney fees~~ attorney's fee approved by a judge of compensation claims for benefits secured on behalf of a claimant must equal to 20 percent of the first \$5,000 of the amount of the benefits secured, 15 percent of the next \$5,000 of the amount of the benefits secured, 10 percent of the remaining amount of the benefits secured to be provided during the first 10 years after the date the claim is filed, and 5 percent of the benefits secured after 10 years.

(b) However, the judge of compensation claims shall consider the following factors in each case and may increase or decrease the attorney fees, based on a maximum hourly rate of \$250 per hour, if in his or her judgment he or she expressly finds that the circumstances of the particular case warrant such action:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

2. The fee customarily charged in the locality for similar legal services.

3. The amount involved in the controversy and the benefits resulting to the claimant.

4. The time limitation imposed by the claimant or the circumstances.

5. The experience, reputation, and ability of the attorney or attorneys performing services.

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6. The contingency or certainty of a fee.

(c) The judge of compensation claims shall not approve a compensation order, ~~a joint stipulation for lump-sum settlement, a stipulation or agreement between a claimant and his or her attorney,~~ or any other agreement related to benefits under this chapter which provides for attorney fees paid by a carrier or employer ~~an attorney's fee~~ in excess of the amount permitted by this section. The judge of compensation claims is not required to approve any retainer agreement between the claimant and his or her attorney. ~~The retainer agreement as to fees and costs may not be for compensation in excess of the amount allowed under this subsection or subsection (7).~~

(2) In awarding a claimant's attorney fees paid by a carrier or employer ~~attorney's fee~~, the judge of compensation claims shall consider only those benefits secured by the attorney. An attorney is not entitled to attorney ~~attorney's~~ fees for representation in any issue that was ripe, due, and owing and that reasonably could have been addressed, but was not addressed, during the pendency of other issues for the same injury. The amount, statutory basis, and type of benefits obtained through legal representation shall be listed on all attorney ~~attorney's~~ fees awarded by the judge of compensation claims. For purposes of this section, the term "benefits secured" does not include future medical benefits to be provided on any date more than 5 years after the date the claim is filed. In the event an offer to settle an issue pending before a judge of compensation claims, including attorney ~~attorney's~~ fees as provided for in this section, is communicated in writing to the claimant or the claimant's attorney at least 30 days prior to

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the trial date on such issue, for purposes of calculating the amount of attorney ~~attorney's~~ fees to be taxed against the employer or carrier, the term "benefits secured" shall be deemed to include only that amount awarded to the claimant above the amount specified in the offer to settle. If multiple issues are pending before the judge of compensation claims, said offer of settlement shall address each issue pending and shall state explicitly whether or not the offer on each issue is severable. The written offer shall also unequivocally state whether or not it includes medical witness fees and expenses and all other costs associated with the claim.

(3) If any party should prevail in any proceedings before a judge of compensation claims or court, there shall be taxed against the nonprevailing party the reasonable costs of such proceedings, not to include attorney ~~attorney's~~ fees. A claimant is responsible for the payment of her or his own attorney ~~attorney's~~ fees, except that a claimant is entitled to recover attorney fees ~~an attorney's fee~~ in an amount equal to the amount provided for in subsection (1) ~~or subsection (7)~~ from a carrier or employer:

(a) Against whom she or he successfully asserts a petition for medical benefits only, if the claimant has not filed or is not entitled to file at such time a claim for disability, permanent impairment, wage-loss, or death benefits, arising out of the same accident;

(b) In any case in which the employer or carrier files a response to petition denying benefits with the Office of the Judges of Compensation Claims and the injured person has employed an attorney in the successful prosecution of the

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petition;

(c) In a proceeding in which a carrier or employer denies that an accident occurred for which compensation benefits are payable, and the claimant prevails on the issue of compensability; or

(d) In cases where the claimant successfully prevails in proceedings filed under s. 440.24 or s. 440.28.

Regardless of the date benefits were initially requested, attorney ~~attorney's~~ fees shall not attach under this subsection until 30 days after the date the carrier or employer, if self-insured, receives the petition.

(4) In such cases in which the claimant is responsible for the payment of her or his own attorney ~~attorney's~~ fees, such fees are a lien upon compensation payable to the claimant, notwithstanding s. 440.22.

(5) If any proceedings are had for review of any claim, award, or compensation order before any court, the court may award the injured employee or dependent attorney fees ~~an attorney's fee~~ to be paid by the employer or carrier, in its discretion, which shall be paid as the court may direct.

(6) A judge of compensation claims may not enter an order approving the contents of a retainer agreement that permits placing any portion of the employee's compensation into an escrow account until benefits have been secured.

(7) This section may not be interpreted to limit or otherwise infringe on a claimant's right to retain an attorney and pay the attorney reasonable attorney fees for legal services related to a claim under the Workers' Compensation Law if an

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~~attorney's fee is owed under paragraph (3)(a), the judge of compensation claims may approve an alternative attorney's fee not to exceed \$1,500 only once per accident, based on a maximum hourly rate of \$150 per hour, if the judge of compensation claims expressly finds that the attorney's fee amount provided for in subsection (1), based on benefits secured, fails to fairly compensate the attorney for disputed medical-only claims as provided in paragraph (3)(a) and the circumstances of the particular case warrant such action.~~

Section 8. Effective July 1, 2018, subsection (10) of section 624.482, Florida Statutes, is amended to read:

624.482 Making and use of rates.—

(10) Any self-insurance fund that writes workers' compensation insurance and employer's liability insurance is subject to, and shall make all rate filings for workers' compensation insurance and employer's liability insurance in accordance with, ss. 627.091, 627.101, 627.111, 627.141, 627.151, 627.171, and 627.191, ~~and 627.211~~.

Section 9. Effective July 1, 2018, subsections (3), (4), and (6) of section 627.041, Florida Statutes, are amended to read:

627.041 Definitions.—As used in this part:

(3) "Rating organization" means every person, other than an authorized insurer, whether located within or outside this state, who has as his or her object or purpose the making of prospective loss costs, rates, rating plans, or rating systems. Two or more authorized insurers that act in concert for the purpose of making prospective loss costs, rates, rating plans, or rating systems, and that do not operate within the specific

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authorizations contained in ss. 627.311, 627.314(2), (4), and 627.351, shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.

(4) "Advisory organization" means every group, association, or other organization of insurers, whether located within or outside this state, which prepares policy forms or makes underwriting rules incident to but not including the making of prospective loss costs, rates, rating plans, or rating systems or which collects and furnishes to authorized insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a ratemaking, capacity.

(6) "Subscriber" means an insurer which is furnished at its request:

(a) With prospective loss costs, rates, and rating manuals by a rating organization of which it is not a member; or

(b) With advisory services by an advisory organization of which it is not a member.

Section 10. Effective July 1, 2018, subsection (1) of section 627.0612, Florida Statutes, is amended to read:

627.0612 Administrative proceedings in rating determinations.—

(1) In any proceeding to determine whether prospective loss costs, rates, rating plans, or other matters governed by this part comply with the law, the appellate court shall set aside a final order of the office if the office has violated s. 120.57(1)(k) by substituting its findings of fact for findings of an administrative law judge which were supported by competent substantial evidence.

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Section 11. Effective July 1, 2018, subsection (1) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(1) The rates and loss costs for all classes of insurance to which the provisions of this part are applicable may not be excessive, inadequate, or unfairly discriminatory.

Section 12. Effective July 1, 2018, subsection (1) of section 627.0645, Florida Statutes, is amended to read:

627.0645 Annual filings.—

(1) Each rating organization filing rates for, and each insurer writing, any line of property or casualty insurance to which this part applies, except:

~~(a) Workers' compensation and employer's liability insurance;~~

~~(b)~~ Insurance as defined in ss. 624.604 and 624.605, limited to coverage of commercial risks other than commercial residential multiperil; or

~~(b)(e)~~ Travel insurance, if issued as a master group policy with a situs in another state where each certificateholder pays less than \$30 in premium for each covered trip and where the insurer has written less than \$1 million in annual written premiums in the travel insurance product in this state during the most recent calendar year,

shall make an annual base rate filing for each such line with the office no later than 12 months after its previous base rate filing, demonstrating that its rates are not inadequate.

Section 13. Effective July 1, 2018, subsections (1) and (5) of section 627.072, Florida Statutes, are amended to read:

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639 627.072 Making and use of rates.—
 640 (1) As to workers' compensation and employer's liability
 641 insurance, the following factors shall be used in the
 642 determination and fixing of loss costs or rates, as applicable:
 643 (a) The past loss experience and prospective loss
 644 experience within and outside this state;
 645 (b) The conflagration and catastrophe hazards;
 646 (c) A reasonable margin for underwriting profit and
 647 contingencies;
 648 (d) Dividends, savings, or unabsorbed premium deposits
 649 allowed or returned by insurers to their policyholders, members,
 650 or subscribers;
 651 (e) Investment income on unearned premium reserves and loss
 652 reserves;
 653 (f) Past expenses and prospective expenses, both those
 654 countrywide and those specifically applicable to this state; and
 655 (g) All other relevant factors, including judgment factors,
 656 within and outside this state.
 657 ~~(5)(a) In the case of workers' compensation and employer's~~
 658 ~~liability insurance, the office shall consider utilizing the~~
 659 ~~following methodology in rate determinations: Premiums,~~
 660 ~~expenses, and expected claim costs would be discounted to a~~
 661 ~~common point of time, such as the initial point of a policy~~
 662 ~~year, in the determination of rates; the cash-flow pattern of~~
 663 ~~premiums, expenses, and claim costs would be determined~~
 664 ~~initially by using data from 8 to 10 of the largest insurers~~
 665 ~~writing workers' compensation insurance in the state; such~~
 666 ~~insurers may be selected for their statistical ability to report~~
 667 ~~the data on an accident-year basis and in accordance with~~

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668 ~~subparagraphs (b)1., 2., and 3., for at least 2 1/2 years; such~~
 669 ~~a cash-flow pattern would be modified when necessary in~~
 670 ~~accordance with the data and whenever a radical change in the~~
 671 ~~payout pattern is expected in the policy year under~~
 672 ~~consideration.~~
 673 ~~(b) If the methodology set forth in paragraph (a) is~~
 674 ~~utilized, to facilitate the determination of such a cash-flow~~
 675 ~~pattern methodology:~~
 676 1. ~~Each insurer shall include in its statistical reporting~~
 677 ~~to the rating bureau and the office the accident year by~~
 678 ~~calendar quarter data for paid-claim costs;~~
 679 2. ~~Each insurer shall submit financial reports to the~~
 680 ~~rating bureau and the office which shall include total incurred~~
 681 ~~claim amounts and paid-claim amounts by policy year and by~~
 682 ~~injury types as of December 31 of each calendar year; and~~
 683 3. ~~Each insurer shall submit to the rating bureau and the~~
 684 ~~office paid-premium data on an individual risk basis in which~~
 685 ~~risks are to be subdivided by premium size as follows:~~
 686
 687 Number of Risks in
 688 Premium Range Standard Premium Size
 689
 690 ... (to be filled in by carrier) ... \$300-999
 691 ... (to be filled in by carrier) ... 1,000-4,999
 692 ... (to be filled in by carrier) ... 5,000-49,999
 693 ... (to be filled in by carrier) ... 50,000-99,999
 694 ... (to be filled in by carrier) ... 100,000 or more
 695 Total:
 696 Section 14. Effective July 1, 2018, section 627.091,

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Florida Statutes, is amended to read:

627.091 Rate filings; workers' compensation and employer's liability insurances.-

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

(a) "Expenses" means the portion of a rate which is attributable to acquisition, field supervision, collection expenses, taxes, reinsurance, assessments, and general expenses.

(b) "Loss cost modifier" means an adjustment to, or a deviation from, the approved prospective loss costs filed by a licensed rating organization.

(c) "Loss cost multiplier" means the profit and expense factor, expressed as a single nonintegral number to be applied to the prospective loss costs, which is associated with writing workers' compensation and employer's liability insurance and which is approved by the office in making rates for each classification of risks used by that insurer.

(d) "Prospective loss costs" means the portion of a rate which reflects historical industry average aggregate losses and loss adjustment expenses projected through development to their ultimate value and through trending to a future point in time. The term does not include provisions for profit or expenses other than loss adjustment expense.

(2)(1) As to workers' compensation and employer's liability insurances, every insurer shall file with the office every manual of classifications, rules, and rates, every rating plan, and every modification of any of the foregoing which it proposes to use. Each insurer or insurer group shall independently and individually file with the office the final rates it proposes to use. An insurer may satisfy this filing requirement by adopting

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the most recent loss costs filed by a licensed rating organization and approved by the office, and by otherwise complying with this part. Each insurer shall file data in accordance with the uniform statistical plan approved by the office. Every filing under this subsection:

(a) Must state the proposed effective date and must be made at least 90 days before such proposed effective date;

(b) Must indicate the character and extent of the coverage contemplated;

(c) May use the most recent approved prospective loss costs filed by a licensed rating organization in combination with the insurer's own approved loss cost multiplier and loss cost modifier;

(d) Must include all deductibles required in chapter 440, and may include additional deductible provisions in its manual of classifications, rules, and rates. All deductibles must be in a form and manner that is consistent with the underlying purpose of chapter 440;

(e) May use variable or fixed expense loads or a combination thereof, and may vary the expense, profit, or contingency provisions by class or group of classes, if the insurer files supporting data justifying such variations;

(f) May include a schedule of proposed premium discounts, credits, and surcharges. The office may not approve discounts, credits, and surcharges unless they are based on objective criteria that bear a reasonable relationship to the expected loss, expense, or profit experience of an individual policyholder or a class of policyholders; and

(g) May file a minimum premium or expense constant Every

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~~insurer is authorized to include deductible provisions in its manual of classifications, rules, and rates. Such deductibles shall in all cases be in a form and manner which is consistent with the underlying purpose of chapter 440.~~

~~(3)(2) Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated.~~ When a filing is not accompanied by the information upon which the insurer or rating organization supports the filing and the office does not have sufficient information to determine whether the filing meets the applicable requirements of this part, the office, it shall within 15 days after the date of filing, shall require the insurer or rating organization to furnish the information upon which it supports the filing. The information furnished in support of a filing may include:

(a) The experience or judgment of the insurer or rating organization making the filing;

(b) The its interpretation of any statistical data which the insurer or rating organization making the filing it relies upon;

(c) The experience of other insurers or rating organizations; or

(d) Any other factors which the insurer or rating organization making the filing deems relevant.

~~(4)(3)~~ A filing and any supporting information are ~~shall be~~ open to public inspection as provided in s. 119.07(1).

~~(5)(4)~~ An insurer may become ~~satisfy its obligation to make such filings by becoming~~ a member of, or a subscriber to, a licensed rating organization that ~~which~~ makes loss costs ~~such~~

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filings and by authorizing the office to accept such filings in its behalf; but nothing contained in this chapter shall be construed as requiring any insurer to become a member or a subscriber to any rating organization.

(6) A licensed rating organization may develop and file for approval with the office reference filings containing prospective loss costs and the underlying loss data, and other supporting statistical and actuarial information. A rating organization may not develop or file final rates or multipliers for expenses, profit, or contingencies. After a loss cost reference filing is filed with the office and is approved, the rating organization must provide its member subscribers with a copy of the approved reference filing.

(7) A rating organization may file supplementary rating information and rules, including, but not limited to, policywriting rules, rating plan classification codes and descriptions, experience modification plans, statistical plans and forms, and rules that include factors or relativities, such as increased limits factors, classification relativities, or similar factors, but that exclude minimum premiums. An insurer may use supplementary rating information if such information is approved by the office.

~~(8)(5)~~ Pursuant to the provisions of s. 624.3161, the office may examine the underlying statistical data used in such filings.

(9)(6) Whenever the committee of a recognized rating organization with authority to file prospective loss costs for use by insurers in determining responsibility for workers' compensation and employer's liability insurance rates in this

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813 state meets to discuss the necessity for, or a request for,
 814 Florida rate increases or decreases in prospective loss costs in
 815 this state, the determination of prospective loss costs in this
 816 state Florida rates, the prospective loss costs rates to be
 817 requested in this state, and any other matters pertaining
 818 specifically and directly to prospective loss costs in this
 819 state such Florida rates, such meetings shall be held in this
 820 state and are shall be subject to s. 286.011. The committee of
 821 such a rating organization shall provide at least 3 weeks' prior
 822 notice of such meetings to the office and shall provide at least
 823 14 days' prior notice of such meetings to the public by
 824 publication in the Florida Administrative Register.

825 (10) An insurer group with multiple insurers writing
 826 workers' compensation and employer's liability insurance shall
 827 file underwriting rules not contained in rating manuals.

828 Section 15. Effective July 1, 2018, section 627.093,
 829 Florida Statutes, is amended to read:

830 627.093 Application of s. 286.011 to workers' compensation
 831 and employer's liability insurances.-Section 286.011 shall be
 832 applicable to every prospective loss cost and rate filing,
 833 approval or disapproval of filing, rating deviation from filing,
 834 or appeal from any of these regarding workers' compensation and
 835 employer's liability insurances.

836 Section 16. Effective July 1, 2018, subsection (1) of
 837 section 627.101, Florida Statutes, is amended to read:

838 627.101 When filing becomes effective; workers'
 839 compensation and employer's liability insurances.-

840 (1) The office shall review all required filings as to
 841 workers' compensation and employer's liability insurances as

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842 soon as reasonably possible after they have been made in order
 843 to determine whether they meet the applicable requirements of
 844 this part. If the office determines that part of a required rate
 845 filing does not meet the applicable requirements of this part,
 846 it may reject so much of the filing as does not meet these
 847 requirements, and approve the remainder of the filing.

848 Section 17. Effective July 1, 2018, section 627.211,
 849 Florida Statutes, is amended to read:

850 627.211 Annual report by the office on the workers'
 851 compensation insurance market Deviations; workers' compensation
 852 and employer's liability insurances.-

853 ~~(1) Every member or subscriber to a rating organization~~
 854 ~~shall, as to workers' compensation or employer's liability~~
 855 ~~insurance, adhere to the filings made on its behalf by such~~
 856 ~~organization; except that any such insurer may make written~~
 857 ~~application to the office for permission to file a uniform~~
 858 ~~percentage decrease or increase to be applied to the premiums~~
 859 ~~produced by the rating system so filed for a kind of insurance,~~
 860 ~~for a class of insurance which is found by the office to be a~~
 861 ~~proper rating unit for the application of such uniform~~
 862 ~~percentage decrease or increase, or for a subdivision of~~
 863 ~~workers' compensation or employer's liability insurance;~~

864 ~~(a) Comprised of a group of manual classifications which is~~
 865 ~~treated as a separate unit for ratemaking purposes; or~~

866 ~~(b) For which separate expense provisions are included in~~
 867 ~~the filings of the rating organization.~~

868
 869 Such application shall specify the basis for the modification
 870 and shall be accompanied by the data upon which the applicant

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871 relies. A copy of the application and data shall be sent
 872 simultaneously to the rating organization.
 873 ~~(2) Every member or subscriber to a rating organization~~
 874 ~~may, as to workers' compensation and employer's liability~~
 875 ~~insurance, file a plan or plans to use deviations that vary~~
 876 ~~according to factors present in each insured's individual risk.~~
 877 ~~The insurer that files for the deviations provided in this~~
 878 ~~subsection shall file the qualifications for the plans,~~
 879 ~~schedules of rating factors, and the maximum deviation factors~~
 880 ~~which shall be subject to the approval of the office pursuant to~~
 881 ~~s. 627.091. The actual deviation which shall be used for each~~
 882 ~~insured that qualifies under this subsection may not exceed the~~
 883 ~~maximum filed deviation under that plan and shall be based on~~
 884 ~~the merits of each insured's individual risk as determined by~~
 885 ~~using schedules of rating factors which shall be applied~~
 886 ~~uniformly. Insurers shall maintain statistical data in~~
 887 ~~accordance with the schedule of rating factors. Such data shall~~
 888 ~~be available to support the continued use of such varying~~
 889 ~~deviations.~~
 890 ~~(3) In considering an application for the deviation, the~~
 891 ~~office shall give consideration to the applicable principles for~~
 892 ~~ratemaking as set forth in ss. 627.062 and 627.072 and the~~
 893 ~~financial condition of the insurer. In evaluating the financial~~
 894 ~~condition of the insurer, the office may consider: (1) the~~
 895 ~~insurer's audited financial statements and whether the~~
 896 ~~statements provide unqualified opinions or contain significant~~
 897 ~~qualifications or "subject to" provisions; (2) any independent~~
 898 ~~or other actuarial certification of loss reserves; (3) whether~~
 899 ~~workers' compensation and employer's liability reserves are~~

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900 ~~above the midpoint or best estimate of the actuary's reserve~~
 901 ~~range estimate; (4) the adequacy of the proposed rate; (5)~~
 902 ~~historical experience demonstrating the profitability of the~~
 903 ~~insurer; (6) the existence of excess or other reinsurance that~~
 904 ~~contains a sufficiently low attachment point and maximums that~~
 905 ~~provide adequate protection to the insurer; and (7) other~~
 906 ~~factors considered relevant to the financial condition of the~~
 907 ~~insurer by the office. The office shall approve the deviation if~~
 908 ~~it finds it to be justified, it would not endanger the financial~~
 909 ~~condition of the insurer, and it would not constitute predatory~~
 910 ~~pricing. The office shall disapprove the deviation if it finds~~
 911 ~~that the resulting premiums would be excessive, inadequate, or~~
 912 ~~unfairly discriminatory, would endanger the financial condition~~
 913 ~~of the insurer, or would result in predatory pricing. The~~
 914 ~~insurer may not use a deviation unless the deviation is~~
 915 ~~specifically approved by the office. An insurer may apply the~~
 916 ~~premiums approved pursuant to s. 627.091 or its uniform~~
 917 ~~deviation approved pursuant to this section to a particular~~
 918 ~~insured according to underwriting guidelines filed with and~~
 919 ~~approved by the office, such approval to be based on ss. 627.062~~
 920 ~~and 627.072.~~
 921 ~~(4) Each deviation permitted to be filed shall be effective~~
 922 ~~for a period of 1 year unless terminated, extended, or modified~~
 923 ~~with the approval of the office. If at any time after a~~
 924 ~~deviation has been approved the office finds that the deviation~~
 925 ~~no longer meets the requirements of this code, it shall notify~~
 926 ~~the insurer in what respects it finds that the deviation fails~~
 927 ~~to meet such requirements and specify when, within a reasonable~~
 928 ~~period thereafter, the deviation shall be deemed no longer~~

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929 ~~effective. The notice shall not affect any insurance contract or~~
 930 ~~policy made or issued prior to the expiration of the period set~~
 931 ~~forth in the notice.~~

932 ~~(5) For purposes of this section, the office, when~~
 933 ~~considering the experience of any insurer, shall consider the~~
 934 ~~experience of any predecessor insurer when the business and the~~
 935 ~~liabilities of the predecessor insurer were assumed by the~~
 936 ~~insurer pursuant to an order of the office which approves the~~
 937 ~~assumption of the business and the liabilities.~~

938 ~~(6)~~ The office shall submit an annual report to the
 939 President of the Senate and the Speaker of the House of
 940 Representatives by January 15 of each year which evaluates
 941 insurance company solvency and competition in the workers'
 942 compensation insurance market in this state. The report must
 943 contain an analysis of the availability and affordability of
 944 workers' compensation coverage and whether the current market
 945 structure, conduct, and performance are conducive to
 946 competition, based upon economic analysis and tests. The purpose
 947 of this report is to aid the Legislature in determining whether
 948 changes to the workers' compensation rating laws are warranted.
 949 The report must also document that the office has complied with
 950 the provisions of s. 627.096 which require the office to
 951 investigate and study all workers' compensation insurers in the
 952 state and to study the data, statistics, schedules, or other
 953 information as it finds necessary to assist in its review of
 954 workers' compensation rate filings.

955 Section 18. Effective July 1, 2018, section 627.2151,
 956 Florida Statutes, is created to read:

957 627.2151 Workers' compensation excessive defense and cost

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958 containment expenses.

959 (1) As used in this section, the term "defense and cost
 960 containment expenses" or "DCCE" includes the following Florida
 961 expenses of an insurer group or insurer writing workers'
 962 compensation insurance:

- 963 (a) Insurance company attorney fees;
- 964 (b) Expert witnesses;
- 965 (c) Medical examinations and autopsies;
- 966 (d) Medical fee review panels;
- 967 (e) Bill auditing;
- 968 (f) Treatment utilization reviews; and
- 969 (g) Preferred provider network expenses.

970 (2) Each insurer group or insurer writing workers'
 971 compensation insurance shall file with the office a schedule of
 972 Florida defense and cost containment expenses and total Florida
 973 incurred losses for each of the 3 years before the most recent
 974 accident year. The DCCE and incurred losses must be valued as of
 975 December 31 of the first year following the latest accident year
 976 to be reported, developed to an ultimate basis, and at two 12-
 977 month intervals thereafter, each developed to an ultimate basis,
 978 so that a total of three evaluations will be provided for each
 979 accident year. The first year reported shall be accident year
 980 2018, so that the reporting of 3 accident years under this
 981 evaluation will not take place until accident years 2019 and
 982 2020 have become available.

983 (3) Excessive DCCE occurs when an insurer includes in its
 984 rates Florida defense and cost containment expenses for workers'
 985 compensation which exceed 15 percent of Florida workers'
 986 compensation incurred losses by the insurer or insurer group for

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987 the 3 most recent calendar years for which data is to be filed
 988 under this section.

989 (4) If the insurer or insurer group realizes excessive
 990 DCCE, the office must order a return of the excess amounts after
 991 affording the insurer or insurer group an opportunity for a
 992 hearing and otherwise complying with the requirements of chapter
 993 120. Excessive DCCE amounts must be returned in all instances
 994 unless the insurer or insurer group affirmatively demonstrates
 995 to the office that the refund of the excessive DCCE amounts will
 996 render a member of the insurer group financially impaired or
 997 will render it insolvent under provisions of the Florida
 998 Insurance Code.

999 (5) Any excess DCCE amount must be returned to
 1000 policyholders in the form of a cash refund or credit toward the
 1001 future purchase of insurance. The refund or credit must be made
 1002 on a pro rata basis in relation to the final compilation year
 1003 earned premiums to the policyholders of record of the insurer or
 1004 insurer group on December 31 of the final compilation year. Cash
 1005 refunds and data in required reports to the office may be
 1006 rounded to the nearest dollar and must be consistently applied.

1007 (6) (a) Refunds must be completed in one of the following
 1008 ways:

1009 1. A cash refund must be completed within 60 days after
 1010 entry of a final order indicating that excessive DCCE has been
 1011 realized.

1012 2. A credit to renewal policies must be applied to policy
 1013 renewal premium notices that are forwarded to insureds more than
 1014 60 calendar days after entry of a final order indicating that
 1015 excessive DCCE has been realized. If the insured thereafter

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1016 cancels a policy or otherwise allows the policy to terminate,
 1017 the insurer or insurer group must make a cash refund not later
 1018 than 60 days after coverage termination.

1019 (b) Upon completion of the renewal credits or refunds, the
 1020 insurer or insurer group shall immediately certify having made
 1021 the refunds to the office.

1022 (7) Any refund or renewal credit made pursuant to this
 1023 section is treated as a policyholder dividend applicable to the
 1024 year immediately succeeding the compilation period giving rise
 1025 to the refund or credit, for purposes of reporting under this
 1026 section for subsequent years.

1027 Section 19. Effective July 1, 2018, section 627.291,
 1028 Florida Statutes, is amended to read:

1029 627.291 Information to be furnished insureds; appeal by
 1030 insureds; workers' compensation and employer's liability
 1031 insurances.—

1032 (1) As to workers' compensation and employer's liability
 1033 insurances, every rating organization filing prospective loss
 1034 costs and every insurer which makes its own rates shall, within
 1035 a reasonable time after receiving written request therefor and
 1036 upon payment of such reasonable charge as it may make, furnish
 1037 to any insured affected by a rate made by it, or to the
 1038 authorized representative of such insured, all pertinent
 1039 information as to such rate.

1040 (2) As to workers' compensation and employer's liability
 1041 insurances, every rating organization filing prospective loss
 1042 costs and every insurer which makes its own rates shall provide
 1043 within this state reasonable means whereby any person aggrieved
 1044 by the application of its rating system may be heard, in person

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or by his or her authorized representative, on his or her written request to review the manner in which such rating system has been applied in connection with the insurance afforded him or her. If the rating organization filing prospective loss costs or the insurer making its own rates fails to grant or rejects such request within 30 days after it is made, the applicant may proceed in the same manner as if his or her application had been rejected. Any party affected by the action of such rating organization filing prospective loss costs or insurer making its own rates on such request may, within 30 days after written notice of such action, appeal to the office, which may affirm or reverse such action.

Section 20. Effective July 1, 2018, section 627.318, Florida Statutes, is amended to read:

627.318 Records.—Every insurer, rating organization filing prospective loss costs, and advisory organization and every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the prospective loss costs, rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys, or inspections made or used by it, so that such records will be available at all reasonable times to enable the office to determine whether such organization, insurer, group, or association, and, in the case of an insurer or rating organization, every prospective loss cost, rate, rating plan,

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and rating system made or used by it, complies with the provisions of this part applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any such insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the prospective loss costs, rates, rating plans, rating systems, or underwriting rules of such organization. Such records shall be maintained in an office within this state or shall be made available for examination or inspection within this state by the department at any time upon reasonable notice.

Section 21. Effective July 1, 2018, section 627.361, Florida Statutes, is amended to read:

627.361 False or misleading information.—No person shall willfully withhold information from or knowingly give false or misleading information to the office, any statistical agency designated by the office, any rating organization, or any insurer, which will affect the prospective loss costs, rates, or premiums chargeable under this part.

Section 22. Effective July 1, 2018, subsections (1) and (2) of section 627.371, Florida Statutes, are amended to read:

627.371 Hearings.—

(1) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer, and any person aggrieved by any rating plan, rating system, or underwriting rule followed or adopted by a rating organization, may herself or himself or by her or his authorized representative make written request of the insurer or rating

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1103 organization to review the manner in which the prospective loss
 1104 cost, rate, plan, system, or rule has been applied with respect
 1105 to insurance afforded her or him. If the request is not granted
 1106 within 30 days after it is made, the requester may treat it as
 1107 rejected. Any person aggrieved by the refusal of an insurer or
 1108 rating organization to grant the review requested, or by the
 1109 failure or refusal to grant all or part of the relief requested,
 1110 may file a written complaint with the office, specifying the
 1111 grounds relied upon. If the office has already disposed of the
 1112 issue as raised by a similar complaint or believes that probable
 1113 cause for the complaint does not exist or that the complaint is
 1114 not made in good faith, it shall so notify the complainant.
 1115 Otherwise, and if it also finds that the complaint charges a
 1116 violation of this chapter and that the complainant would be
 1117 aggrieved if the violation is proven, it shall proceed as
 1118 provided in subsection (2).

1119 (2) If after examination of an insurer, rating
 1120 organization, advisory organization, or group, association, or
 1121 other organization of insurers which engages in joint
 1122 underwriting or joint reinsurance, upon the basis of other
 1123 information, or upon sufficient complaint as provided in
 1124 subsection (1), the office has good cause to believe that such
 1125 insurer, organization, group, or association, or any prospective
 1126 loss cost, rate, rating plan, or rating system made or used by
 1127 any such insurer or rating organization, does not comply with
 1128 the requirements and standards of this part applicable to it, it
 1129 shall, unless it has good cause to believe such noncompliance is
 1130 willful, give notice in writing to such insurer, organization,
 1131 group, or association stating therein in what manner and to what

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1132 extent noncompliance is alleged to exist and specifying therein
 1133 a reasonable time, not less than 10 days thereafter, in which
 1134 the noncompliance may be corrected, including any premium
 1135 adjustment.

1136 Section 23. Effective July 1, 2017, the sums of \$723,118 in
 1137 recurring funds and \$100,000 in nonrecurring funds from the
 1138 Insurance Regulatory Trust Fund are appropriated to the Office
 1139 of Insurance Regulation, and eight full-time equivalent
 1140 positions with associated salary rate of 460,000 are authorized,
 1141 for the purpose of implementing this act.

1142 Section 24. Effective July 1, 2017, the sum of \$24,720 in
 1143 nonrecurring funds from the Operating Trust Fund is appropriated
 1144 to the Office of Judges of Compensation Claims within the
 1145 Division of Administrative Hearings for the purposes of
 1146 implementing this act.

1147 Section 25. Except as otherwise expressly provided in this
 1148 act, 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)

4/19/17

Meeting Date

1582

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislation Director

Address 110 E. Jefferson St.

Phone 850-445-3367

Street

Tallahassee

FL

State

32301

Zip

Email tim.nungesser@nfb.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing National Federation of Independent Business

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

04.19.17

Meeting Date

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

1582

Bill Number (if applicable)

Topic Workers Compensation

Amendment Barcode (if applicable)

Name Kim Fernandes

Job Title _____

Address 201 South Monroe Street - Ste 5

Phone 850-577-1301

Street

Tallahassee

FL

32301

Email kfernandes@kelleykronenberg.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/19/17

Meeting Date

CS/SB 1582

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Kraig Conn

Job Title _____

Address 301 S. Broward St. 300

Street

Tall FL 32301

City

State

Zip

Phone 222 9684

Email kconn@flcities

com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/19/17

Meeting Date

1582

Bill Number (if applicable)

Topic Workers' Comp

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough St

Phone 521-1200

Street

Tallahassee

FL

City

State

Zip

Email cjohnson@
flchamber.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FL 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

4/19/17

Meeting Date

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

1582

Bill Number (if applicable)

Topic Workers' Compensation

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title Vice President & General Counsel

Address 227 S. Adams St.

Phone 222-4082

Tallahassee FL 32301
City State Zip

Email samantha@fla.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/17

Meeting Date

1582

Bill Number (if applicable)

Topic WORKERS COMP

Amendment Barcode (if applicable)

Name NANCY STEPHENS

Job Title _____

Address 1625 SUMMIT LAKE DR

Phone 850 445 1607

Street

TALLAHASSEE

FL

32317

City

State

Zip

Email nancy@nstephens.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 1) MANUFACTURERS ASSOCIATION OF FLORIDA
2) FLORIDA BUILDING MATERIALS ASSOCIATION
3) FLORIDA POULTRY FEDERATION

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

4-19-17

Meeting Date

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

1582

Bill Number (if applicable)

Topic Workers' Compensation - Loss Costs

Amendment Barcode (if applicable)

Name Tom Stahl

Job Title Executive Director

Address 116 S. Monroe St.

Phone 850-681-6265

Street

Tallahassee FL 32308

City

State

Zip

Email tstahl@fuba.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FUBA - Florida United Businesses ~~Ass~~ 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)

4/19

Meeting Date

1582

Bill Number (if applicable)

Topic Workers Comp

Amendment Barcode (if applicable)

Name Jim McConnaughay

Job Title Consultant

Address 516 W Adams

Street

Phone _____

TLH

City

FL

State

32901

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

4-19-17

Meeting Date

1582

Bill Number (if applicable)

Topic Wage Compensation

Amendment Barcode (if applicable)

Name Tom Kovar

Job Title General Counsel

Address 6300 University Parkway

Phone 941-907-3396

Street

SARASOTA

City

FL

State

32426

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FCCI

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4-19-17

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

SB 1582

Meeting Date

Bill Number (if applicable)

Topic WORKERS' COMP

Amendment Barcode (if applicable)

Name Cam FENTRIS

Job Title LEG. COUNSEL

Address 1400 VILLAGE SQ # 3-243

Phone 222-2772

Street

TALL

FL

32312

City

State

Zip

Email AFENTRIS@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

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 7002

INTRODUCER: Community Affairs Committee

SUBJECT: OGSR/Donor Information/Publicly Owned Performing Arts Center

DATE: April 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Present	Yeatman		CA Submitted as Committee Bill
1.	Peacock	Ferrin	GO	Favorable
2.	Present	Phelps	RC	Favorable

I. Summary:

SB 7002 eliminates the scheduled repeal of the current public records exemption for identifying information provided by a donor or a prospective donor to a publicly owned performing arts center if the donor or prospective donor wishes to remain anonymous. Such information includes the name, address, or telephone number of the donor or prospective donor. As a result, if the bill passes, this information will continue to be exempt from public disclosure.

The bill requires a majority vote for passage and takes effect on October 1, 2017.

II. Present Situation:

Public Records Law

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

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that:

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ 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.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹³ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹⁴

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act.

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.¹⁷

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary.¹⁸ An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁹
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²⁰ or
- It protects trade or business secrets.²¹

In addition, the Legislature must find that the purpose of the exemption overrides the Florida's public policy strongly favoring open government.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. Specific questions are enumerated for consideration under the review.²² The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?

¹⁵ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one Legislature cannot bind a future Legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(5)(a), F.S.

¹⁸ Section 119.15(6)(b), F.S.

¹⁹ Section 119.15(6)(b)1., F.S.

²⁰ Section 119.15(6)(b)2., F.S.

²¹ Section 119.15(6)(b)3., F.S.

²² Section 119.15(6)(a), F.S.

- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.²³ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.²⁴

Examples of Existing Exemptions for Donors or Prospective Donors

<i>Entity</i>	<i>Exemption</i>	<i>Florida Statute</i>	<i>Status</i>
Enterprise Florida, Inc.	Identity of donor or prospective donor who desires to remain anonymous and all identifying information	s. 11.45(3)(i)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Florida Development Finance Corporation, Inc.	Identity of donor or prospective donor who desires to remain anonymous and all identifying information	s. 11.45(3)(j)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Cultural Endowment Program (Department of State)	Information which, if released, would identify donors and amounts contributed. Information which, if released, would identify prospective donors.	s. 265.605(2)	Confidential and exempt from s. 119.07(1), F.S.
Direct Support Organization (DSO) (University of West Florida)	Identity of donor or prospective donor of property to a DSO who desires to remain anonymous, and all identifying information.	s. 267.1732(8)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Citizen Support Organization (CSO) (Fish and Wildlife Conservation Commission)	Identity of donor or prospective donor to a CSO who desires to remain anonymous and all identifying information.	s. 379.223(3)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Florida Agricultural Center and Horse Park Authority (Department of Agriculture and Consumer Services)	Identity of donor if requested by the donor in writing.	s. 570.686	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.

²³ FLA. CONST., art. I, s. 24(c).

²⁴ Section 119.15(7), F.S.

<i>Entity</i>	<i>Exemption</i>	<i>Florida Statute</i>	<i>Status</i>
John and Mable Ringling Museum of Art Direct Support Organization (Florida State University)	Information that, if released, would identify donors who wish to remain anonymous or prospective donors who wish to remain anonymous when the DSO has identified the prospective donor and has not obtained the name in another manner.	s. 1004.45(2)(h)	Confidential and exempt from s. 119.07(1), F.S.
Florida Prepaid College Board Direct Support Organization	Identity of donors who wish to remain anonymous. Any sensitive, personal information regarding contract beneficiaries, including identity.	s. 1009.983(4)	Confidential and exempt from s. 119.07(1) and s. 24(a), Art. I, State Constitution.

Publicly Owned Performing Arts Centers in Florida

Section 265.7015(1), F.S., defines the term “publicly owned performing arts center” as:

a facility consisting of at least 200 seats, owned and operated by a county, municipality, or special district, which is used and occupied to promote development of any or all of the performing, visual, or fine arts or any or all matters relating thereto and to encourage and cultivate public and professional knowledge and appreciation of the arts.

If a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center desires to remain anonymous, information that would identify the name, address, or telephone number of that donor or prospective donor is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.²⁵

If s. 265.7015, F.S., is not reenacted by the Legislature, it will be repealed on October 2, 2017.²⁶

Florida has dozens of performing arts centers located throughout the state, and their ownership, management, and financing varies widely according to information on their websites.

A statewide study completed in 2009²⁷ found that Florida’s nonprofit arts and culture industry generated \$3.1 billion in economic activity, including:

- 88,236 full time equivalent jobs;

²⁵ Section 265.7015(2), F.S.

²⁶ Section 265.7015(3), F.S.

²⁷ Division of Cultural Affairs of the Department of State, Arts and Economic Prosperity III: The Economic Impact of Nonprofit Arts and Culture Organizations and Their Audiences in the State of Florida, *available at* <http://dos.myflorida.com/cultural/info-and-opportunities/resources-by-topic/economic-impact-of-the-arts>. (Last visited January 17, 2017)

- \$2.057 billion in resident household income;
- \$196 million in local government revenue; and
- \$249 million in state government revenue.²⁸

OFSR Survey and Results

From June to September of 2016, Senate and House professional staff, in conjunction with the Division of Cultural Affairs of the Department of State, sent out a survey to publicly owned performing arts centers to ascertain if s. 265.7015, F.S., remains necessary, pursuant to the OFSR.²⁹ Four publicly owned performing arts centers responded to the survey.

The surveys revealed that publicly owned performing arts centers normally received requests for anonymity at the time of donation and that donors and prospective donors had chosen anonymity on several occasions. Most publicly owned performing arts centers appeared to collect only contact information from the donors and prospective donors such as their name, address, or phone number. One publicly owned performing arts center defined a donor as “one who is making or has made a contribution” and a prospective donor as “one who is or has been identified as one with the potential to make a contribution.”

Each of the publicly owned performing arts centers that responded to the survey believed that the exemption encouraged donations by ensuring the information provided by the donor or prospective donor remained confidential and exempt and stated that the public records exemption should be reenacted.

III. Effect of Proposed Changes:

Section 1 amends s. 265.7015, F.S., by deleting the scheduled repeal of the public records exemption. As a result, the covered records will remain exempt from disclosure.

Section 2 provides an effective date of October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce the counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. If an exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not

²⁸ *Id.*

²⁹ The surveys are on file with the Senate Committee on Community Affairs.

required. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Donors or prospective donors to publicly owned performing arts centers have the option of requesting anonymity, which may encourage more private entities to donate to these facilities.

C. Government Sector Impact:

This public records exemption may encourage donations and therefore result in a financial gain to counties and municipalities that own and operate publicly owned performing arts centers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 265.7015 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By the Committee on Community Affairs

578-01927-17

20177002__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 265.7015, F.S., which provides an exemption from public records requirements for information that identifies a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center if the donor desires to remain anonymous; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 265.7015, Florida Statutes, is amended to read:

265.7015 Confidentiality of certain donor information; ~~related to a publicly owned performing arts centers center.~~

(1) As used in this section, the term "publicly owned performing arts center" means a facility consisting of at least 200 seats, owned and operated by a county, municipality, or special district, which is used and occupied to promote development of any or all of the performing, visual, or fine arts or any or all matters relating thereto and to encourage and cultivate public and professional knowledge and appreciation of the arts.

(2) If a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center desires to remain anonymous, information that would identify the name, address, or telephone number of that donor or prospective donor is confidential and exempt from s. 119.07(1) and s. 24(a), Art.

Page 1 of 2

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

578-01927-17

20177002__

I of the State Constitution.

~~(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2017.

Page 2 of 2

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/17

Meeting Date

7002
Bill Number (if applicable)

Topic DOWD INF / Pompano Arts Center Amendment Barcode (if applicable)

Name DAVE ERICKS

Job Title LOBBYIST

Address 205 S ADAMS ST

Phone 850-224-0880

Street

DALLAS TX 75201

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ISLINGTON COUNTY PERFORMING ARTS CENTER

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/19/2017
Meeting Date

7002
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name ROMAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

CourtSmart Tag Report

Room: EL 110
Caption: Senate Rules Committee

Case No.:
Judge:

Type:

Started: 4/19/2017 4:03:54 PM

Ends: 4/19/2017 5:55:55 PM

Length: 01:52:02

4:03:52 PM Meeting called to order by Chair Benacquisto
4:03:57 PM Roll call by Administrative Assistant Futch
4:04:02 PM Quorum present
4:04:49 PM SB 102 introduced by Chair Benacquisto
4:04:55 PM Explanation of SB 102 by Senator Steube
4:05:29 PM Amendment Barcode No. 321438 introduced by Chair Benacquisto
4:05:36 PM Explanation of Amendment Barcode No. 321438 by Senator Steube
4:06:02 PM Without objection, Amendment Barcode No. 321438 is adopted
4:06:10 PM Stephen Winn of the Florida Osteopathic Medical Association waives in support
4:06:20 PM Dorene Barker of the AARP waives in support
4:06:25 PM Mary Thomas of the Florida Medical Association waives in support
4:06:31 PM Chris Hansen of the Florida Podiatric Medical Association waives in support
4:06:39 PM Joe Annettart of the Florida Dental Association waives in support
4:06:49 PM Senator Steube waives close
4:06:52 PM Roll call on CS/SB 102 by Administrative Assistant Futch
4:07:17 PM CS/SB 102 is reported favorably
4:07:23 PM CS/CS/SB 182 introduced by Chair Benacquisto
4:07:28 PM Explanation of CS/CS/SB 182 by Senator Mayfield
4:08:24 PM Mary Thomas of the Florida Medical Association waives in support
4:08:32 PM Stephen Winn of the Florida Osteopathic Medical Association waives in support
4:08:34 PM Brewster Bevis of the Associated Industries of Florida waives in opposition
4:08:44 PM Senator Mayfield waives close
4:08:48 PM Roll call on CS/CS/SB 182 by Administrative Assistant Futch
4:09:02 PM CS/CS/SB 182 is reported favorably
4:09:16 PM Senator Bradley moves to temporarily postpone CS/CS/SB 190
4:09:23 PM Without objection, CS/CS/SB 190 is temporarily postponed
4:09:27 PM CS/CS/SB 414 introduced by Chair Benacquisto
4:09:32 PM Explanation of CS/CS/SB 414 by Senator Grimsley
4:09:59 PM Sharon Gordon-Girvin on behalf of MorseLife waives in support
4:10:13 PM Senator Grimsley waives close
4:10:16 PM Roll call on CS/CS/SB 414 by Administrative Assistant Futch
4:10:31 PM CS/CS/SB 414 is reported favorably
4:10:42 PM CS/CS/SB 660 introduced by Chair Benacquisto
4:10:48 PM Explanation of CS/CS/SB 660 by Senator Passidomo
4:11:31 PM Amendment Barcode No. 675346 introduced by Chair Benacquisto
4:11:40 PM Explanation of Amendment Barcode No. 675346 by Senator Passidomo
4:11:46 PM Without objection, Amendment Barcode No. 675346 is adopted
4:11:58 PM Jennifer Martin of the Florida Credit Union Association waives in support
4:12:17 PM Senator Passidomo waives close
4:12:20 PM Roll call on CS/CS/CS/SB 660 by Administrative Assistant Futch
4:12:32 PM CS/CS/CS/SB 660 is reported favorably
4:12:35 PM CS/SB 730 introduced by Chair Benacquisto
4:12:58 PM Explanation of CS/SB 730 by Senator Passidomo
4:13:41 PM Amendment Barcode No. 176748 introduced by Chair Benacquisto
4:13:45 PM Explanation of Amendment Barcode No. 176748 by Senator Passidomo
4:13:50 PM Without objection, Amendment Barcode No. 176748 is adopted
4:14:06 PM Elizabeth Boyd of the Department of Financial Services waives in support
4:14:17 PM Senator Passidomo waives close
4:14:22 PM Roll call on CS/CS/SB 730 by Administrative Assistant Futch
4:14:33 PM CS/CS/SB 730 is reported favorably
4:14:51 PM CS/SB 512 introduced by Chair Benacquisto
4:14:54 PM Explanation of CS/SB 512 by Senator Young

4:15:14 PM Don Goldstein of Greyhound Rescue and Adoptions of Tampa Bay speaks in support
 4:16:07 PM Carey M. Theil waives in support
 4:16:14 PM Kate MacFall of the Humane Society of the United States waives in support
 4:16:16 PM Jennifer Leon waives in support
 4:16:20 PM Jennifer Hobgood of the ASPCA waives in support
 4:16:24 PM Ramon Maury of the Florida Greyhound Association speaks in opposition
 4:18:48 PM Brian Pitts of Justice-2-Jesus waives in support
 4:19:11 PM Senator Young waives close
 4:19:15 PM Roll call on CS/SB 512 by Administrative Assistant Futch
 4:19:45 PM CS/SB 512 is reported favorably
 4:19:47 PM SB 898 introduced by Chair Benacquisto
 4:19:48 PM Explanation of SB 898 by Senator Simmons
 4:20:22 PM Brian Pitts of Justice-2-Jesus speaks
 4:22:45 PM Senator Simmons waives close
 4:22:51 PM Roll call on SB 898 by Administrative Assistant Futch
 4:22:59 PM SB 898 is reported favorably
 4:23:17 PM CS/CS/SB 788 introduced by Chair Benacquisto
 4:23:28 PM Explanation of CS/CS/SB 788 by Senator Clemens
 4:24:20 PM Julie Allison of the Association for Clear and Compassionate Governance of Substance Abuse Treatment speaks in opposition
 4:27:24 PM Rebecca DeLaRosa, Legislative Affairs Director of Palm Beach County waives in support
 4:27:29 PM Alan Johnson, Chief Assistant State Attorney for the 15th Circuit waives in support
 4:27:39 PM Jill Gran of the Florida Behavioral Health Association waives in support
 4:27:43 PM Richard Pinsky of the City of Lake Worth waives in support
 4:27:48 PM Devon West, Legislative Affairs Director for the Martin County Board of County Commissioners waives in support
 4:27:55 PM Nicole Fogarty, Legislative Affairs Director for the St. Lucie County Board of County Commissioners waives in support
 4:28:08 PM Senator Clemens closes
 4:28:48 PM Roll call on CS/CS/SB 788 by Administrative Assistant Futch
 4:29:11 PM CS/CS/SB 788 is reported favorably
 4:29:20 PM CS/SB 1582 introduced by Chair Benacquisto
 4:29:21 PM Explanation of CS/SB 1582 by Senator Bradley
 4:35:14 PM Question by Senator Lee
 4:35:36 PM Response by Senator Bradley
 4:36:01 PM Follow-up by Senator Lee
 4:36:11 PM Discussion between Senators Lee and Bradley
 4:39:21 PM Tim Nungesser of the National Federation of Independent Business speaks in opposition
 4:40:55 PM Kim Fernandes of the Florida Justice Reform institute speaks in opposition
 4:42:29 PM Kraig Conn of the Florida League of Cities waives in opposition
 4:42:33 PM Carolyn Johnson of the Florida Chamber of Commerce
 4:42:47 PM Samantha Padgett of the Florida Retail Federation speaks in opposition
 4:45:16 PM Nancy Stephens of the Manufacturers Association of Florida, the Florida Building Materials Association, and the Florida Poultry Federation speaks in opposition
 4:45:55 PM Tom Stahl of the Florida United Business Association (FUBA) speaks in opposition
 4:47:13 PM Jim McConnaughhay of the Associated Industries of Florida speaks in opposition
 4:49:10 PM Tom Koval of FCCI waives in opposition
 4:49:19 PM Cam Fentriss of the Florida Roofing and Sheet Metal Contractors Association waives in opposition
 4:49:34 PM Comments by Senator Lee
 4:50:38 PM Comments by Senator Brandes
 4:50:57 PM Senator Bradley closes
 4:53:02 PM Roll call on CS/SB 1582 by Administrative Assistant Futch
 4:53:23 PM CS/SB 1582 is reported favorably
 4:53:31 PM CS/CS/SB 596 introduced by Chair Benacquisto
 4:53:40 PM Comment by Senator Hutson regarding delete all amendment
 4:53:42 PM Amendment Barcode No. 219028 introduced by Chair Benacquisto
 4:53:50 PM Explanation of CS/CS/SB 596 and delete all Amendment Barcode No. 219028
 4:55:05 PM Question by Senator Montford
 4:55:11 PM Response by Senator Hutson
 4:55:47 PM Follow-up by Senator Montford
 4:55:56 PM Response by Senator Hutson
 4:56:26 PM Question by Senator Latvala

4:56:40 PM Response by Senator Hutson
 4:57:01 PM Discussion between Senators Latvala and Hutson
 4:58:00 PM Amendment to Amendment Barcode No. 320990 introduced by Chair Benacquisto
 4:58:02 PM Explanation of Amendment Barcode No. 320990 by Senator Hutson
 4:58:38 PM Without objection, Amendment to Amendment Barcode No. 320990 is adopted
 4:58:42 PM Amendment to Amendment Barcode No. 567676 introduced by Chair Benacquisto
 4:58:46 PM Senator Hutson withdraws Amendment to Amendment Barcode No. 567676
 4:58:50 PM Amendment to Amendment Barcode No. 325560 introduced by Chair Benacquisto
 4:58:55 PM Explanation of Amendment Barcode No. 325560 by Senator Lee
 4:59:42 PM Question by Senator Latvala
 4:59:48 PM Response by Senator Lee
 5:00:11 PM Follow-up by Senator Latvala
 5:00:36 PM Discussion between Senators Lee and Latvala
 5:03:30 PM Question by Vice-Chair Thurston
 5:03:47 PM Response by Senator Lee
 5:04:00 PM Follow-up question by Vice-Chair Thurston
 5:04:28 PM Discussion between Senators Lee and Thurston
 5:04:59 PM Voice vote on Amendment to Amendment Barcode No. 325560
 5:05:03 PM Amendment to Amendment Barcode No. 325560 is not adopted
 5:05:11 PM Amendment Barcode No. 741036 introduced by Chair Benacquisto
 5:05:13 PM Explanation of Amendment Barcode No. 741036 by Senator Lee
 5:06:14 PM Voice vote on Amendment to Amendment Barcode No. 741036
 5:06:20 PM Without objection, Amendment to Amendment Barcode No. 741036 is adopted
 5:06:28 PM Without objection, delete all Amendment No. 219028, as amended, is adopted
 5:06:38 PM Connie Vanassche of the City of Wauchula and Okeechobee County waives in opposition
 5:06:55 PM JB Whitten of the City of Crestview waives in opposition
 5:07:06 PM Drinda Merritt, Mayor of the Town of Inglis, waives in opposition
 5:07:18 PM Corinne Mixon of T-Mobile waives in support
 5:07:22 PM Michael Beedie, City Manager of the City of Ft. Walton Beach speaks in opposition
 5:08:53 PM Question by Senator Brandes
 5:09:13 PM Response by Mr. Beedie
 5:09:59 PM Question by Vice-Chair Thurston
 5:10:39 PM Discussion between Vice-Chair Thurston and Mr. Beedie
 5:10:42 PM Tracy Hatch of AT&T speaks in support
 5:12:25 PM Christopher Emmanuel of the Florida Chamber waives in support
 5:12:31 PM Brewster Bevis of the Associated Industries of Florida waives in support
 5:12:35 PM Eric Poole of the Florida Association of Counties speaks in opposition
 5:14:29 PM Natalie King of Uniti Fiber waives in support
 5:14:36 PM Edward Briggs of Mobilitie waives in support
 5:14:44 PM Megan Sirjane-Samples of the Florida League of Cities speaks in opposition
 5:16:10 PM Question by Senator Latvala
 5:16:40 PM Response by Ms. Sirjane-Samples
 5:17:35 PM Senator Hutson waives close
 5:17:45 PM Roll call on CS/CS/CS/SB 596 by Administrative Assistant Futch
 5:18:07 PM CS/CS/CS/SB 596 is reported favorably
 5:18:26 PM CS/SB 926 introduced by Chair Benacquisto
 5:18:30 PM Explanation of CS/SB 926 by Senator Flores
 5:20:19 PM Amendment Barcode No. 367714 introduced by Chair Benacquisto
 5:20:23 PM Explanation of Amendment Barcode No. 367714 by Senator Brandes
 5:20:33 PM Question by Senator Montford
 5:20:37 PM Response by Senator Brandes
 5:21:11 PM Follow-up question by Senator Montford
 5:21:29 PM Discussion between Senators Brandes and Montford
 5:21:50 PM (Senator Bradley assumes Chair)
 5:22:01 PM Further discussion between Senators Brandes and Montford
 5:26:41 PM Question by Vice Chair Thurston
 5:27:04 PM Comment by Senator Flores
 5:27:45 PM Follow up by Vice Chair Thurston
 5:28:13 PM Response by Senator Brandes
 5:28:19 PM Discussion between Senators Thurston and Brandes
 5:29:33 PM Comments by Chair Bradley
 5:29:57 PM Shruti Graf, Staff Director of Education Committee, responds to questions raised in discussion

5:30:52 PM Question by Senator Montford to staff
 5:31:36 PM Response by Ms. Graf
 5:31:53 PM Follow-up by Senator Montford
 5:32:10 PM Response by Sara Benvenisty, Attorney for the Education Committee
 5:32:19 PM Discussion between Senators Montford and Brandes with the Education Committee staff
 5:33:24 PM Comments by Chair Bradley
 5:34:33 PM Question by Senator Lee
 5:34:49 PM Response by Ms. Graf
 5:35:16 PM Further discussion between Senator Lee and Education Committee staff
 5:35:34 PM Amendment Barcode No. 367714 withdrawn by Senator Brandes
 5:35:56 PM Late filed Amendment Barcode No. 903014 introduced by Chair Bradley and taken up without objection
 5:36:10 PM Explanation of late filed Amendment Barcode No. 903014 by Senator Flores
 5:37:23 PM Question by Senator Lee
 5:37:50 PM Response by Senator Flores
 5:38:53 PM Question by Senator Montford
 5:38:58 PM Response by Senator Flores
 5:39:20 PM Catherine Baer of the Tea Party Network and Common Ground speaks in opposition
 5:40:08 PM John Cerra of the Florida League of International Baccalaureate Schools waives in support
 5:40:19 PM Nancy Lawther of the Florida PTA waives in support
 5:40:30 PM Codeye Woody of Orange County Public Schools waives in opposition
 5:40:52 PM Senator Flores closes on Amendment Barcode No. 903014
 5:41:17 PM Without objection, Amendment Barcode No. 903014 is adopted
 5:41:23 PM Late filed Amendment Barcode No. 662216 introduced by Chair Bradley and taken up without objection
 5:41:28 PM Explanation of late filed Amendment Barcode No. 662216 by Senator Flores
 5:42:20 PM Question by Senator Montford
 5:42:30 PM Response by Senator Flores
 5:43:12 PM Senator Flores waives close
 5:43:20 PM Without objection, Amendment Barcode No. 662216 is adopted
 5:43:25 PM Late filed Amendment Barcode No. 236592 introduced by Chair Bradley and taken up without objection
 5:43:39 PM Explanation of late filed Amendment Barcode No. 236592 by Senator Flores
 5:44:22 PM Dr. Fely Curva of the Society of Health and Physical Education (SHAPE) speaking in support
 5:45:36 PM Senator Flores waives close
 5:45:39 PM Without objection, amendment is adopted
 5:45:49 PM Alli Liby-Schoonover of the Seminole County Public Schools waives in support
 5:46:13 PM Catherine Baer of the Tea Party Network and Common Ground speaks in support
 5:46:39 PM Kelly Quintero of the League of Women Voters of Florida waives in support
 5:46:46 PM Shan Goff of the Foundation for Florida's Future waives in support
 5:46:51 PM Nancy Lawther of the Florida PTA speaks in support
 5:47:31 PM Beth Overholt of Opt Out Leon waives in support
 5:47:39 PM Brian Pitts of Justice-2-Jesus speaks in opposition
 5:49:19 PM Senator Flores closes
 5:50:00 PM Roll call on CS/CS/SB 926 by Administrative Assistant Futch
 5:50:20 PM CS/CS/SB 926 is reported favorably
 5:50:34 PM CS/CS/SB 420 introduced by Chair Bradley
 5:50:46 PM Explanation of CS/CS/SB 420 by Senator Brandes
 5:51:14 PM Senator Brandes withdraws Amendment Barcode No. 909524 and Substitute Amendment Barcode No. 960142
 5:52:13 PM Senator Brandes waives close
 5:52:16 PM Roll call on CS/CS/SB 420 by Administrative Assistant Futch
 5:52:28 PM CS/CS/SB 420 is reported favorably
 5:52:46 PM (Senator Benacquisto resumes Chair)
 5:52:53 PM Senator Bradley moves to temporarily postpone SB 1238
 5:52:58 PM Without objection, SB 1238 is temporarily postponed
 5:53:07 PM SB 7002 introduced by Chair Benacquisto
 5:53:14 PM Explanation of SB 7002 by Senator Brandes
 5:54:01 PM Dave Ericks of the Broward County Performing Arts Center waives in support
 5:54:06 PM Brian Pitts of Justice-2-Jesus speaks
 5:55:11 PM Senator Lee waives close
 5:55:13 PM Roll call on SB 7002 by Administrative Assistant Futch
 5:55:31 PM SB 7002 is reported favorably
 5:55:45 PM Senator Montford moves to adjourn
 5:55:55 PM Without objection, meeting is adjourned