Tab 1	**CS/SB 286** by **BI, Brandes**; (Similar to CS/H 0817) Merger and Acquisition Brokers

Tab 2	**CS/SB 372** by **JU, Lee**; (Similar to CS/CS/CS/H 0183) Administrative Procedures

970140	A	S	RCS	AGG, Lee	Delete L.77 - 78:	01/13 03:18 PM
933300	A	S	RCS	AGG, Lee	Delete L.396:	01/13 03:18 PM
~~112484~~	A	S	WD	AGG, Lee	btw L.596 - 597:	01/13 03:18 PM

Tab 3	**SB 374** by **Montford**; (Identical to H 0425) State-leased Space

Tab 4	**SB 394** by **Hays**; (Identical to H 0303) Unlicensed Activity Fees

Tab 5	**CS/SB 400** by **EP, Hays**; (Similar to CS/CS/H 0561) Organizational Structure of the Department of Environmental Protection

Tab 6	**CS/SB 548** by **BI, Richter**; (Similar to CS/CS/H 0413) Title Insurance

926508	A	S	RCS	AGG, Lee	btw L.23 - 24:	01/13 03:18 PM

Tab 7	**SB 7008** by **GO**; (Similar to CS/H 0339) Housing Discrimination

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT
Senator Hays, Chair
Senator Braynon, Vice Chair

MEETING DATE: Wednesday, January 13, 2016
TIME: 1:30—3:30 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Hays, Chair; Senator Braynon, Vice Chair; Senators Altman, Dean, Lee, Margolis, and Simpson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 286** Banking and Insurance / Brandes (Similar H 817)	Merger and Acquisition Brokers; Providing an exemption from certain registration requirements with the Office of Financial Regulation for a specified offer or sale of securities; requiring a merger and acquisition broker to receive certain written assurances from a specified person prior to the completion of specified securities transactions; providing an exemption from certain registration requirements with the office for a merger and acquisition broker under certain circumstances; specifying disqualifying conditions for the exemption, etc. BI 12/01/2015 Fav/CS AGG 01/13/2016 Favorable FP	Favorable Yeas 6 Nays 1
2	**CS/SB 372** Judiciary / Lee (Similar CS/CS/H 183)	Administrative Procedures; Providing procedures for agencies to follow when initiating rulemaking after certain public hearings; providing for publication of notices of rule development and of rules filed for adoption; specifying legal authority to file a petition challenging an agency rule as an invalid exercise of delegated legislative authority, etc. JU 11/17/2015 Fav/CS AGG 01/13/2016 Fav/CS AP	Fav/CS Yeas 7 Nays 0
3	**SB 374** Montford (Identical H 425)	State-leased Space; Revising requirements for Department of Management Services rules relating to terms and conditions included in lease agreements in which the state is the lessee, etc. GO 11/02/2015 GO 11/17/2015 Favorable AGG 01/13/2016 Favorable AP	Favorable Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 394** Hays (Identical H 303)	Unlicensed Activity Fees; Prohibiting the Department of Business and Professional Regulation from imposing a specified fee in certain circumstances, etc. RI 11/18/2015 Favorable AGG 01/13/2016 Favorable AP	Favorable Yeas 7 Nays 0
5	**CS/SB 400** Environmental Preservation and Conservation / Hays (Identical H 561)	Organizational Structure of the Department of Environmental Protection; Requiring the secretary of the Department of Environmental Protection to appoint a general counsel; authorizing the secretary to establish divisions as necessary to accomplish the mission and goals of the department; authorizing offices to be established as necessary to promote the efficient and effective operation of the department, etc. EP 11/18/2015 Fav/CS AGG 01/13/2016 Favorable AP	Favorable Yeas 7 Nays 0
6	**CS/SB 548** Banking and Insurance / Richter (Identical CS/H 413)	Title Insurance; Increasing a title insurer's limit of risk from one-half of its surplus as to policyholders to the entirety of its surplus; revising an exception to the limit, etc. BI 11/17/2015 Fav/CS AGG 01/13/2016 Fav/CS AP	Fav/CS Yeas 7 Nays 0
7	**SB 7008** Governmental Oversight and Accountability (Identical H 339)	Housing Discrimination; Removing housing discrimination as a cause of action for certain relief and damages stemming from violations of the Florida Civil Rights Act of 1992; authorizing, rather than requiring, a civil action to commence within 2 years after an alleged discriminatory housing practice; authorizing an aggrieved person to commence a civil action regardless of whether a specified complaint has been filed and regardless of the status of any such complaint, etc. JU 11/17/2015 Favorable AGG 01/13/2016 Favorable AP	Favorable Yeas 7 Nays 0
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL:	CS/SB 286
INTRODUCER:	Banking and Insurance Committee and Senator Brandes
SUBJECT:	Merger and Acquisition Brokers
DATE:	January 12, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Recommend: Favorable**
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 286 creates an exemption from registration with the Office of Financial Regulation (OFR) for a merger and acquisition (M&A) broker facilitating the offer or sale of securities in connection with the transfer of ownership of an eligible privately held company. Generally, an M&A broker, acting as an intermediary, engages in the business of transferring the ownership and control of a privately-held company through the sale of the business, which may be structured as an asset or securities transaction. The bill also provides an exemption for the securities transactions that are conducted through an M&A broker if certain conditions are met.

The bill has an indeterminate insignificant fiscal impact.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Federal Regulation of Securities

Securities Act of 1933

The federal Securities Act of 1933 (Securities Act) requires every offer or sale of securities using the means and instrumentalities of interstate commerce to be registered with the U.S. Securities and Exchange Commission (SEC), unless an exemption is available. The Securities Act's emphasis on disclosure of important financial information through the registration of securities

enables investors to make informed judgments about whether to purchase a company's securities. Investors who purchase securities and suffer losses have recovery rights if they can prove that there was incomplete or inaccurate disclosure of important information.

Securities Exchange Act of 1934

With the enactment of the Securities Exchange Act of 1934 (act), Congress created the Securities and Exchange Commission (SEC). The act provides the SEC with broad authority over all aspects of the securities industry. This includes the power to register, regulate, and oversee brokerage firms, transfer agents, and clearing agencies as well as the nation's securities self-regulatory organizations (SROs).

The act also identifies and prohibits certain types of conduct in the markets and provides the SEC with disciplinary powers over regulated entities and persons associated with them. The act also authorizes the SEC to require periodic reporting of information by companies with publicly traded securities. Generally, any person acting as a "broker" or "dealer" as defined by Section 3(4), and 3(a)(5) of the Securities Exchange Act of 1934, respectively, must be registered with the SEC and join a SRO, the Financial Industry Regulatory Authority (FINRA), a national securities exchange, or both. Broker dealers must also comply with state laws relating to registration requirements.

In 2014, SEC staff issued a no-action letter stating that it would not recommend enforcement action to the SEC if an individual or firm meeting the definition of an "M&A Broker" were to effect transactions in connection with the transfer of ownership of a privately held company.[1] The no-action letter outlines the permissible activities and transactions that could be effected without requiring registration with the SEC as a broker dealer. In particular, the no-action letter permits an M&A broker to participate in the negotiations of the M&A transaction; advise the parties to issue securities, or otherwise to effect the transfer of the business by means of securities; or assess the value of any securities sold; and receive transaction-based or other compensation without registering as a dealer with the SEC." Prior to the release of this no-action letter, it was unclear when an M&A Broker had to be registered with the SEC. The SEC no-action letter is applicable to federal registration requirements.

Florida Regulation of Securities

In addition to federal securities laws, "Blue Sky Laws" are state laws that protect the investing public through registration requirements for both broker dealers and securities offerings, merit review of offerings, and various investor remedies for fraudulent sales practices and activities.[2] In Florida, the Securities and Investor Protection Act, ch. 517, F.S. (act), regulates securities issued, offered, and sold in the state of Florida. The OFR regulates and registers the offer and

[1] M&A Broker Letter, SEC (January 31, 2014, revised February 4, 2014). For purposes of the letter, an "M&A Broker" is a person engaged in the business of effecting securities transactions solely in connection with the transfer of ownership and control of a privately-held company through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the company, to a buyer that will actively operate the company or the business conducted with the assets of the company.

[2] U.S. Securities and Exchange Commission, *Blue Sky Laws*, http://www.sec.gov/answers/bluesky.htm (last visited November 22, 2015).

sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms in accordance with the act.[3]

The act prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted.[4] Additionally, all securities in Florida must be registered with the OFR unless they meet one of the exemptions in s. 517.051 or s. 517.061, F.S., or are federally covered (i.e., under the exclusive jurisdiction of the SEC). Currently, mergers where two corporations have $500,000 or more in assets and where the sale price is $50,000 or more, are transactions that qualify for a securities registration exemption under s. 517.061(8), F.S. Similarly, mergers approved by the vote of the security holders are transactions that qualify for a securities registration exemption under s. 517.061(9), F.S. Brokers who facilitate transactions through one of these two exemptions are currently exempt from registration by s. 517.12(3), F.S.

Failure to meet the requirements of these exemptions, can subject entities to civil, criminal, and administrative liability for the sale of unregistered securities, which is a third-degree felony in Florida.[5] Civil remedies under the act include rescission and damages.[6] In addition, issuers must comply with disclosure requirements in state and federal laws that provide potential investors with full and fair disclosures regarding the security.

Merger and Acquisition Brokers

An M&A broker may introduce buyers and sellers, help value the business, recommend terms and structure of the sale, and assist with negotiations in the closing sales of privately held businesses. Smaller transactions may involve the sale of the assets of the business in exchange for cash. However, the ownership of a business may be transferred by means of the purchase, sale, exchange, issuance, merger, repurchase, or redemption of, or other business combinations involving securities. If a transaction involves securities, then state and federal securities laws may apply to the parties and the transactions. The costs of complying with SEC and FINRA broker-dealer regulatory requirements can be substantial, an estimated $150,000 initially and more than $75,000 annually. These regulatory costs are included in the final costs incurred by the small business sellers and buyers using services of an M&A broker.[7]

Prior to the adoption of the North American Securities Administrators Association, Inc. (NAASA) model rule, California, South Dakota, Texas, and Utah adopted limited broker-dealer or transaction-based exemptions. In September 2015, the NAASA adopted a model rule, which provides a uniform approach to state-level securities regulation and provides an exemption for M&A brokers if certain conditions are met.[8]

[3] Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the OFR's agency head for purposes of rulemaking and appoints the OFR's commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.
[4] Section 517.12, F.S.
[5] Section 517.302(1), F.S.
[6] Section 517.211(3-5), F.S.
[7] Alliance of Merger and Acquisition Advisors and International Business Brokers Associations, M&A White Paper (April 29, 2015).
[8] The NASAA is a voluntary association whose membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. The

III. Effect of Proposed Changes:

The bill provides that the offer or sale of securities solely in connection with the transfer of ownership of an eligible privately held company through an M&A broker is an exempt transaction under ch. 517, F.S., if certain conditions are met. However, these exempt transactions are subject to the prohibited practices and remedies under ss. 517.301, 517.311, and 517.312, F.S. The bill also exempts the M&A broker from registration with the OFR as a dealer if certain conditions are met.

An eligible privately held company is a company that meets certain requirements:

- The company does not have any securities that require registration with the SEC or the OFR, or for which the company must submit filings with the SEC.
- In the fiscal year immediately preceding the fiscal year during which the M&A broker begins to provide services for the securities transaction, the company has earnings before interest, taxes, depreciation, and amortization of less than $25 million or has gross revenues of less than $250 million.

The bill provides that an M&A broker is any broker and any person associated with a broker engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of eligible privately held companies. Further, the bill provides that prior to the completion of the securities transaction, the M&A broker must receive written assurances from the control person with the largest percentage of ownership for both the buyer and seller that:

- After the completion of the transaction, any person who acquires securities or assets of the eligible privately held company will be a control person of the eligible privately held company or will be a control person for the business conducted with the assets of the eligible privately held company. The bill defines the term, "control person."
- Any person that is offered securities in exchange for securities or assets of the eligible, privately held company will receive financial statements of the issuer of the securities offered in the exchange prior to becoming legally bound to complete the transaction.

An M&A broker is exempt from registration *unless* the M&A broker engages in certain activities or has engaged in disqualifying events, delineated below:

- Holds, transmits, or has custody of the funds or securities to be exchanged by the parties;
- Engages on behalf of an issuer in a public offering of securities which are required to be registered with the SEC or the OFR;
- Engages on behalf of an issuer in a public offering of securities for which the issuer is required to file certain documents pursuant to 15 U.S.C. s. 78o(d);
- Engages on behalf of any party in a transaction involving a public shell company;
- Is subject to a suspension or revocation of registration under 15 U.S.C. s. 78o(b)(4);
- Is subject to a disqualification under 15 U.S.C. s. 78c(a)(39);
- Is subject to a disqualification under 15 U.S.C. s. 230.506(d); or
- Is subject to a final order described under 15 U.S.C. s. 78o(b) (4)(H).

The bill takes effect July 1, 2016.

NASAA's Model Rule, Exempting Certain Merger & Acquisition Brokers from Registration, was adopted September 29, 2015.

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 would exempt the sale of securities in connection with the transfer of ownership of a privately held eligible company and the registration of M&A brokers with the OFR if certain conditions are met. This would reduce the regulatory burden and the costs of such transactions incurred by the buyers and sellers of such small businesses.

C. Government Sector Impact:

The fiscal impact on state funds is indeterminate. The registration fees are currently deposited into the General Revenue Fund. The OFR estimates that there are under ten brokers/dealers currently paying the fee that totals under $2,000 annually.[9]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 517.061 and 517.12.

[9] Information provided via a telephone conversation with the staff of the OFR on December 11, 2015.

IX. Additional Information:

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

CS by Banking and Insurance on December 1, 2015:
The CS provides technical, conforming changes to make the bill consistent with the provisions of the model act of the North American Securities Administrators Association and chapter 517, F.S.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Brandes

597-01757-16 2016286c1

A bill to be entitled

An act relating to merger and acquisition brokers; amending s. 517.061, F.S.; providing an exemption from certain registration requirements with the Office of Financial Regulation for a specified offer or sale of securities; amending s. 517.12, F.S.; defining terms; requiring a merger and acquisition broker to receive certain written assurances from a specified person prior to the completion of specified securities transactions; providing an exemption from certain registration requirements with the office for a merger and acquisition broker under certain circumstances; specifying disqualifying conditions for the exemption; providing an effective date.

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

Section 1. Subsection (22) is added to section 517.061, Florida Statutes, to read:

517.061 Exempt transactions.—Except as otherwise provided in s. 517.0611 for a transaction listed in subsection (21), the exemption for each transaction listed below is self-executing and does not require any filing with the office before claiming the exemption. Any person who claims entitlement to any of the exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to the provisions of ss. 517.301, 517.311, and 517.312:

597-01757-16 2016286c1

(22) The offer or sale of securities, solely in connection with the transfer of ownership of an eligible privately held company, through a merger and acquisition broker in accordance with s. 517.12(22).

Section 2. Subsection (22) is added to section 517.12, Florida Statutes, to read:

517.12 Registration of dealers, associated persons, intermediaries, and investment advisers.—

(22)(a) As used in this subsection, the term:

1. "Broker" has the same meaning as "dealer" as defined in s. 517.021.

2. "Control person" means an individual or entity that possesses the power, directly or indirectly, to direct the management or policies of a company through ownership of securities, by contract, or otherwise. A person is presumed to be a control person of a company if, with respect to a particular company, the person:

a. Is a director, a general partner, a member, or a manager of a limited liability company, or is an officer who exercises executive responsibility or has a similar status or function;

b. Has the power to vote 20 percent or more of a class of voting securities or has the power to sell or direct the sale of 20 percent or more of a class of voting securities; or

c. In the case of a partnership or limited liability company, may receive upon dissolution, or has contributed, 20 percent or more of the capital.

3. "Eligible privately held company" means a company that meets all of the following conditions:

a. The company does not have any class of securities which

is registered, or which is required to be registered, with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., or with the office under s. 517.07, or for which the company files, or is required to file, summary and periodic information, documents, and reports under Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d).

b. In the fiscal year immediately preceding the fiscal year during which the merger and acquisition broker begins to provide services for the securities transaction, the company, in accordance with its historical financial accounting records, has earnings before interest, taxes, depreciation, and amortization of less than $25 million or has gross revenues of less than $250 million. On July 1, 2016, and every 5 years thereafter, each dollar amount in this sub-subparagraph shall be adjusted by dividing the annual value of the Employment Cost Index for wages and salaries for private industry workers, or any successor index, as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made, by the annual value of such index or successor index for the calendar year ending December 31, 2012, and multiplying such dollar amount by the quotient obtained. Each dollar amount determined under this sub-subparagraph shall be rounded to the nearest multiple of $100,000.

4. "Merger and acquisition broker" means any broker and any person associated with a broker engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether that broker acts on behalf of a seller or

buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company.

5. "Public shell company" means a company that at the time of a transaction with an eligible privately held company:

a. Has any class of securities which is registered, or which is required to be registered, with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., or with the office under s. 517.07, or for which the company files, or is required to file, summary and periodic information, documents, and reports under Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d);

b. Has nominal or no operations; and

c. Has nominal assets or no assets, assets consisting solely of cash and cash equivalents, or assets consisting of any amount of cash and cash equivalents and nominal other assets.

(b) Prior to the completion of any securities transaction described in s. 517.061(22), a merger and acquisition broker must receive written assurances from the control person with the largest percentage of ownership for both the buyer and seller engaged in the transaction that:

a. After the transaction is completed, any person who acquires securities or assets of the eligible privately held company, acting alone or in concert, will be a control person of the eligible privately held company or will be a control person for the business conducted with the assets of the eligible privately held company; and

b. If any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, before becoming legally bound to complete the transaction, receive or be given reasonable access to the most recent year-end financial statements of the issuer of the securities offered in exchange. The most recent year-end financial statements shall be customarily prepared by the issuer's management in the normal course of operations. If the financial statements of the issuer are audited, reviewed, or compiled, the most recent year-end financial statements must include any related statement by the independent certified public accountant; a balance sheet dated not more than 120 days before the date of the exchange offer; and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and material loss contingencies of the issuer.

(c) A merger and acquisition broker engaged in a transaction exempt under s. 517.061(22) is exempt from registration under this section unless the merger and acquisition broker:

1. Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction;

2. Engages on behalf of an issuer in a public offering of any class of securities which is registered, or which is required to be registered, with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., or with the office under s. 517.07;

or for which the issuer files, or is required to file, periodic information, documents, and reports under Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d);

3. Engages on behalf of any party in a transaction involving a public shell company;

4. Is subject to a suspension or revocation of registration under Section 15(b)(4) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(b)(4);

5. Is subject to a statutory disqualification described in Section 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78c(a)(39);

6. Is subject to a disqualification under U.S. Securities and Exchange Commission Rule 506(d), 17 C.F.R. s. 230.506(d); or

7. Is subject to a final order described in Section 15(b)(4)(H) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(b)(4)(H).

Section 3. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/13/16
Meeting Date

SB 286
Bill Number (if applicable)

Topic Waiving in Support of SB 286
Amendment Barcode (if applicable)

Name Ross Nobles

Job Title Chief Financial Officer, Office of Financial Regulation

Address Office of Financial Regulation, 101 E Gaines Street
Street
Tallahassee Florida 32399
City *State* *Zip*

Phone 850-410-9601

Email ross.nobles@flofr.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Office of Financial Regulation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/13/16
Meeting Date

SB 286
Bill Number (if applicable)

Topic Mergers & Acquisitions Broker Exemption

Amendment Barcode (if applicable)

Name Meredith Hinshelwood

Job Title Deputy Director of Governmental Relations

Address 200 East Gaines Street
Street

Phone (850) 410-9544

Tallahassee FL 32399
City *State* *Zip*

Email Meredith.Hinshelwood@flofr.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Office of Financial Regulation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

Committee Agenda Request

To: Senator Alan Hays, Chair
Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: December 2, 2015

I respectfully request that **Senate Bill #286**, relating to **Mergers and Acquisitions Brokers**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL:	PCS/CS/SB 372 (278904)
INTRODUCER:	Appropriations Subcommittee on General Government; Judiciary Committee; and Senator Lee
SUBJECT:	Administrative Procedures
DATE:	January 15, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	**Fav/CS**
2.	Davis	DeLoach	AGG	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

PCS/CS/SB 372 revises the Administrative Procedure Act, which governs agency rulemaking and decision making. The most significant changes to the act by the bill:

- Require an agency to commence and complete rulemaking activities generally within 180 days after it holds a public hearing on a petition to initiate rulemaking activities on an unadopted rule and choses to initiate rulemaking.
- Require the dissemination of additional notices of agency rulemaking activities on the Florida Administrative Register and through e-mails by an agency to its licensees and other interested persons.
- Authorize a person to challenge agency action by asserting that a rule or unadopted rule used as a basis for the agency's action is invalid.
- Require agencies to review their rules to identify rules the violation of which would constitute a minor violation and for which a notice of noncompliance will be the first enforcement action.

The bill has an indeterminate fiscal impact.

II. Present Situation:

Rulemaking and the Administrative Procedure Act

The Administrative Procedure Act (APA) in ch. 120, F.S., sets forth uniform procedures that agencies must follow when exercising rulemaking authority. A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency.[1] Rulemaking authority is delegated by the Legislature[2] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[3] a rule. Agencies do not have discretion whether to engage in rulemaking.[4] To adopt a rule, an agency must have a general grant of authority to implement a specific law through rulemaking.[5] The grant of rulemaking authority itself need not be detailed.[6] The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[7]

Petition to Initiate Rulemaking Directed to an Unadopted Rule

An agency may initiate rulemaking on its own or upon a petition to initiate rulemaking by a person regulated by the agency or having a substantial interest in an agency rule.[8] A petition to initiate rulemaking must specify the proposed rule and the action requested.[9] If the petition relates to an unadopted rule, the agency must initiate rulemaking within 30 days or hold a public hearing on the petition. The agency, if it does not initiate rulemaking or comply with the petition, must publish a statement of its reasons for not doing so in the Florida Administrative Register within 30 days after the hearing.

If an agency chooses to hold a hearing on the petition, the agency must consider public comments relating to the scope and application of the proposed rule and consider whether the public interest is adequately served by applying the rule on a case-by-case basis instead of a formally adopted rule. If the agency elects to pursue rulemaking after the hearing, it is not subject to any deadlines for commencing or completing the rulemaking process.

Attorney Fees

The Florida Equal Access to Justice Act is intended to diminish the deterrent effect of seeking review of, or defending against governmental actions.[10] Under the act, a small business that prevails in a legal action initiated by a state agency is entitled to attorney fees and costs if the

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[1] Section 120.52(16), F.S.; *Florida Dep't of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[2] *Southwest Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).
[3] Section 120.52(17), F.S.
[4] Section 120.54(1)(a), F.S.
[5] Sections 120.52(8) and 120.536(1), F.S.
[6] *Southwest Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594 at 599.
[7] *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008) (internal citations omitted); *Bd. of Trustees of the Internal Improvement Trust Fund v. Day Cruise Assoc., Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[8] Section 120.54, F.S.
[9] Section 120.54(7), F.S.
[10] Section 57.111, F.S.

actions of the agency were not substantially justified or special circumstances exist which would make the award unjust. An agency action is reasonably justified if it had a reasonable basis in law and fact at the time it was initiated by a state agency.

In addition to the special attorney fee provisions in the Equal Access to Justice Act, the APA authorizes the recovery of attorney fees when:

- A non-prevailing party has participated for an improper purpose;
- An agency's actions are not substantially justified;
- An agency relies upon an unadopted rule and is successfully challenged after 30 days' notice of the need to adopt rules; and
- An agency loses an appeal in a proceeding challenging an unadopted rule.[11]

An agency defense to attorney fees available in actions challenging agency statements defined as rules is that the agency did not know and should not have known that the agency statement was an unadopted rule. Additionally, attorney fees in such actions may be awarded only upon a finding that the agency received notice that the agency statement may constitute an unadopted rule at least 30 days before a petition challenging the agency statement is filed, and the agency fails to publish a notice of rulemaking within that 30 day period.[12]

The authorization for attorney fees in the Equal Access to Justice Act supplement other statutes authorizing attorney fees.[13]

Notice of Rules

Under current law, the Department of State (DOS) is required to publish the Florida Administrative Register on the Internet.[14] This document must contain:

- Notices relating to the adoption or repeal of a rule.
- Notices of public meetings, hearing, and workshops.
- Notices of requests for authorization to amend or repeal an existing rule or for the adoption of a new uniform rule.
- Notices of petitions for declaratory statements or administrative determinations.
- Summaries of objections to rules filed by the Administrative Procedures Committee.
- Other material required by law or deemed useful by the department.

Additionally, DOS allows users of its e-rulemaking website to subscribe to receive free e-mail notification of notices submitted by agencies.[15]

Burden of Proof

In general, laws carry a presumption of validity, and those challenging the validity of a law carry the burden of proving invalidity. The APA retains this presumption of validity by requiring those

[11] Section 120.595, F.S,
[12] Section 120.595(4)(b), F.S.
[13] See s. 120.595(6), F.S. (providing that a statute authorizing attorney fees in challenges to agency actions does not affect the availability of attorney fees and costs under other statutes including ss. 57.105, and 57.111, F.S.).
[14] Section 120.55, F.S.
[15] See Florida Department of State, Florida Administrative Code & Florida Administrative Register, *FLRules FAQ* at https://www.flrules.org/Help/newHelp.asp#sub (last visited Nov. 10, 2015).

challenging adopted rules to carry the burden of proving a rule's invalidity.[16] However, in the case of proposed rules, the APA places the burden on the agency to demonstrate the validity of the rule as proposed, once the challenger has raised specific objections to the rule's validity.[17] In addition, a rule may not be filed for adoption until any pending challenge is resolved.[18]

In the case of a statement or policy in force that was not adopted as a rule, a challenger must prove that the statement or policy meets the definition of a rule under the APA. If so, and if the statement or policy has not been validly adopted, the agency must prove that rulemaking is not feasible or practicable.[19]

Rulemaking is presumed feasible unless the agency proves that:

- The agency needs more time to obtain the knowledge and experience to reasonably address a statement by rulemaking.
- Related matters must be sufficiently resolved before the agency can engage in rulemaking.[20]

Additionally, rulemaking is presumed practicable unless the agency proves that:

- Detail or precision in the establishment of principles, criteria, or standards for agency decisions is not reasonable under the circumstances.
- The particular questions addressed are of such a narrow scope that more specific resolution of the matter is impractical outside of an adjudication based on individual circumstances.[21]

Proceedings Involving Rule Challenges

The APA presently applies different procedures in rule challenges when proposed rules, existing rules, and unadopted rules are challenged by petition, compared to a challenge to the validity of an existing rule, or an unadopted rule defensively in a proceeding initiated by agency action. In addition to the attorney fees awardable to small businesses under the Equal Access to Justice Act, the APA provides attorney fee awards when a party petitions for the invalidation of a rule or unadopted rule, but not when the same successful legal case is made in defense of an enforcement action or grant or denial of a permit or license.

The APA does provide that an administrative law judge with the Division of Administrative Hearings (DOAH) may determine that an agency has attempted to rely on an unadopted rule in proceedings initiated by agency action. However, this is qualified by a provision that an agency may overrule the DOAH determination if it's clearly erroneous. If the agency rejects the DOAH determination and is later reversed on appeal, the challenger is awarded attorney fees for the entire proceeding.[22] Additionally, in proceedings initiated by agency action, if a DOAH judge determines that a rule constitutes an invalid exercise of delegated legislative authority the agency has full de novo authority to reject or modify such conclusions of law, provided the final order states with particularity the reasons for rejecting or modifying the determination.[23]

[16] Section 120.56(3), F.S.
[17] Section 120.56(2), F.S.
[18] Section 120.54(3)(e)2., F.S.
[19] Section 120.56(4), F.S.
[20] Section 120.54(1)(a)1., F.S.
[21] Section 120.54(1)(a)2., F.S.
[22] Section 120.57(1)(e)3., F.S.
[23] Section 120.57(1)(k-l), F.S.

In proceedings initiated by a party challenging a rule or unadopted rule, the DOAH judge enters a final order that cannot be overturned by the agency. The only appeal is to the District Court of Appeal.

Final Orders

An agency has 90 days to render a final order in any proceeding, after the hearing if the agency conducts the hearing, or after the recommended order is submitted to the agency if DOAH conducts the hearing (excepting the rule challenge proceedings described above in which the DOAH judge enters the final order).

Judicial Review

A notice of appeal of an appealable order under the APA must be filed within 30 days after the rendering of the order.[24] An order, however, is rendered when filed with the agency clerk. On occasion, a party might not receive notice of the order in time to meet the 30 day appeal deadline. Under the current statute, a party may not seek judicial review of the validity of a rule by appealing its adoption, but the statute authorizes an appeal from a final order in a rule challenge.[25]

Minor Violations

The APA directs agencies to issue a "notice of noncompliance" as the first response when the agency encounters a first minor violation of a rule.[26] The law provides that a violation is a minor violation if it "does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm." Agencies are authorized to designate those rules for which a violation would be a minor violation. An agency's designation of rules under the provision is excluded from challenge under the APA but may be subject to review and revision by the Governor or Governor and Cabinet.[27] An agency under the direction of a cabinet officer has the discretion not to use the "notice of noncompliance" once each licensee is provided a copy of all rules upon issuance of a license, and annually thereafter.

Rules Ombudsman

Section 288.7015, F.S., requires the Governor to appoint a rules ombudsman in the Executive Office of the Governor, for considering the impact of agency rules on the state's citizens and businesses. The rules ombudsman must carry out the duties related to rule adoption procedures with respect to small businesses; review state agency rules that adversely or disproportionately impact businesses, particularly those relating to small and minority businesses; and make

[24] Section 120.68(2)(a), F.S.
[25] Section 120.68(9), F.S.
[26] Section 120.695, F.S. The statute contains the following legislative intent: "It is the intent of the Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it."
[27] Section 120.695(2)(c), (d), F.S. The statute provides for final review and revision of these agency designations to be at the discretion of elected constitutional officers.

recommendations on any existing or proposed rules to alleviate unnecessary or disproportionate adverse effects to business. Each state agency must cooperate fully with the rules ombudsman in identifying such rules, and take the necessary steps to waive, modify, or otherwise minimize such adverse effects of any such rules.

III. Effect of Proposed Changes:

Deadlines for Rulemaking Following Public Hearing on an Unadopted Rule (Section 1)

Under existing law, s. 120.54, F.S., there are no statutory deadlines for an agency to commence or complete rulemaking after a public hearing on a petition to initiate rulemaking which was directed to an unadopted rule. The bill requires an agency to commence the rulemaking process by publishing a notice of rule development within 30 days after the hearing and generally requires agencies to publish a notice of proposed rule within 180 days after the hearing.

Additionally, the bill prohibits an agency from relying on the unadopted rule during the rulemaking process following the public hearing unless the agency publishes in the Florida Administrative Register an explanation of why rulemaking is not feasible or practicable until the conclusion of the rulemaking proceeding. Under existing s. 120.54(1)(a), F.S., an agency's failure to engage in rulemaking is excusable if the agency proves that rulemaking is not feasible or practicable.[28]

Dissemination of Notices Rulemaking Activities (Section 2)

The bill adds the following to the list of items that must be published by the Department of State in the Florida Administrative Register:

- Notices of rule development and rule development workshops.
- Notices of negotiated rulemaking.
- A list of all rules filed for adoption within the previous seven days.
- A list of rules filed for legislative ratification.

The bill also requires agencies that provide an e-mail notification service to licensees and other registered recipients of notices to use that service to provide notice of the following rulemaking activities:

- Rule development and rule development workshops.
- Negotiated rulemaking.
- The intent to adopt, amend, or repeal a rule.
- Public hearings on a propose rule.
- Changes to a proposed rule.
- The withdrawal of a proposed rule.

The notices above must also include links to a website containing the proposed or final rule.

[28] The extent to which an agency's explanation or failure to provide an explanation may impact agency enforcement actions or challenges to an unadopted rule is not clear.

The bill further provides (lines 222-224) that the failure to comply with the requirements to publish notice of rulemaking activities may not be raised in a proceeding to challenge a rule. This statement effectively means that the violation of the publication requirements is not a legally sufficient ground for the invalidation of a rule.[29]

Rule Challenges (Section 3)

The bill revises several subsections of s. 120.56, F.S., which set forth the pleading requirements for a petition challenging a proposed, adopted, or unadopted rule. The changes made by the bill appear to be a rewording without any substantive changes, but the changes could be interpreted as a reduction in the pleading requirements for a person challenging a rule.[30]

General Procedures

Existing s. 120.56(1), F.S., which sets forth the general procedures for rule challenges, requires a person who challenges an agency rule or proposed rule as an invalid exercise of delegated legislative authority to file a petition stating:

> *with particularity* the provisions alleged to be invalid with *sufficient explanation* of the facts or grounds for the alleged invalidity and facts sufficient to show that the person challenging a rule is substantially affected by it, or that the person challenging a proposed rule would be substantially affected by it.

The bill revises s. 120.56(1), F.S., to refer to the "particular" provisions alleged to be invalid and a "statement," instead of a sufficient explanation, of the facts or grounds for the alleged invalidity. However, the bill still requires a petitioner to be substantially affected by a rule or proposed rule.

Special Provisions for Proposed Rules

Existing s. 120.56(2), F.S., which sets forth special provisions for challenges to proposed rules, requires the petition challenging a proposed rule to "*state with particularity* the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority." The statute further states that the "petitioner has the burden of going forward." Case law interpreted these provisions as imposing a burden on a party challenging a proposed rule to establish the factual basis for its objections to the rule.[31]

The bill replaces the particularity requirement in s. 120.56(2), F.S., with the general provisions in subsection (1) which require a petition challenging a proposed rule to include a statement of the facts or grounds for the alleged invalidity. Instead of a burden of going forward with the

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[29] *Compare* s. 120.56(1)(c), F.S., which states in part, "The failure of an agency to follow the applicable rulemaking procedures set forth in this chapter shall be presumed to be material."

[30] One argument that the deletion of the word "particularity" as it relates to the pleading requirements in a rule challenge, is a substantive change, not a rewording, is that the bill does not eliminate similar particularity requirements imposed on agencies in ss. 120.545, 120.569, 120.57, and 120.60, F.S.

[31] *St. Johns River Water Management Dist. v. Consolidated-Tamoka Land Co.* 717 So. 2d 72, 76-77 (Fla 1st DCA 1998) (superseded by statute on other grounds). Once the petitioner's burden is met, 'the agency has the ultimate burden of persuasion to show that the proposed rule is a valid exercise of delegated legislative authority." *Id.*

evidence supporting its objections, the bill provides that the petitioner has a burden "to prove by a preponderance of the evidence that it would be substantially affected by the proposed rule."

Challenges to Unadopted Rules

Existing s. 120.56(4), F.S., sets forth special provisions for challenges to unadopted rules. The subsection, requires a petition to "*state with particularity* facts sufficient to show that the statement constitutes" an unadopted rule. The bill deletes the words "with particularity" but still requires the petition to state sufficient facts.

Agency Decisions Based on an Unadopted Rule or Invalid Rule (Section 4)

Hearings Involving Disputed Facts

The bill expressly authorizes a person to challenge an agency action proposing to determine his or her substantial interests by asserting that the agency's action is based on an invalid rule or an unadopted rule. This challenge is subject to the procedures governing rule challenges. The bill also allows an administrative law judge to consolidate a rule challenge with a proceeding to determine a person's substantial interests.[32]

The consolidation of a rule challenge with a substantial interest proceeding will likely shorten the time period that would have been available for discovery activities.[33] Existing s. 120.56(1)(c), F.S., requires an administrative law judge to conduct a hearing on a rule challenge within 40 days after the filing of a petition challenging a rule, unless a continuance is granted for good cause shown. However, hearings on a petition to challenge an agency action to determine a person's substantial interests are not subject to a statutory deadline.[34]

The bill in its revisions to the law governing hearings involving disputed issues of fact also provides that a petition may pursue a separate rule challenge even if an adequate remedy exists in the hearing to determine the petitioner's substantial interests.[35]

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[32] Consolidation of proceedings is currently allowed under Rule 28-106.108 of the Florida Administrative Code which states:

> If there are separate matters which involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

[33] The consolidation of proceedings may also shorten time periods for the issuance of a final order. The final order in a rule challenge must be issued within 30 days after the hearing. Section 120.56(1)(d), F.S. The final order in a hearing under s. 120.57(1), F.S., that doesn't contain a rule challenge component is not due for at least 90 days after the hearing. Section 120.569(2)(l), F.S.

[34] Section 120.569(2)(o), F.S., describes the timeframes for a typical hearing under s. 120.57(1), F.S., as follows:

> On the request of any party, the administrative law judge shall enter an initial scheduling order to facilitate the just, speedy, and inexpensive determination of the proceeding. The initial scheduling order shall establish a discovery period, including a deadline by which all discovery shall be completed, and the date by which the parties shall identify expert witnesses and their opinions. The initial scheduling order also may require the parties to meet and file a joint report by a date certain.

[35] The bill, however, does not clearly indicate whether a person could assert both a rule challenge during a substantial interest hearing and during a separate rule challenge proceeding. The Legislature may wish to consider whether only one rule challenge proceeding should be authorized.

Hearings Not Involving Disputed Facts

Existing s. 120.57(2), F.S., provides additional procedures for hearings not involving disputed issues of material fact. The bill adds to that subsection a statement prohibiting an agency from basing its decisions on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. The prohibition, however, appears to be a restatement of the limits on an agency's authority as opposed to a new, substantive requirement.

Unlike the bill's changes to s. 120.57(1), F.S., the changes to s. 120.57(2), F.S., do not expressly authorize a person to challenge a rule or unadopted rule used as the basis of an agency's action.[36] Additionally, nothing in the bill appears to allow an administrative law judge to consolidate a rule challenge with a hearing before an agency hearing officer which does not involve disputed facts. As such, a person likely must file a separate rule challenge petition with the Division of Administrative Hearings to assert the invalidity of a rule or unadopted rule that an agency is using as a basis for an agency decision in a proceeding not involving disputed facts.

Judicial Review (Section 5)

Existing s. 120.68, F.S., sets forth a person's rights to seek judicial review of final agency action and other preliminary, procedural, or intermediate orders of an agency or administrative law judge. The revisions by section 5 of the bill authorize a person to seek judicial review of orders resolving a challenge to a rule during a substantial interest hearing involving a disputed issue of material fact and a similar order issued during a hearing not involving a disputed issue of material fact.

Section 4 of the bill expressly authorizes a person to assert a rule challenge during a substantial interest hearing involving a disputed issue of material fact, which is a hearing under s. 120.57(1), F.S., and provides procedures for raising and adjudicating those challenges. However, the bill does not provide similar procedures for a rule challenge raised during a hearing not involving a disputed issue of material fact under s. 120.57(2), F.S. As a result, how a rule challenge will be raised and resolved during a hearing under s. 120.57(2), F.S., is not clear. The lack of procedures for raising and resolving a rule challenge during a hearing under s. 120.57(2), F.S., implies that section 5 gives appellate courts jurisdiction over a rule challenge raised for the first time during the appeal of an order from a hearing conducted under s. 120.57(2), F.S.

Minor Rule Violations (Section 6)

Existing s. 120.695, F.S., required most agencies to review their rules and designate those for which a violation would be a minor violation and for which a notice of noncompliance must be the first enforcement action taken. This review was required to have been completed by December 1, 1995, for some agencies and by January 1, 1996, for other agencies. The bill requires agencies to perform a similar review by June 30, 2017, and within 3 months after a request by the rules ombudsman in the Executive Office of the Governor. Similarly, for each rule

[36] Although s. 120.57(2), F.S., as amended by the bill, does not expressly authorize a rule challenge in a proceeding not involving a disputed issue of material fact, section 5 of the bill suggests that the bill may have been intended to allow those challenges. Section 5 allows a person to seek judicial review of an order issued under s. 120.57(2)(b), F.S., resulting from a rule challenge. If the Legislature intends to allow rule challenges under s. 120.57(2)(b), F.S., it may wish to set forth additional procedures governing those challenges.

filed for adoption, an agency head must certify whether a violation of the rule constitutes a minor rule violation.

Each agency must publish a list of all rules the violation of which is a minor violation on their websites and incorporate them in their disciplinary guidelines adopted as a rule. Agencies must also ensure that their investigative and enforcement personnel are knowledgeable about minor rule violations.

Technical Changes (Section 7)

Section 7 makes a technical change conforming a cross-reference to other changes made by the bill.

Effective Date (Section 8)

The bill takes effect July 1, 2016.

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:

PCS/CS/SB 372, if interpreted as lowering the pleading requirements for a rule challenge petition, may facilitate challenges to agency rules by persons regulated or substantially affected by agency actions. However, the bill may simplify the resolution of disputes by expressly authorizing the consolidation of rule challenges and substantial interest hearings under s. 120.57(1), F.S.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact. The bill may require some additional workload on state agencies and a minimal increase in expenditures related to state

agencies filing more frequently in the Florida Administrative Register, email notifications, and publications on the agency's website. However, the impact is likely insignificant and can be absorbed within existing resources.

In addition, this bill, if interpreted as lowering the pleading requirements for a rule challenge petition, may facilitate challenges to agency rules by persons regulated or substantially affected by agency actions, which would have an indeterminate fiscal impact resulting from additional litigation and costs.

VI. Technical Deficiencies:

There are several potentially ambiguous provisions in this bill, all of which are noted in the Effect of Proposed Changes section of this bill analysis.

VII. Related Issues:

After the 2015 Session, Governor Scott vetoed HB 435 (2015), relating to administrative procedures. The Governor explained the basis of his objections as follows:

> This bill alters the long-standing deference granted to agencies by shifting final action authority to an administrative law judge. This change has the potential to result in prolonged litigation impeding an agency's ability to perform core functions like sanctioning bad actors and protecting public health and safety. These changes create a situation that could paralyze agency rulemaking, delay enforcement actions, and create a backlog of court cases at an increased cost to the taxpayer.[37]

Although the bill has some commonality with HB 435 (2015), it does not contain the provisions that would have shifted final action authority from an agency to an administrative law judge.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.54, 120.55, 120.56, 120.57, 120.68, 120.695, and 120.595.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on January 13, 2016:
Makes two technical changes. The bill prohibits an agency from relying on an unadopted rule during the rulemaking process following the public hearing unless the agency publishes in the Florida Administrative Register an explanation of why rulemaking was not feasible or practicable before the hearing. The first technical amendment requires a

[37] Veto of Fla. CS for CS for CS for HB 435 (2015) (letter from Gov. Rick Scott to Sec'y of State Kenneth W. Detzner, June 16, 2015) *available at* http://www.flgov.com/wp-content/uploads/2015/06/Transmittal-Letter-6.16.15-HB-435.pdf.

published explanation of why rulemaking is not feasible or practicable until the conclusion of the rulemaking hearing. The second technical amendment corrects a cross reference in the bill.

CS by Judiciary on November 17, 2015:
The changes to s. 120.57(2), F.S., made by the committee substitute, may lower the pleading requirements for a challenge to a proposed agency rule. Under the amendment, a petitioner must prove by the preponderance of the evidence that the petitioner would be substantially affected by the proposed rule. In contrast, the underlying bill provided that the petitioner had the burden of going forward with evidence sufficient to support the rule challenge petition, which appeared to relate to the petitioner's factual basis for its objections to the proposed rule.

B. Amendments:

None.

970140

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/13/2016	.	
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Appropriations Subcommittee on General Government (Lee) recommended the following:

Senate Amendment

Delete lines 77 - 78
and insert:
explaining why rulemaking under paragraph (1)(a) is not feasible or practicable until the conclusion of the rulemaking proceeding.

933300

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/13/2016	.	
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	.	

Appropriations Subcommittee on General Government (Lee) recommended the following:

Senate Amendment

Delete line 396
and insert:
procedures set forth in s. 120.56(1)(b).

112484

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/13/2016	.	
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	.	
	.	

Appropriations Subcommittee on General Government (Lee) recommended the following:

Senate Amendment (with title amendment)

Between lines 596 and 597
insert:

Section 7. Section 403.8141, Florida Statutes, is amended to read:

403.8141 Special event permits.—

(1) The department shall issue permits for special events under s. 253.0345. The permits must be for a period that runs concurrently with the lease or letter of consent issued pursuant

112484

to s. 253.0345 and must allow for the movement of temporary structures within the footprint of the lease area.

(2) Administrative challenges to any proposed regulatory permits related to special events, which temporarily preempt use of sovereign submerged lands for the purpose of facilitating boat shows or include the installation of temporary structures such as docks, moorings, pilings, or access walkways for the purpose of facilitating boat shows, are subject to the summary hearing provisions of s. 120.574, except that the summary proceeding must be conducted within 30 days after a party files a motion for a summary hearing, regardless of whether the parties agree to the summary proceeding.

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

And the title is amended as follows:

Delete line 38

and insert:

notice; providing applicability; amending s. 403.8141, F.S.; specifying that administrative challenges to proposed special event permits are subject to summary hearing procedures; amending s. 120.595,

By the Committee on Judiciary; and Senator Lee

590-01328-16 2016372c1

A bill to be entitled

An act relating to administrative procedures; amending s. 120.54, F.S.; providing procedures for agencies to follow when initiating rulemaking after certain public hearings; limiting reliance upon an unadopted rule in certain circumstances; amending s. 120.55, F.S.; providing for publication of notices of rule development and of rules filed for adoption; providing for additional notice of rule development, proposals, and adoptions in the Florida Administrative Register; requiring certain agencies to provide additional e-mail notifications concerning specified rulemaking and rule development activities; providing that failure to follow certain provisions does not constitute grounds to challenge validity of a rule; amending s. 120.56, F.S.; clarifying language regarding challenges to rules; specifying the petitioner's burden of proof in proposed rule challenges; amending s. 120.57, F.S.; conforming proceedings that oppose agency action based on an invalid or unadopted rule to proceedings used for challenging rules; authorizing the administrative law judge to make certain findings on the validity of certain alleged unadopted rules; authorizing a petitioner to file certain collateral challenges regarding the validity of a rule; authorizing the administrative law judge to consolidate proceedings in such rule challenges; providing that agency action may not be based on an invalid or unadopted rule; amending s. 120.68, F.S.; specifying legal authority to file a

590-01328-16 2016372c1

petition challenging an agency rule as an invalid exercise of delegated legislative authority; amending s. 120.695, F.S.; removing obsolete provisions with respect to required agency review and designation of minor violations; requiring agency review and certification of minor violation rules by a specified date; requiring minor violation certification for all rules adopted after a specified date; requiring public notice; providing applicability; amending s. 120.595, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Paragraph (c) of subsection (7) of section 120.54, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

120.54 Rulemaking.—

(7) PETITION TO INITIATE RULEMAKING.—

(c) If the agency does not initiate rulemaking or otherwise comply with the requested action within 30 days after ~~following~~ the public hearing provided for in ~~by~~ paragraph (b), ~~if the agency does not initiate rulemaking or otherwise comply with the requested action,~~ the agency shall publish in the Florida Administrative Register a statement of its reasons for not initiating rulemaking or otherwise complying with the requested action~~,~~ and of any changes it will make in the scope or application of the unadopted rule. The agency shall file the statement with the committee. The committee shall forward a copy

of the statement to the substantive committee with primary oversight jurisdiction of the agency in each house of the Legislature. The committee or the committee with primary oversight jurisdiction may hold a hearing directed to the statement of the agency. The committee holding the hearing may recommend to the Legislature the introduction of legislation making the rule a statutory standard or limiting or otherwise modifying the authority of the agency.

(d) If the agency initiates rulemaking after the public hearing provided for in paragraph (b), the agency shall publish a notice of rule development within 30 days after the hearing and file a notice of proposed rule within 180 days after the notice of rule development unless, before the 180th day, the agency publishes in the Florida Administrative Register a statement explaining its reasons for not having filed the notice. If rulemaking is initiated under this paragraph, the agency may not rely on the unadopted rule unless the agency publishes in the Florida Administrative Register a statement explaining why rulemaking under paragraph (1)(a) was not previously feasible or practicable before the public hearing.

Section 2. Section 120.55, Florida Statutes, is amended to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on a ~~an Internet~~ website managed by the department, the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the

specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department may contract with a publishing firm for a printed publication; however, the department shall retain responsibility for the code as provided in this section. The electronic publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its

dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

5. The department shall allow adopted rules and material incorporated by reference to be filed in electronic form as prescribed by department rule. When a rule is filed for adoption with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its ~~Internet~~ website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

(b) Electronically publish on a ~~an Internet~~ website managed by the department a continuous revision and publication entitled the "Florida Administrative Register," which shall serve as the official publication and must contain:

1. All notices required by s. 120.54(2) and (3)(a) ~~120.54(3)(a)~~, showing the text of all rules proposed for consideration.

2. All notices of public meetings, hearings, and workshops conducted in accordance with s. 120.525, including a statement of the manner in which a copy of the agenda may be obtained.

3. A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules.

4. Notice of petitions for declaratory statements or administrative determinations.

5. A summary of each objection to any rule filed by the Administrative Procedures Committee.

6. A list of rules filed for adoption in the previous 7 days.

7. A list of all rules filed for adoption pending legislative ratification under s. 120.541(3). A rule shall be removed from the list once notice of ratification or withdrawal of the rule is received.

8.~~6.~~ Any other material required or authorized by law or deemed useful by the department.

The department may contract with a publishing firm for a printed publication of the Florida Administrative Register and make copies available on an annual subscription basis.

(c) Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing.

(d) Charge each agency using the Florida Administrative Register a space rate to cover the costs related to the Florida

Administrative Register and the Florida Administrative Code.

(e) Maintain a permanent record of all notices published in the Florida Administrative Register.

(2) The Florida Administrative Register ~~Internet~~ website must allow users to:

(a) Search for notices by type, publication date, rule number, word, subject, and agency.

(b) Search a database that makes available all notices published on the website for a period of at least 5 years.

(c) Subscribe to an automated e-mail notification of selected notices to be sent out before or concurrently with publication of the electronic Florida Administrative Register. Such notification must include in the text of the e-mail a summary of the content of each notice.

(d) View agency forms and other materials submitted to the department in electronic form and incorporated by reference in proposed rules.

(e) Comment on proposed rules.

(3) Publication of material required by paragraph (1)(b) on the Florida Administrative Register ~~Internet~~ website does not preclude publication of such material on an agency's website or by other means.

(4) Each agency shall provide copies of its rules upon request, with citations to the grant of rulemaking authority and the specific law implemented for each rule.

(5) Each agency that provides an e-mail notification service to inform licensees or other registered recipients of notices shall use that service to notify recipients of each notice required under s. 120.54(2) and (3) and provide Internet

links to the appropriate rule page on the Secretary of State's website or Internet links to an agency website that contains the proposed rule or final rule.

(6)~~(5)~~ Any publication of a proposed rule promulgated by an agency, whether published in the Florida Administrative Register or elsewhere, shall include, along with the rule, the name of the person or persons originating such rule, the name of the agency head who approved the rule, and the date upon which the rule was approved.

(7)~~(6)~~ Access to the Florida Administrative Register ~~Internet~~ website and its contents, including the e-mail notification service, shall be free for the public.

(8)~~(7)~~(a) All fees and moneys collected by the Department of State under this chapter shall be deposited in the Records Management Trust Fund for the purpose of paying for costs incurred by the department in carrying out this chapter.

(b) The unencumbered balance in the Records Management Trust Fund for fees collected pursuant to this chapter may not exceed $300,000 at the beginning of each fiscal year, and any excess shall be transferred to the General Revenue Fund.

(9) The failure to comply with this section may not be raised in a proceeding challenging the validity of a rule pursuant to s. 120.52(8)(a).

Section 3. Subsection (1), paragraph (a) of subsection (2), paragraph (a) of subsection (3), and subsection (4) of section 120.56, Florida Statutes, are amended to read:

120.56 Challenges to rules.—

(1) GENERAL PROCEDURES ~~FOR CHALLENGING THE VALIDITY OF A RULE OR A PROPOSED RULE~~.—

(a) Any person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.

(b) The petition challenging the validity of a proposed or adopted rule under this section ~~seeking an administrative determination~~ must state: ~~with particularity~~

1. The particular provisions alleged to be invalid and a statement ~~with sufficient explanation~~ of the facts or grounds for the alleged invalidity. ~~and~~

2. Facts sufficient to show that the petitioner ~~person challenging a rule~~ is substantially affected by the challenged adopted rule ~~it,~~ or ~~that the person challenging a proposed rule~~ would be substantially affected by the proposed rule ~~it~~.

(c) The petition shall be filed by electronic means with the division which shall, immediately upon filing, forward by electronic means copies to the agency whose rule is challenged, the Department of State, and the committee. Within 10 days after receiving the petition, the division director shall, if the petition complies with ~~the requirements of~~ paragraph (b), assign an administrative law judge who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties or for good cause shown. Evidence of good cause includes, but is not limited to, written notice of an agency's decision to modify or withdraw the proposed rule or a written notice from the chair of the committee stating that the committee will consider an objection to the rule at its next scheduled meeting. The failure of an agency to follow the applicable rulemaking procedures or

requirements set forth in this chapter shall be presumed to be material; however, the agency may rebut this presumption by showing that the substantial interests of the petitioner and the fairness of the proceedings have not been impaired.

(d) Within 30 days after the hearing, the administrative law judge shall render a decision and state the reasons for his or her decision ~~therefor~~ in writing. The division shall forthwith transmit by electronic means copies of the administrative law judge's decision to the agency, the Department of State, and the committee.

(e) Hearings held under this section shall be de novo in nature. The standard of proof shall be the preponderance of the evidence. Hearings shall be conducted in the same manner as provided by ss. 120.569 and 120.57, except that the administrative law judge's order shall be final agency action. The petitioner and the agency whose rule is challenged shall be adverse parties. Other substantially affected persons may join the proceedings as intervenors on appropriate terms which shall not unduly delay the proceedings. Failure to proceed under this section does ~~shall~~ not constitute failure to exhaust administrative remedies.

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

(a) A ~~substantially affected person may seek an administrative determination of the invalidity of a proposed rule by filing a~~ petition alleging the invalidity of a proposed rule shall be filed ~~seeking such a determination with the division~~ within 21 days after the date of publication of the notice required by s. 120.54(3)(a); within 10 days after the final public hearing is held on the proposed rule as provided by

s. 120.54(3)(e)2.; within 20 days after the statement of estimated regulatory costs or revised statement of estimated regulatory costs, if applicable, has been prepared and made available as provided in s. 120.541(1)(d); or within 20 days after the date of publication of the notice required by s. 120.54(3)(d). ~~The petition must state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority.~~ The petitioner has the burden to prove by a preponderance of the evidence that it would be substantially affected by the proposed rule ~~of going forward~~. The agency then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised. ~~A person who is substantially affected by a change in the proposed rule may seek a determination of the validity of such change.~~ A person who is not substantially affected by the proposed rule as initially noticed, but who is substantially affected by the rule as a result of a change, may challenge any provision of the resulting proposed rule ~~and is not limited to challenging the change to the proposed rule~~.

(3) CHALLENGING ~~EXISTING~~ RULES IN EFFECT; SPECIAL PROVISIONS.—

(a) A petition alleging ~~substantially affected person may seek an administrative determination of~~ the invalidity of an existing rule may be filed at any time during which the ~~existence of the~~ rule is in effect. The petitioner has the ~~a~~ burden of proving by a preponderance of the evidence that the existing rule is an invalid exercise of delegated legislative

authority as to the objections raised.

(4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED RULES; SPECIAL PROVISIONS.—

(a) Any person substantially affected by an agency statement that is an unadopted rule may seek an administrative determination that the statement violates s. 120.54(1)(a). The petition shall include the text of the statement or a description of the statement and shall state ~~with particularity~~ facts sufficient to show that the statement constitutes an unadopted ~~a~~ rule ~~under s. 120.52 and that the agency has not adopted the statement by the rulemaking procedure provided by s. 120.54~~.

(b) The administrative law judge may extend the hearing date beyond 30 days after assignment of the case for good cause. Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3), such notice shall automatically operate as a stay of proceedings pending adoption of the statement as a rule. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings pending rulemaking shall remain in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule.

(c) If a hearing is held and the petitioner proves the allegations of the petition, the agency shall have the burden of proving that rulemaking is not feasible or not practicable under s. 120.54(1)(a).

(d) ~~(c)~~ The administrative law judge may determine whether all or part of a statement violates s. 120.54(1)(a). The

decision of the administrative law judge shall constitute a final order. The division shall transmit a copy of the final order to the Department of State and the committee. The Department of State shall publish notice of the final order in the first available issue of the Florida Administrative Register.

(e) ~~(d)~~ If an administrative law judge enters a final order that all or part of an unadopted rule ~~agency statement~~ violates s. 120.54(1)(a), the agency must immediately discontinue all reliance upon the unadopted rule ~~statement~~ or any substantially similar statement as a basis for agency action.

(f) ~~(e)~~ If proposed rules addressing the challenged unadopted rule ~~statement~~ are determined to be an invalid exercise of delegated legislative authority as defined in s. 120.52(8)(b)-(f), the agency must immediately discontinue reliance upon ~~on~~ the unadopted rule ~~statement~~ and any substantially similar statement until rules addressing the subject are properly adopted, and the administrative law judge shall enter a final order to that effect.

(g) ~~(f)~~ All proceedings to determine a violation of s. 120.54(1)(a) shall be brought pursuant to this subsection. A proceeding pursuant to this subsection may be consolidated with a proceeding under subsection (3) or under any other section of this chapter. This paragraph does not prevent a party whose substantial interests have been determined by an agency action from bringing a proceeding pursuant to s. 120.57(1)(e).

Section 4. Paragraphs (e) and (h) of subsection (1) and subsection (2) of section 120.57, Florida Statutes, are amended to read:

120.57 Additional procedures for particular cases.—

(1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—

(e)1. An agency or an administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. ~~The administrative law judge shall determine whether an agency statement constitutes an unadopted rule.~~ This subparagraph does not preclude application of valid adopted rules and applicable provisions of law to the facts.

2. In a matter initiated as a result of agency action proposing to determine the substantial interests of a party, the party's timely petition for hearing may challenge the proposed agency action based on a rule that is an invalid exercise of delegated legislative authority or based on an alleged unadopted rule. For challenges brought under this subparagraph:

a. The challenge may be pled as a defense using the procedures set forth in s. 120.56(1).

b. Section 120.56(3)(a) applies to a challenge alleging that a rule is an invalid exercise of delegated legislative authority.

c. Section 120.56(4)(c) applies to a challenge alleging an unadopted rule.

d. This subparagraph does not preclude the consolidation of any proceeding under s. 120.56 with any proceeding under this paragraph.

3. ~~2.~~ Notwithstanding subparagraph 1., if an agency demonstrates that the statute being implemented directs it to

adopt rules, that the agency has not had time to adopt those rules because the requirement was so recently enacted, and that the agency has initiated rulemaking and is proceeding expeditiously and in good faith to adopt the required rules, then the agency's action may be based upon those unadopted rules if~~, subject to de novo review by~~ the administrative law judge determines that rulemaking is neither feasible nor practicable and the unadopted rules would not constitute an invalid exercise of delegated legislative authority if adopted as rules. An unadopted rule ~~The agency action~~ shall not be presumed valid ~~or invalid~~. The agency must demonstrate that the unadopted rule:

a. Is within the powers, functions, and duties delegated by the Legislature or, if the agency is operating pursuant to authority vested in the agency by ~~derived from~~ the State Constitution, is within that authority;

b. Does not enlarge, modify, or contravene the specific provisions of law implemented;

c. Is not vague, establishes adequate standards for agency decisions, or does not vest unbridled discretion in the agency;

d. Is not arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational;

e. Is not being applied to the substantially affected party without due notice; and

f. Does not impose excessive regulatory costs on the regulated person, county, or city.

4.~~3.~~ The recommended and final orders in any proceeding shall be governed by ~~the provisions of~~ paragraphs (k) and (l),

except that the administrative law judge's determination regarding an unadopted rule under subparagraph 1. or subparagraph 2. shall not be rejected by the agency unless the agency first determines from a review of the complete record, and states with particularity in the order, that such determination is clearly erroneous or does not comply with essential requirements of law. In any proceeding for review under s. 120.68, if the court finds that the agency's rejection of the determination regarding the unadopted rule does not comport with ~~the provisions of~~ this subparagraph, the agency action shall be set aside and the court shall award to the prevailing party the reasonable costs and a reasonable attorney ~~attorney's~~ fee for the initial proceeding and the proceeding for review.

5. A petitioner may pursue a separate, collateral challenge under s. 120.56 even if an adequate remedy exists through a proceeding under this section. The administrative law judge may consolidate the proceedings.

(h) Any party to a proceeding in which an administrative law judge ~~of the Division of Administrative Hearings~~ has final order authority may move for a summary final order when there is no genuine issue as to any material fact. A summary final order shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order. A summary final order shall consist of findings of fact, if any, conclusions of law, a disposition or penalty, if

applicable, and any other information required by law to be contained in the final order.

(2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which subsection (1) does not apply:

(a) The agency shall:

1. Give reasonable notice to affected persons of the action of the agency, whether proposed or already taken, or of its decision to refuse action, together with a summary of the factual, legal, and policy grounds therefor.

2. Give parties or their counsel the option, at a convenient time and place, to present to the agency or hearing officer written or oral evidence in opposition to the action of the agency or to its refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction.

3. If the objections of the parties are overruled, provide a written explanation within 7 days.

(b) An agency may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority.

(c) ~~(b)~~ The record shall only consist of:

1. The notice and summary of grounds.

2. Evidence received.

3. All written statements submitted.

4. Any decision overruling objections.

5. All matters placed on the record after an ex parte communication.

6. The official transcript.

7. Any decision, opinion, order, or report by the presiding officer.

Section 5. Subsections (1) and (9) of section 120.68, Florida Statutes, are amended to read:

120.68 Judicial review.—

(1)(a) A party who is adversely affected by final agency action is entitled to judicial review.

(b) A preliminary, procedural, or intermediate order of the agency or of an administrative law judge of the Division of Administrative Hearings is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(9) A ~~No~~ petition challenging an agency rule as an invalid exercise of delegated legislative authority shall not be instituted pursuant to this section, except to review an order entered pursuant to a proceeding under s. 120.56, s. 120.57(1)(e)1., or s. 120.57(2)(b) or an agency's findings of immediate danger, necessity, and procedural fairness prerequisite to the adoption of an emergency rule pursuant to s. 120.54(4), unless the sole issue presented by the petition is the constitutionality of a rule and there are no disputed issues of fact.

Section 6. Section 120.695, Florida Statutes, is amended to read:

120.695 Notice of noncompliance; designation of minor violation of rules.—

(1) It is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established by the Legislature. Fines and other

penalties may be provided in order to assure compliance; however, the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance with an agency's rules. It is the intent of the Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it.

(2)(a) Each agency shall issue a notice of noncompliance as a first response to a minor violation of a rule. A "notice of noncompliance" is a notification by the agency charged with enforcing the rule issued to the person or business subject to the rule. A notice of noncompliance may not be accompanied with a fine or other disciplinary penalty. It must identify the specific rule that is being violated, provide information on how to comply with the rule, and specify a reasonable time for the violator to comply with the rule. A rule is agency action that regulates a business, occupation, or profession, or regulates a person operating a business, occupation, or profession, and that, if not complied with, may result in a disciplinary penalty.

(b) Each agency shall review all of its rules and designate those for which a violation would be a minor violation and for which a notice of noncompliance must be the first enforcement action taken against a person or business subject to regulation. A violation of a rule is a minor violation if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat

of such harm. ~~If an agency under the direction of a cabinet officer mails to each licensee a notice of the designated rules at the time of licensure and at least annually thereafter, the provisions of paragraph (a) may be exercised at the discretion of the agency. Such notice shall include a subject matter index of the rules and information on how the rules may be obtained.~~

(c)1. No later than June 30, 2017, and after such date within 3 months after any request of the rules ombudsman in the Executive Office of the Governor, ~~The agency's review and designation must be completed by December 1, 1995;~~ each agency shall review ~~under the direction of the Governor shall make a report to the Governor, and each agency under the joint direction of the Governor and Cabinet shall report to the Governor and Cabinet by January 1, 1996, on which of~~ its rules and certify to the President of the Senate, the Speaker of the House of Representatives, the committee, and the rules ombudsman those rules that have been designated as rules the violation of which would be a minor violation under paragraph (b), consistent with the legislative intent stated in subsection (1).

2. Beginning July 1, 2017, each agency shall:

a. Publish all rules that the agency has designated as rules the violation of which would be a minor violation, either as a complete list on the agency's website or by incorporation of the designations in the agency's disciplinary guidelines adopted as a rule.

b. Ensure that all investigative and enforcement personnel are knowledgeable about the agency's designations under this section.

3. For each rule filed for adoption, the agency head shall

certify whether any part of the rule is designated as a rule the violation of which would be a minor violation and shall update the listing required by sub-subparagraph 2.a.

(d) The Governor or the Governor and Cabinet, as appropriate ~~pursuant to paragraph (c)~~, may evaluate the review and designation effects of each agency subject to the direction and supervision of such authority and may direct ~~apply~~ a different designation than that applied by such ~~the~~ agency.

(e) Notwithstanding s. 120.52(1)(a), this section does not apply to:

1. The Department of Corrections;

2. Educational units;

3. The regulation of law enforcement personnel; or

4. The regulation of teachers.

(f) Designation pursuant to this section is not subject to challenge under this chapter.

Section 7. Paragraph (a) of subsection (4) of section 120.595, Florida Statutes, is amended to read:

120.595 Attorney's fees.—

(4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION 120.56(4).—

(a) If the appellate court or administrative law judge determines that all or part of an agency statement violates s. 120.54(1)(a), or that the agency must immediately discontinue reliance on the statement and any substantially similar statement pursuant to s. 120.56(4)(f) ~~s. 120.56(4)(c)~~, a judgment or order shall be entered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that the statement is required by the

Federal Government to implement or retain a delegated or approved program or to meet a condition to receipt of federal funds.

Section 8. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Appropriations Subcommittee on General Government
Banking and Insurance
Reapportionment
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission, *Alternating Chair*

SENATOR TOM LEE
24th District

November 17, 2015

The Honorable Alan Hays
Senate Appropriations Subcommittee on General Government, Chair
320 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Hays,

I respectfully request that SB 372 related to *Administrative Procedures,* be placed on the Senate Appropriations Subcommittee on General Government agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Tom Lee
Senator, District 24

Cc: Jamie DeLoach, Staff Director

REPLY TO:
❒ 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
❒ 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL:	SB 374
INTRODUCER:	Senator Montford
SUBJECT:	State-leased Space
DATE:	January 12, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	**Favorable**
2.	Davis	DeLoach	AGG	**Recommend: Favorable**
3.			AP	

I. Summary:

SB 374 eliminates the requirement that the Department of Management Services (DMS) adopt a rule requiring that any lease agreement for private property must contain a clause allowing the lessee state agency to terminate the lease agreement if state-owned property becomes available to the lessee state agency and the state agency gives six months' advance written notice of termination. Under current law, this requirement may not be amended, supplemented, or waived by contract.

The DMS retains the authority to promulgate or maintain the same or similar rule if the DMS deems it to be an acceptable term and condition for lease agreements.

SB 374 provides that the bill does not impair or restrict the terms and conditions of lease agreements entered into by a state agency before July 1, 2016.

The bill has an indeterminate fiscal impact.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Leasing and Department of Management Services (DMS) Authority

The DMS Facilities Program, also called the Division of Real Estate Development and Management (REDM), is responsible for the overall management of the Florida Facilities Pool, as well as other facilities and structures the DMS has been given responsibility to manage.[1] The State of Florida owns 20,199 facilities, including facilities owned by state agencies, the Florida

[1] *See* http://www.dms.myflorida.com/business_operations/real_estate_development_and_management (last visited on October 28, 2015).

College System, the State University System of Florida, and water management districts.[2] The DMS manages 109 facilities in the Florida Facilities Pool, and five federal surplus property facilities.[3] The DMS also contracts for seven private correctional facilities and 11 Division of Telecommunications equipment buildings.[4] The Bureau of Leasing within the REDM administers public and private leasing and ensures that leases are in the best interests of the state.[5]

As of June 30, 2015:

Lease Type	Lease Count	Square Footage (SF)	Percent of Total Lease Space (SF)	Annual Rent
Government	324	961,828	7%	$4,448,295.35
Private	794	6,466,501	48%	$125,176,825.89
Public	302	6,070,907	45%	$99,032,316.70
Grand Total	1,420	13,499,236	100%	$228,657,437.94

According to the DMS 2015 Master Leasing Report,[6] the state leases approximately 13.5 million square feet with an annual rent of $228 million, of which 6.4 million square feet is in 794 private sector leases, with an annual rent of $125 million.

Chapter 255, F.S., provides the statutory authority for the DMS to manage and operate the Florida Facilities Pool and specifies the oversight role the DMS has in the leasing of privately owned space. Except as provided in ss. 255.249[7] and 255.2501,[8] F.S., a state agency may not lease a building or any part thereof unless prior approval of the lease conditions and the need for the lease is first obtained from the DMS.[9]

The DMS has the authority to approve leases of greater than 5,000 square feet that cover more than 12 consecutive months, if such lease is, in the judgment of the DMS, in the best interests of the state.[10] Except as provided for emergency space needs,[11] no state agency may enter into a

[2] DMS Master Leasing Report 2015, *available at* http://www.dms.myflorida.com/content/download/118552/650855/2015_Master_Leasing_reportpdf.pdf (last visited on October 28, 2015).
[3] *Id*.
[4] *Id.*
[5] *See* http://www.dms.myflorida.com/business_operations/real_estate_development_and_management (last visited on October 28, 2015).
[6] DMS Master Leasing Report 2015, *available at* http://www.dms.myflorida.com/content/download/118552/650855/2015_Master_Leasing_reportpdf.pdf (last visited on October 28, 2015).
[7] Section 255.249(5), F.S. DMS may direct a state agency to occupy, or relocate to, space in any state-owned office building, including all state-owned space identified in the Florida State-Owned Lands and Record Information System managed by the Department of Environmental Protection.
[8] Section 255.2501, F.S. Lease of space financed with local government obligations under specified conditions.
[9] Section 255.25(2), F.S.
[10] Section 225.25(3)(b), F.S.
[11] Section 255.25(10), F.S., provides that the DMS may approve emergency acquisition of space without competitive bids if existing state-owned or state-leased space is destroyed or rendered uninhabitable by an act of God, fire, malicious destruction, structural failure, or by legal action, if the chief administrator of the state agency or designated representative certifies that no other agency-controlled space is available to meet this emergency need, but in no case shall the lease for such space exceed 11 months.

lease as lessee for the use of 5,000 square feet or more of space in a privately owned building except upon advertisement for and receipt of competitive solicitations.[12]

Section 255.249(9)(b), F.S., requires the DMS to promulgate rules to provide procedures for: soliciting and accepting competitive proposals for leased space of 5,000 square feet or more in privately owned buildings; evaluating the proposals received; exempting from competitive bidding requirements any lease the purpose of which is the provision of care and living space for persons or emergency space needs as provided in s. 255.25(10), F.S.; and the securing of at least three documented quotes for a lease that is not required to be competitively bid.

For the lease of less than 5,000 square feet of space, including space leased for nominal or no consideration, a state agency must notify the DMS at least 90 days before the execution of the lease.[13] The DMS must review the lease and determine whether suitable space is available in a state-owned or state-leased building located in the same geographic region.[14] If space is not available, the DMS must determine whether the proposed lease is in the best interests of the state.[15] If the DMS determines that the lease is not in the best interests of the state, the DMS must notify the agency proposing the lease, the Governor, the President of the Senate, and the Speaker of the House of Representatives of such finding in writing.[16]

Section 255.249(9)(j), F.S., requires the DMS to promulgate rules for a leased of less than 5,000 square feet; a method for certification by the agency head or the agency head's designated representative that all criteria for leasing have been fully complied with and for filing a copy of such lease with all supporting documents with the DMS for its review and approval as to technical sufficiency and whether such lease is in the best interest of the state.

Section 255.249(11), F.S., authorizes the DMS to contract for a tenant broker or real estate consultant to assist with carrying out its responsibilities.[17] The DMS is required to annually publish a master leasing report that includes its required strategic leasing plan and to submit this report to the Governor and the Legislature by October 1st of each year.[18] The report must contain analyses and other information on the status of state-owned facilities and private sector leased space.[19] To assist the DMS in preparing the report, state agencies are required to provide their projected requirements for leased space based on active and planned full-time employee data, lease-expiration schedules for each geographic region of the state, and opportunities for consolidating operations, as well as costs relating to occupancy and relocation.[20]

[12] Section 225.25(3)(a), F.S. The size at which a leased space must be competitively bid was raised in 1990 from 2,000 square feet to 3,000 square feet by ch. 90-224, s. 3, Laws of Fla., and raised in 1999 to 5,000 square feet by ch. 99-399, s. 22, Laws of Fla.
[13] Section 255.25(2)(a), F.S.
[14] *Id*.
[15] *Id*.
[16] *Id*.
[17] *Also, see* s. 225.25(3)(h), F.S.
[18] Section 255.249(7), F.S.
[19] *Id*.
[20] Section 255.249(8), F.S.

According to the 2015 Lease Renegotiation Report released by the DMS, renegotiations between Fiscal Years 2013-14 and 2014-15 have resulted in a decrease of 43,367 square feet, or -0.71 percent; however, lease costs increased by $903,820, or 0.76 percent over the same time period.[21]

Section 39 of ch. 2015-222, L.O.F., requires the DMS, with the cooperation of the agencies having existing private lease contracts for office or storage space in excess of 2,000 square feet, to use tenant broker services to renegotiate or reprocure all private lease agreements expiring between July 1, 2016, and June 30, 2018, in order to reduce costs in future years.

State Lease Agreements

Section 255.249(6), F.S., requires the DMS to develop and implement a strategic leasing plan which must forecast space needs for all state agencies and identify opportunities for reducing costs through consolidation, relocation, reconfiguration, capital investment, and the renovation, building, or acquisition of state-owned space.

Section 255.2502, F.S., requires any contract on behalf of the state which binds the state or its executive agencies to the lease, rental, lease-purchase, purchase, or sale-leaseback of office space, real property or improvements to real property for a period in excess of one fiscal year, including any and all renewal periods and including all leases which constitute a series of leases, to contain a contingency statement that the state's obligation and performance under such contract is contingent upon an annual appropriation by the Legislature. Any contract not containing the required contingency statement is null and void.

Section 255.249(9)(e), F.S., requires the DMS to adopt rules providing acceptable terms and conditions for inclusion in lease agreements. At a minimum, lease terms and conditions must include the following clauses, which may not be amended, supplemented, or waived:

1. As provided in s. 255.2502, "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."
2. "The lessee has the right to terminate this lease, without penalty, if a state-owned building becomes available to the lessee for occupancy and the lessee has given 6 months' advance written notice to the lessor by certified mail, return receipt requested."

To comply with this requirement, the DMS has adopted Rule 60H-1.003, F.A.C., which sets out the form of the lease agreement and includes the required termination clause.

Section 255.2503, F.S., prohibits an executive agency or department from entering into any lease on behalf of the state that requires the state agency to refrain from making legislative budget or fixed capital outlay requests for alternative space other than that in the lease agreement.[22] Any

[21] DMS 2015 Lease Renegotiation Report, *available at* http://www.dms.myflorida.com/content/download/118819/652055/Complete_Report2.pdf (last visited November 3, 2015).
[22] This section does not apply to any facility financed under the Florida Building and Facilities Act.

contract containing such a term is null and void.[23] Any person who willfully violates this section is guilty of a misdemeanor of the first degree.

Unless specifically authorized by law, no agency or branch of state government can contract to spend or enter into any agreement to spend, any moneys, in excess of the amount appropriated to such agency or branch.[24] Any such contract is null and void.[25]

To best manage leasing costs, the DMS must ensure that available and suitable state-owned space takes precedence over approving an agency's request to lease private-sector space, and whenever possible, backfill public office space, to ensure that debt service and operations and maintenance revenue projections are met.[26]

Inventory of State-owned and State-leased Facilities

Pursuant to s. 216.0152(1), F.S., the DMS must develop and maintain an automated inventory of all facilities[27] owned, leased, rented, or otherwise occupied or maintained by any agency of the state, the judicial branch, or the water management districts. The DMS must use this data for determining maintenance needs and conducting strategic analyses.[28]

Inventory of State-owned Real Property

The DMS and the Department of Environmental Protection (DEP) must publish, by October 1st of each year, a complete report detailing the inventory of all state-owned facilities, including the inventories of the Board of Governors of the State University System, the Department of Education, and the Department of Transportation, excluding transportation facilities of the state transportation system.[29]

In 2010, the Legislature mandated the creation of a database to identify surplus property and dispose of such property owned by the state that is unnecessary to achieving the state's responsibilities.[30] Pursuant to s. 216.0153, F.S., the DEP must create, administer, and maintain a comprehensive system for all state lands and real property leased, owned, rented, and otherwise occupied or maintained by any state agency, by the judicial branch, and by any water management district. The comprehensive state-owned real property system must contain a database that includes an accurate inventory of all real property that is leased, owned, rented, occupied, or managed by the state, the judicial branch, or the water management districts.[31] The

[23] Section 255.2503, F.S.
[24] Section 216.311(1), F.S.
[25] Section 216.311(2), F.S.
[26] *See 2016 Department of Management Services Legislative Bill Analysis for SB 374*, dated October 20, 2015 (copy on file with the Governmental Oversight and Accountability Committee).
[27] The term "facility" means buildings, structures, and building systems, but does not include transportation facilities of the state transportation system.
[28] Section 216.0152(1), F.S.
[29] Section 216.0152(2), F.S. Also, the annual report of state-owned real property recommended for disposition required under s. 216.0153 must be included in the report.
[30] Chapter 2010-280, s. 5, Laws of Fla.
[31] Section 216.0153(1)(a), F.S.

Division of State Lands in the DEP is the statewide custodian of the real property information and is accountable for its accuracy.[32]

The Division of State Lands in the DEP must annually submit a report by October 1st, to the Governor, the President of the Senate, and the Speaker of the House of Representatives that lists the state-owned real property recommended for disposition, including a report by the DMS of surplus buildings recommended for disposition.[33] The report must include specific information that documents the valuation and analysis process used to identify the specific state-owned real property recommended for disposition.

The DEP and DMS are now implementing the Florida State Owned Lands and Records Information System (FL-SOLARIS), designed with two main components:[34]

- Facility Information Tracking System (FITS) – available since April 2012; and
- Lands Information Tracking System (LITS) – available since February 2013.

Both components are designed to give agencies an online interface to record data on their state-owned facilities, as well as provide the mechanism for agencies' annual identification and reporting of properties that are candidates for disposition.[35] Facility leases are not entered via FITS.[36]

Energy Performance and Reporting

The "Florida Energy Conservation and Sustainable Buildings Act" in ss. 255.251 - 255.2575, F.S., creates duties for agencies and the DMS concerning energy efficiency in buildings leased and owned by the state.

Section 255.254, F.S., requires agencies to seek from the DMS an evaluation of life-cycle costs based on sustainable building ratings for all leased or newly constructed facilities.

Section 255.257, F.S., requires all agencies to collect energy consumption and cost data for all state-owned and metered state-leased facilities, and report the data annually to the DMS.

III. Effect of Proposed Changes:

Section 1 amends s. 255.249(9), F.S., to eliminate a requirement on the DMS to adopt a rule that each lease agreement include a clause to allow a lessee state agency to terminate a lease, without penalty, when a state-owned building becomes available for occupancy and the lessee has provided a six month advanced written notice to the lessor by certified mail, return receipt requested. The DMS retains the authority to promulgate or retain the same or similar rule if the DMS deems the provision to be an acceptable term and condition of a lease agreement.

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[32] Section 216.0153(1)(b), F.S.
[33] Section 216.0153(3), F.S.
[34] *See* DEP website located at http://www.dms.myflorida.com/business_operations/real_estate_development_and_management/facilities_management/florida_state_owned_lands_and_records_information_system_fl_solaris (last visited on October 29, 2015).
[35] *Id*.
[36] *Id*.

Currently, some agencies are in private leases that are not fully utilized. The clause in s. 255.249, F.S., allows agencies to move/realign to under-utilized state-owned space to reduce costs. By eliminating this required clause, the state's ability to negotiate reductions in square footage and continue to backfill vacant public space may be limited.[37]

Section 2 provides that the bill does not impair or restrict the terms and conditions of a lease agreement entered into by a state agency pursuant to s. 255.249, F.S., before July 1, 2016.

Section 3 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shares with 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:

Indeterminate. The owners of private property leased to the state have stated that they bear additional financing costs when the lessee (the state) has the option to terminate the lease based on the availability of other state-owned property.[38] According to the owners of private property leased to the state, their creditors may classify lessees with this option as "high risk tenants".[39] If the lease agreement did not contain the current requirement allowing for termination, the owners of the private property may "save" money when refinancing their properties to the extent the institutional lenders deem the lease agreements to be of a higher value or quality without the termination clause.[40]

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[37] *See 2016 Department of Management Services Legislative Bill Analysis for SB 374*, dated October 20, 2015 (copy on file with the Governmental Oversight and Accountability Committee).
[38] Meeting with stakeholders on October 15, 2015.
[39] *Id.*
[40] *Id.*

C. Government Sector Impact:

Indeterminate. The state may lose a portion of its flexibility to terminate private property lease agreements when state-owned property becomes available. In addition, the state's uniform rental rate for full-service office space in the Florida Facilities Pool facilities is $17.18 per square foot.[41] This rate is below the average July 2015 private full-service office rates in all markets.[42] As a result of the bill, the state may lose its ability to move from more costly rates. However, the Legislature retains its authority to annually appropriate funds for the lease agreements and potentially terminate the lease agreements or a portion thereof.

The costs of financing the private property may be reduced if institutional lenders deem the lease agreements to be of a higher value or quality without the termination clause. The state may realize some cost savings if the landlord passes such financing savings on to the state. However, the lease agreements are competitively procured, and the state should be entering into lease agreements based on the best value to the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 255.249 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.

[41] DMS Master Leasing Report 2015, *available at* http://www.dms.myflorida.com/content/download/118552/650855/2015_Master_Leasing_reportpdf.pdf (last visited on December 14, 2015)
[42] *Id*.

By Senator Montford

3-00218-16 2016374__

A bill to be entitled

An act relating to state-leased space; amending s. 255.249, F.S.; revising requirements for Department of Management Services rules relating to terms and conditions included in lease agreements in which the state is the lessee; providing for applicability; providing an effective date.

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

Section 1. Paragraph (e) of subsection (9) of section 255.249, Florida Statutes, is amended to read:

255.249 Department of Management Services; responsibility; department rules.—

(9) The department shall adopt rules providing:

(e) Acceptable terms and conditions for inclusion in lease agreements. At a minimum, the ~~such~~ terms and conditions must include the statement required by s. 255.2502 ~~following clauses~~, which may not be amended, supplemented, or waived.~~:~~

~~1. As provided in s. 255.2502, "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."~~

~~2. "The lessee has the right to terminate this lease, without penalty, if a state-owned building becomes available to the lessee for occupancy and the lessee has given 6 months' advance written notice to the lessor by certified mail, return receipt requested."~~

Section 2. This act does not impair or restrict the terms and conditions of a lease agreement entered into by a state agency pursuant to s. 255.249, Florida Statutes, before July 1, 2016.

Section 3. This act shall take effect July 1, 2016.

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)

1/13/2016
Meeting Date

SB 374
Bill Number (if applicable)

Topic State-leased Space

Amendment Barcode (if applicable)

Name ~~Mike Huey~~ Todd Steibly

Job Title Attorney

Address 301 S. Bronough Street, Ste. 600
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Phone (850) 577-9090

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Winewood, Northwood

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

1/13/16
Meeting Date

SB 374
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic DMS Leasing

Name Doug Mannheimer

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Tall. FL 32301
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Phone 850 519 1916

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

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

Representing Hall Investments / Koger Center

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

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

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL:	SB 394
INTRODUCER:	Senator Hays
SUBJECT:	Unlicensed Activity Fees
DATE:	January 12, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	**Favorable**
2.	Davis	DeLoach	AGG	**Recommend: Favorable**
3.			AP	

I. Summary:

SB 394 requires the Department of Business and Professional Regulation (department) to waive the $5 unlicensed activity fee, which is charged to all licensees renewing a license issued by the department, if certain benchmarks for the profession's operating account and unlicensed activity account are met. The waiver applies to all licensees in a renewal cycle for the duration of that cycle. The waiver does not apply if a profession has a deficit in its operating account or is projected to have a deficit within five fiscal years.

For the 2016-2017 fiscal year, the bill is estimated to have a negative fiscal impact of $1,588,300 within the department's Professional Regulation Trust Fund and a $127,064 negative fiscal impact to the General Revenue Fund.

II. Present Situation:

The department licenses and regulates businesses and professionals in Florida. The department includes separate divisions and various professional boards that are responsible for carrying out the department's mission to license efficiently and regulate fairly.

Section 20.165, F.S., establishes the organizational structure of the department. There are 12 divisions, which include:

- Administration;
- Alcoholic Beverages and Tobacco;
- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;
- Florida Condominiums, Timeshares, and Mobile Homes;
- Hotels and Restaurants;
- Pari-mutuel Wagering;
- Professions;

- Real Estate;
- Regulation;
- Service Operations; and
- Technology.

There are 15 boards and programs established within the Division of Professions,[1] two boards within the Division of Real Estate,[2] and one board within the Division of Certified Public Accounting.[3] The Florida State Boxing Commission (boxing commission) is also assigned to the department for administrative and fiscal accountability purposes only.[4] The department also administers the Child Labor Law and Farm Labor Contractor Registration Law pursuant to parts I and III of ch. 450, F.S.

Chapter 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."[5]

Regulation of professions is limited under Florida law, to be undertaken "only for the preservation of the health, safety, and welfare of the public under the police powers of the state."[6] Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.[7]

However, "neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention," or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.[8]

[1] Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: Board of Architecture and Interior Design, part I of ch. 481; Florida Board of Auctioneers, part VI of ch. 468; Barbers' Board, ch. 476; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468; Construction Industry Licensing Board, part I of ch. 489; Board of Cosmetology, ch. 477; Electrical Contractors' Licensing Board, part II of ch. 489; Board of Employee Leasing Companies, part XI of ch. 468; Board of Landscape Architecture, part II of ch. 481; Board of Pilot Commissioners, ch. 310; Board of Professional Engineers, ch. 471; Board of Professional Geologists, ch. 492; Board of Veterinary Medicine, ch. 474; Home Inspection Services Licensing Program, part XV of ch. 468; and Mold-related Services Licensing Program, part XVI of ch. 468.
[2] *See* s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.
[3] *See* s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.
[4] *See* s. 548.003(1), F.S.
[5] *See* s. 455.01(6), F.S.
[6] *See* s. 455.201(2), F.S.
[7] *Id.*
[8] *See* s. 455.201(4)(b), F.S.

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative framework for all of the professional boards housed under the department as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.[9] When a person is authorized to engage in a profession or occupation in Florida by the department, the department issues a "permit, registration, certificate, or license" to the licensee.[10]

In Fiscal Year 2013-2014, the Division of Accountancy had 37,513 licensees, the Division of Real Estate had 312,715 licensees, and the Board of Professional Engineers had 57,653 licensees.[11] In Fiscal Year 2013-2014, there were 413,401 licensees in the Division of Professions,[12] including:

- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers;
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors;
- Cosmetologists;
- Electrical contractors;
- Employee leasing companies;
- Geologists;
- Home inspectors;
- Landscape architects;
- Harbor pilots;
- Mold-related services;
- Talent agencies; and
- Veterinarians.[13]

Sections 455.203 and 455.213, F.S., establish general licensing provisions for the department, including the authority to charge license fees and license renewal fees. Each board within the department must determine by rule the amount of license fees for its profession, based on estimates of the required revenue to implement regulatory laws.[14]

The department may adopt rules to implement a waiver of renewal fees, when it determines that a profession's trust fund moneys exceed the amount required to cover the necessary functions of

[9] *See* s. 455.203, F.S. The department must also provide legal counsel for boards within the department by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing department staff counsel. *See* s. 455.221(1), F.S.
[10] *See* s. 455.01(4) and (5), F.S.
[11] *See* Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2013-2014*, http://www.myfloridalicense.com/dbpr/os/documents/FY2013-2014AnnualReportProRegCPARE.pdf (last accessed 2015) at 22.
[12] Of the total 413,401 licensees in the Division of Professions, 22,859 are inactive, but all licensees, whether or not active, must pay the $5 unlicensed activity fee. *Id.* at 21-22.
[13] *Id*. at 13.
[14] *See* s. 455.219(1), F.S.

the board (or of the department, when there is no board). However, the waiver period may not exceed two years.[15]

Section 455.2281, F.S., requires that persons who are issued licenses by the department pay a special fee of $5 to support efforts to combat unlicensed activity. The fee is imposed on all initial licenses and renewed licenses, including inactive licenses. The funds of a profession regulated by the department are held in an unlicensed activity account and an operating fund account.

A transfer from the profession's operating fund account to its unlicensed activity account may be authorized if the operating fund account for the profession is not in a deficit and has a reasonable cash balance,[16] in order to inform the public about the consequences of obtaining services from professionals who are not properly licensed.

The department's Unlicensed Activity Program consists of public outreach and education, thorough investigation of complaints, and enforcement and prosecution.[17] The department maintains an educational campaign to inform consumers and licensees about the danger of hiring unlicensed individuals, with an emphasis on compliance rather than discipline of unlicensed offenders. In Fiscal Year 2014-2015, the department received over 5,000 complaints of unlicensed activity. More than 3,300 complaints that met requirements to be pursued resulted in the issuance of more than more than 200 citations[18] and more than 2,300 Notices to Cease and Desist.

Administrative action is taken on those cases not resolved by issuance of a citation or a notice to discontinue the unlicensed activity. The number of fines and administrative actions against unlicensed offenders increased in Fiscal Year 2014-2015 over the prior fiscal year, from 317 to 543 fines and from 168 to 433 actions.[19]

The department's administrative rules include disciplinary guidelines for the imposition of penalties against unlicensed persons.[20] Practicing a profession without holding the required license may result in a fine of $3,000 for a first violation.[21] Various circumstances may be considered in order to reduce or increase fine amounts.[22]

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[15] *Id*. Each board (or the department when there is no board) must ensure that license fees will cover all anticipated costs and a reasonable cash balance will be maintained. If sufficient action is not taken by a board within one year of notification by the department that license fees are projected to be inadequate, the department must set license fees for the board, in order to cover anticipated costs and to maintain the required cash balance.
[16] *See* s. 455.2281, F.S.
[17] *See* Department of Business and Professional Regulation, *Unlicensed Activity Program, Fiscal Year 2014-2015* http://www.myfloridalicense.com/dbpr/reg/documents/ULA14-15FINALAnnualReport.pdf (last accessed Nov. 18, 2015).
[18] *See* s. 455.228(3)(a), F.S., which states the penalty for the unlicensed practice of a profession is a fine of not less than $500 or more than $5,000, or other conditions as established by rule.
[19] *See supra* note 17, at 1-2.
[20] *See* Rule 61-5.007, F.A.C.
[21] *Id*. A second violation may result in a $2,500 fine; third and subsequent violations may result in fines of $5,000.
[22] *Id*. These include the severity of the offense, the number of repetitions of the unlicensed activity, and complaints filed, among others.

Recently, the department engaged in a media campaign to increase awareness of unlicensed activity and the threat to consumers and to professionals who are properly licensed.[23] In addition to promoting the "Report Unlicensed Activity" mobile telephone application, the campaign's objectives were to increase the number of Florida consumers and licensed professionals exposed to information about:

- The professional services that require a license;
- How to verify a license; and
- How to report unlicensed activity.

III. Effect of Proposed Changes:

SB 394 prohibits the department from imposing the $5 unlicensed activity fee on a licensee during a license renewal for a profession for the duration of that renewal cycle if:

- The unlicensed activity account balance for the profession at the beginning of the fiscal year before the renewal is more than twice the expenditures for unlicensed activity enforcement in the previous two fiscal years; and
- The profession does not have a deficit in its operating account or is not projected to have a deficit in the next five fiscal years.

The bill revises language to meet bill drafting conventions.

The bill provides an effective date of July 1, 2016.

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:

SB 394 provides fees payable by licensees renewing a license issued by the department may be reduced by $5, if the special unlicensed activity fee of $5 authorized in s. 455.2281, F.S., is required to be waived during a profession's qualified license renewal cycle. In order for a profession to qualify for the waiver of the unlicensed activity fee for all licensees in that renewal cycle:

[23] *See supra* note 17, at 20-27.

- The unlicensed activity account balance for the profession at the beginning of the fiscal year before the renewal must be more than twice the expenditures for unlicensed activity enforcement in the previous two fiscal years; and
- The profession may not have a deficit in its operating account or be projected to have a deficit in the next five fiscal years.

B. Private Sector Impact:

If a profession qualifies for waiver of a special unlicensed activity fee of $5 during a renewal cycle, the renewal fees payable by affected licensees in that profession will be reduced by $5. The waiver applies to all licensees in a renewal cycle for that profession for the duration of that cycle. If a profession has a deficit in its operating account or is projected to have a deficit within five fiscal years, the waiver is not applicable, and renewal fees will not be reduced.

C. Government Sector Impact:

The bill requires the department to determine whether a profession qualifies for the waiver of the unlicensed activity fee for all licensees in a license renewal cycle. The department must calculate, for each profession:

- The expenditures made for enforcement against unlicensed activity in the previous two fiscal years; and
- Whether the profession has a deficit in its operating account, or is projected to have a deficit in the next five fiscal years.

The department will be required to modify license renewal information provided to licensees, based on whether a renewal cycle qualifies for a reduction in the special unlicensed activity fee, reducing the renewal fees by $5 for each professional renewing during that cycle.

According to the department, as of July 1, 2015, eight of the 22 professions for which it issues licenses meet the proposed criteria for waiver of the unlicensed activity fee of $5 upon license renewal.[24] The total reduction in renewal fees payable by licensees in a single two-year renewal cycle for all eight professions eligible for the waiver is estimated by the department as $3,193,450. See chart below.[25]

[24] *See* Email from C. Madill, Legislative Coordinator, Department of Business and Professional Regulation, to A. Nicotra, Office of Senator D. Alan Hays and *Professional Board Unlicensed Activity Fee Holiday Projections* chart attached thereto (Oct. 21, 2015)(on file with the Senate Committee on Regulated Industries).
[25] *Id.*

Professional Board Unlicensed Activity Fee Holiday Projections

BOARD	EXPENDITURES: 6/30/2014	EXPENDITURES: 6/30/2015	TOTAL EXPENITURES	ACCOUNT BALANCE: 7/1/2015	Current License Count*	Estimated Savings: 7/1/2015 - 6/30/ 2017
Asbestos Unit	582	1,292	1,874	9,160	495	2,475
Athlete Agents	99	34	133	4,782	364	1,820
Building Code Admin & Inspectors	4,729	2,332	7,061	362,794	9,156	45,780
Board of Cosmetology	335,846	202,684	538,530	2,749,983	268,088	1,340,440
Board of Pilot Commissioners	2	1,079	1,081	1,277	93	465
Board of Landscape Architects	2,465	1,921	4,386	35,245	1,691	8,455
Real Estate Appraisal Board	9,086	4,979	14,065	138,473	7,739	38,695
Real Estate Commission	443,941	525,664	969,605	2,984,588	351,064	1,755,320
Total:						**$3,193,450**

*License counts as of August 12, 2015

The department estimates there will be a reduction in unlicensed activity fee revenue of approximately $1,588,300 in Fiscal Year 2016-2017, $1,603,935 in Fiscal Year 2017-2018, and $1,588,300 in Fiscal Year 2018-2019. There will be a corresponding reduction in the 8 percent service charge sent to the General Revenue Fund of approximately $127,064 in Fiscal Year 2016-2017, $128,315 in Fiscal Year 2017-2018, and $127,064 in Fiscal Year 2018-2019.[26]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 455.2281 of the Florida Statutes.

[26] *See 2016 Department of Business and Professional Regulation Legislative Bill Analysis for SB 394*, October 23, 2015 (on file with Senate Committee on Regulated Industries) at 3.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Hays

11-00555-16 2016394__

A bill to be entitled

An act relating to unlicensed activity fees; amending s. 455.2281, F.S.; prohibiting the Department of Business and Professional Regulation from imposing a specified fee in certain circumstances; providing for applicability of the waiver; providing an effective date.

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

Section 1. Section 455.2281, Florida Statutes, is amended to read:

455.2281 Unlicensed activities; fees; disposition.—In order to protect the public and to ensure a consumer-oriented department, it is the intent of the Legislature that vigorous enforcement of regulation for all professional activities is a state priority. All enforcement costs should be covered by professions regulated by the department. Therefore, the department shall impose, upon initial licensure and each subsequent renewal ~~thereof~~, a special fee of $5 per licensee,~~.~~ ~~Such fee shall be~~ in addition to all other fees imposed, ~~collected from each licensee~~ to ~~and shall~~ fund efforts to combat unlicensed activity. However, the department may not impose this special fee on a license renewal for any profession whose unlicensed activity account balance, at the beginning of the fiscal year before the renewal, totals more than twice the total of the expenditures for unlicensed activity enforcement efforts in the preceding 2 fiscal years. This waiver applies to all licensees within the profession, and assessment of the special

11-00555-16 2016394__

fee may not begin or resume until the renewal cycle subject to the waiver has ended for all of the licensees in that profession. This waiver does not apply to a profession that has a deficit in its operating account or that is projected to have such a deficit in the next 5 fiscal years. Any profession regulated by the department which offers services that are not subject to regulation when provided by an unlicensed person may use funds in its unlicensed activity account to inform the public of such situation. The board with concurrence of the department, or the department when there is no board, may earmark $5 of the current licensure fee for this purpose, if such board, or profession regulated by the department, is not in a deficit and has a reasonable cash balance. A board or profession regulated by the department may authorize the transfer of funds from the operating fund account to the unlicensed activity account of that profession if the operating fund account is not in a deficit and has a reasonable cash balance. The department shall make direct charges to this fund by profession and may ~~shall~~ not allocate indirect overhead. The department shall seek board advice regarding enforcement methods and strategies prior to expenditure of funds; however, the department may, without board advice, allocate funds to cover the costs of continuing education compliance monitoring under s. 455.2177. The department shall directly credit, by profession, revenues received from the department's efforts to enforce licensure provisions. The department shall include all financial and statistical data resulting from unlicensed activity enforcement and from continuing education compliance monitoring as separate categories in the quarterly management report

provided for in s. 455.219. The department may ~~shall~~ not charge the account of any profession for the costs incurred on behalf of any other profession. With the concurrence of the applicable board and the department, any balance that remains in ~~For~~ an unlicensed activity account~~, a balance which remains~~ at the end of a renewal cycle may~~, with concurrence of the applicable board and the department,~~ be transferred to the operating fund account of that profession.

Section 2. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/13/16
Meeting Date

SB 394
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Unlicensed Activity

Name David Mica, Jr.

Job Title Legislative Affairs Director

Address 1940 N. Monroe Street
Street

Tallahassee FL 32399
City *State* *Zip*

Phone (850) 487-4827

Email david.mica@myfloridalicense.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing DBPR

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that 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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394

Meeting Date | *Bill Number (if applicable)*

Topic UNLICENSED ACTIVITY

Amendment Barcode (if applicable)

Name JENNIFER GREEN

Job Title

Address P.O BOX 290

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

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

BILL:	CS/SB 400
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Hays
SUBJECT:	Organizational Structure of the Department of Environmental Protection
DATE:	January 12, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	**Fav/CS**
2.	Howard	DeLoach	AGG	**Recommend: Favorable**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 400 revises the organizational structure of the Department of Environmental Protection (department) and authorizes the secretary of the department to establish divisions and offices to accomplish the agency's mission and goals. These divisions include, but are not limited to, water resources management, regulatory programs, and lands and recreation. The bill provides greater flexibility in the coordination of existing programs in order to increase responsiveness to public needs.

There is no fiscal impact on the department.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Chapter 20, F.S., sets forth the requirements for the organizational structure of the executive branch to maximize the efficiency and effectiveness of agencies. Specifically, s. 20.02, F.S., requires departments to be organized along functional or program lines and stipulates the structural reorganization of departments to be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and coordination of existing programs in response to public needs.

Section 20.04(3), F.S., requires each department[1] to adhere to the following organizational structure:

- The principal unit of the department is the "division." Each division is headed by a "director."
- The principal unit of the division is the "bureau." Each bureau is headed by a "chief."
- The principal unit of the bureau is the "section." Each section is headed by an "administrator."
- If further subdivision is necessary, sections may be divided into "subsections," which are headed by "supervisors."

The head of a department is prohibited from reallocating duties and functions specifically assigned by law to a specific unit of the department, unless specifically authorized by law. However, the head of the department is authorized to allocate or reallocate those duties or functions that are assigned generally.[2]

Additional divisions, bureaus, sections, and subsections of a department may be recommended by the head of the department to promote efficient and effective operation. New bureaus, sections, and subsections of a department may be initiated by a department and established as recommended by the Department of Management Services and approved by the Executive Office of the Governor, or may be established by specific statutory enactment.[3]

Some departments, such as the Department of State and the Department of Management Services, have organizational structures that statutorily establish each division or program within the department.[4] Whereas, other departments like the Department of Transportation and the Department of Corrections have organizational structures that statutorily authorize the secretaries of such departments to appoint positions at the level of deputy assistant secretary, director, or other positions as the secretary deems necessary to accomplish the mission and goals of the department.[5]

Section 20.255, F.S., provides the organizational structure for the Department of Environmental Protection and statutorily establishes each division and special office within the department. Additionally, s. 20.255, F.S., requires there to be six administrative districts involved in regulatory matters of waste management, water resource management, wetlands, and air resources.

III. Effect of Proposed Changes:

CS/SB 400 revises the requirements for the organizational structure of the Department of Environmental Protection (department) to promote efficiency and effectiveness and to provide greater flexibility in the coordination of existing programs in response to public needs.

[1] Section 20.04(3), F.S. provides an exception for the Department of Financial Services, the Department of Children and Families, the Department of Corrections, the Department of Management Services, the Department of Revenue, and the Department of Transportation.
[2] Section 20.04(7)(a), F.S.
[3] Section 20.04(7)(b), F.S.
[4] See s. 20.10, F.S., creating the Department of State and s. 20.22, F.S., creating the Department of Management Services.
[5] See s. 20.23, F.S., creating the Department of Transportation and s. 20.315, F.S., creating the Department of Corrections.

The bill requires the secretary of the department to appoint a general counsel who is directly responsible to and serves at the pleasure of the secretary. The bill provides that the general counsel is responsible for all legal matters of the department.

Rather than statutorily establishing each division, the bill authorizes the secretary to establish divisions as he or she deems necessary to accomplish the mission and goals of the department, which include, but are not limited to, the following program areas:

- Water Resources Management;
- Regulatory Programs; and
- Lands and Recreation.

As required under s. 20.04, F.S., the bill specifies that divisions shall be headed by directors. Each director is to be appointed by and shall serve at the pleasure of the secretary. The bill does not revise the statutorily established Division of State Lands within the department.

The bill authorizes offices to be established as deemed necessary to promote the effective and efficient operation of the department. Under the bill, the secretary is authorized to combine, separate, or delete offices as necessary in consultation with the Executive Office of the Governor.

The bill removes the authorization for a division to have one assistant or two deputy division directors and the requirement that there be six administrative districts limited to the areas of waste management, water resource management, wetlands, and air resources.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There are numerous references in statute to specific divisions and offices within the department. If the department revises the names of divisions or offices or transfers authority between divisions or offices, then the statutory references to such division or office will need to be amended.

VIII. Statutes Affected:

This bill substantially amends section 20.255 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 Environmental Preservation and Conservation on November 18, 2015:
The CS requires the Secretary of the Department of Environmental Protection to appoint a general counsel and provides that the general counsel is responsible for all legal matters of the department.

B. Amendments:

None.

By the Committee on Environmental Preservation and Conservation; and Senator Hays

592-01416A-16 2016400c1

A bill to be entitled

An act relating to the organizational structure of the Department of Environmental Protection; amending s. 20.255, F.S.; requiring the secretary of the Department of Environmental Protection to appoint a general counsel; authorizing the secretary to establish divisions as necessary to accomplish the mission and goals of the department; authorizing offices to be established as necessary to promote the efficient and effective operation of the department; deleting the required establishment of certain offices and divisions; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 20.255, Florida Statutes, are amended to read:

20.255 Department of Environmental Protection.—There is created a Department of Environmental Protection.

(2)(a) The secretary shall appoint ~~There shall be~~ three deputy secretaries who ~~are to be appointed by and shall~~ serve at the pleasure of the secretary. The secretary may assign any deputy secretary the responsibility to supervise, coordinate, and formulate policy for any division, office, or district.

(b) The secretary shall appoint a general counsel who is directly responsible to and serves at the pleasure of the secretary. The general counsel is responsible for all legal matters of the department.

(c) The secretary may establish divisions as he or she

592-01416A-16 2016400c1

deems necessary to accomplish the mission and goals of the department, including, but not limited to, the following areas of program responsibility: water resources management, regulatory programs, and lands and recreation. The divisions shall be headed by directors, each of whom is to be appointed by and serve at the pleasure of the secretary. The Division of State Lands is established within the department, the director of which is to be appointed by the secretary, subject to confirmation by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund.

(d) Offices may be established as deemed necessary to promote the efficient and effective operation of the department. The secretary may combine, separate, or delete offices as necessary in consultation with the Executive Office of the Governor. The ~~following special~~ offices shall be ~~are established and~~ headed by managers, each of whom is to be appointed by and serve at the pleasure of the secretary~~:~~

~~1. Office of Chief of Staff;~~

~~2. Office of General Counsel;~~

~~3. Office of Inspector General;~~

~~4. Office of External Affairs;~~

~~5. Office of Legislative Affairs;~~

~~6. Office of Intergovernmental Programs; and~~

~~7. Office of Greenways and Trails.~~

~~8. Office of Emergency Response~~.

(e)~~(b)~~ There shall be ~~six~~ administrative districts involved in regulatory matters, such as ~~of~~ waste management, water resource management, wetlands, and air resources. The districts~~,~~ ~~which~~ shall be headed by managers, each of whom is to be

appointed by and serve at the pleasure of the secretary. ~~Divisions of the department may have one assistant or two deputy division directors, as required to facilitate effective operation.~~

The managers of all divisions, ~~and~~ offices, and districts ~~specifically named in this section and the directors of the six administrative districts~~ are exempt from part II of chapter 110 and are included in the Senior Management Service in accordance with s. 110.205(2)(j).

(3) ~~The following divisions of the Department of Environmental Protection are established:~~

~~(a) Division of Administrative Services.~~

~~(b) Division of Air Resource Management.~~

~~(c) Division of Water Resource Management.~~

~~(d) Division of Environmental Assessment and Restoration.~~

~~(e) Division of Waste Management.~~

~~(f) Division of Recreation and Parks.~~

~~(g) Division of State Lands, the director of which is to be appointed by the secretary of the department, subject to confirmation by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund.~~ In order to ensure statewide and intradepartmental consistency, the department's divisions shall direct the district offices and bureaus on matters of interpretation and applicability of the department's rules and programs.

Section 2. This act shall take effect July 1, 2016.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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Meeting Date

SB 400
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 400

Name Lennie Zeiler

Job Title Chief of Staff

Address 3900 Commonwealth Blvd
Street

Tallahassee FL 32303
City State Zip

Phone

Email

Speaking: ☐ For ☐ Against ☒ Information

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

Representing DEP

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that 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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11/3/15
Meeting Date

SB 400
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Andrew Ketchel

Job Title Director of Leg. Affairs

Address 3900 commonwealth Blvd
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 8500345

Email andrew.ketchel@dep.state.fl.us

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Department of Environmental Protection

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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)

1/13/16
Meeting Date

SB 400
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic DEP reorg

Name Julie Wraithmell

Job Title Dir. Wildlife Conservation

Address 308 N Monroe St.
Street

Tallahassee 32301
City *State* *Zip*

Phone 850-339-5009

Email jwraithmell@audubon.org

Speaking: ☐ For ☐ Against ☑ Information

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

Representing Audubon FL

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL:	PCS/CS/SB 548 (517060)
INTRODUCER:	Appropriations Subcommittee on General Government; Banking and Insurance Committee; and Senator Richter
SUBJECT:	Title Insurance
DATE:	January 15, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier/Knudson	Knudson	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

PCS/CS/SB 548 increases the limit of risk a title insurer may assume on a single contract to not greater than its surplus as to policyholders. This bill also requires a title insurer to reinsure any excess above the surplus as to policyholders from authorized insurers or reinsurers that may provide reinsurance under s. 624.610, F.S. Currently, the limit of risk is one-half of the company's surplus as to policyholders and title insurers that are required to reinsure any excess may only obtain reinsurance from "approved" insurers.

There is no fiscal impact to state funds.

This bill takes effect July 1, 2016.

II. Present Situation:

Title insurance is (1) insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title; or (2) insurance of owners and secured parties of the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.[1] Title insurance

[1] *See* s. 624.608, F.S.

serves to indemnify the insured against financial loss caused by defects in the title arising out of events that occurred before the date of the policy.[2] Title insurance agents and agencies are licensed and regulated by the Department of Financial Services (DFS) while title insurance companies are licensed and regulated by the Office of Insurance Regulation (OIR).

Limit of Risk

Florida law limits the amount of the risk that a title insurer can assume when providing coverage for a single risk, such as a large commercial real estate project. Section 627.778, F.S., provides that a title insurer may not issue a contract of title insurance if the dollar amount of the risk exceeds one-half of its surplus as to policyholders[3] unless the excess is reinsured by one or more approved insurers.[4] Different states have different rules relating to the amount of risk a title insurer can assume for a single risk. Some states have no single risk limit.[5] A justification for a state having no single risk limit for title insurers is that the risk of a complete loss in a title insurance claim is very low.[6] Claims in title cases occur in approximately one of every 700 to 1,000 policies and only 1-3 percent of those claims exceed policy limits.[7] Most companies have additional review before issuing policies for large commercial transactions so losses on such transactions are expected be lower.[8] Florida has recently had two title insurer insolvencies. According to the DFS, the insolvencies were not related to the single risk limit.[9] The insolvency of K.E.L. Title Insurance Group, for example, was related to theft of funds from real estate transactions and not related to insurance of a large commercial risk.[10]

Authorized Insurers

Section 627.778, F.S., references "approved" insurers. However, "approved" is not defined in the statutes. Section 624.09, F.S., defines an authorized insurer as an insurer with a certificate of authority to transact insurance issued by the OIR.

Section 624.610, F.S., sets forth requirements for reinsurance. An insurer can only receive credit for reinsurance as an asset or a deduction from liability if the reinsurer meets statutory requirements.[11] Section 624.610(3)(a), F.S., requires that credit be allowed for reinsurance when

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[2] *See Lawyers Title Insurance Co. Inc. v. Novastar Mortgage, Inc.*, 862 So. 2d 793, 797 (Fla. 4th DCA 2003).
[3] The capital and surplus of an insurance company are sometimes referred to as surplus as regards policyholders or policyholders' surplus. Policyholders' surplus is equal to net admitted assets, or admitted assets minus liabilities. Surplus as to policyholders is determined from the last annual statement filed by the insurer. *See* s. 627.778(2), F.S.
[4] *See* s. 627.778(1), F.S.
[5] According to one commenter, twenty states have no single risk limit for title insurance. *See* James L. Gosdin, Title Insurance: A Comprehensive Overview, pp. 458-60 (2007) https://books.google.com/books?id=QwIG8waPOXcC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false (last visited on November 12, 2015).
[6] *See* James L. Gosdin, Title Insurance: A Comprehensive Overview, p. 101 (2007)(https://books.google.com/books?id=QwIG8waPOXcC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false (last visited on November 10, 2015).
[7] *Id*.
[8] *Id*.
[9] Email from the Department of Financial Services to Staff of the Banking and Insurance Committee (on file with the Banking and Insurance Committee).
[10] *See* http://www.myfloridacfo.com/Division/Receiver/company_pdf/541/motion.pdf (last visited on November 12, 2015).
[11] *See* s. 624.310(2), F.S.

the reinsurance is ceded to an authorized insurer. Credit is also allowed for reinsurance when reinsurance is ceded to an "accredited" reinsurer[12] or when reinsurance is ceded to an insurer who maintains a sufficient trust fund for payment of claims.[13]

Reinsurance

Reinsurance is insurance by another insurer of all or part of a risk previously assumed by an insurance company.[14] Section 624.610, F.S., sets forth when the OIR must credit a ceding insurer[15] for reinsurance. Credit for reinsurance results in the insurer being credited with an asset or a deduction from liability.[16] Reinsurance credit is given when the reinsurance is ceded to an assuming insurer that:

- Is a Florida-authorized insurer or reinsurer;
- An accredited reinsurer;[17] or
- A reinsurer that maintains a trust fund[18] in a qualified United States financial institution.

Credit for reinsurance must also be provided if the assuming reinsurer does not meet the above requirements but is reinsuring risks located in jurisdiction in which the reinsurance is required to be purchased by a particular entity by applicable law or regulation of that jurisdiction.[19] The OIR commissioner may also allow credit if the assuming insurer holds a surplus in excess of $250 million, has a secure financial strength rating from at least two statistical rating organizations, and agrees to meet conditions set forth in statute related to the failure to perform duties under the reinsurance agreement and insolvency.[20]

III. Effect of Proposed Changes:

This bill increases the limit of risk a title insurer may incur on a single contract by allowing a title insurer to issue a contract of title insurance if the dollar amount of the risk assumed does not exceed its surplus as to policyholders. Currently the limit of risk is one-half of the company's surplus as to policyholders.

If the limit of risk is exceeded, the bill requires that the excess must be reinsured by one or more authorized insurers or one or more reinsurers that may provide reinsurance under s. 624.610, F.S. Current law requires that any risk assumed in excess of one-half of the company's surplus as to policyholders must be reinsured by "approved" insurers but does not define the term "approved."

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[12] *See* s. 624.310(3)(b), F.S.
[13] *See* s. 624.310(3)(c), F.S.
[14] "Reinsurance," *Merriam-Webster.com*, http://www.merriam-webster.com/dictionary/reinsurance (last accessed Nov. 17, 2015).
[15] The insurer purchasing reinsurance and thus ceding risk to the other insurer.
[16] *See* s. 624.610(2), F.S.
[17] *See* s. 624.610(2)(b), F.S. An accredited reinsurer must submit to the jurisdiction of Florida, submit to this state's authority to examine its books and records, be licensed or authorized to transact insurance or reinsurance in at least one state, and annually file with the OIR its annual and any quarterly statements required in its state of domicile, and maintain a surplus as to policyholders of not less than $20 million.
[18] *See* s. 624.610(2)(c), F.S. The trust fund must maintain minimum surplus requirements and be approved by the insurance regulator where the trust is domiciled or that has accepted principal regulatory oversight of the trust.
[19] *See* s. 624.610(2)(d), F.S.
[20] *See* s. 624.610(2)(e)-(g), F.S.

The bill provides that reinsurance must be provided by "authorized" insurers, which are defined in statute as insurers that have been issued a certificate of authority to transact insurance in Florida by the Office of Insurance Regulation.[21]

This bill takes effect on July 1, 2016.

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:

Proponents of this bill state that increasing the limit of risk will allow title insurers to insure larger commercial risks without purchasing as much reinsurance which would lower costs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.778 of the Florida Statutes.

[21] *See* s. 624.09, F.S.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on January 13, 2016:
The CS makes adds technical, clarifying language to include authorized reinsurers that provide reinsurance in addition to authorized insurers.

CS by Banking and Insurance on November 17, 2015:
The CS allows a title insurer to obtain reinsurance from reinsurers that may provide reinsurance under s. 624.610, F.S. The filed version of the bill allowed title insurers to purchase reinsurance from any assuming insurer that has a financial strength rating of "A" or higher from A.M. Best or another rating organization approved by the Insurance Commissioner.

B. Amendments:

None.

926508

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/13/2016	.	
	.	
	.	
	.	

Appropriations Subcommittee on General Government (Lee) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 23 and 24
insert:

(c) This subsection does not prohibit:

1. The simultaneous issuance of policies insuring different estates, liens, or interests in the same property, if each of the simultaneous policies excepts the paramount estates, liens, or interests to which the insured estate, lien, or interest is subject and if each of the simultaneous policies conforms to

926508

this subsection.

2. Ceding portions of the total risk to authorized insurers or reinsurers that may provide reinsurance under s. 624.610. Insurance ceded, including coinsurance effected, is a retention of risk by the insurer assuming the ceded risk, and not by the insurer ceding the risk.

====== 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 10 - 11

and insert:

Section 1. Paragraphs (a) and (c) of subsection (1) of section 627.778, Florida Statutes, are amended to read:

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

And the title is amended as follows:

Delete line 6

and insert:

to the limit; providing that the risk limitation does not prohibit ceding portions of the total risk to specified reinsurers; providing an effective date.

By the Committee on Banking and Insurance; and Senator Richter

597-01291-16 2016548c1

A bill to be entitled

An act relating to title insurance; amending s. 627.778, F.S.; increasing a title insurer's limit of risk from one-half of its surplus as to policyholders to the entirety of its surplus; revising an exception to the limit; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 627.778, Florida Statutes, is amended to read:

627.778 Limit of risk.—

(1)(a) A title insurer may not issue any contract of title insurance, either as a primary insurer or as a coinsurer or reinsurer, upon an estate, lien, or interest in property located in this state unless:

1. The contract shows on its face the dollar amount of the risk assumed; and

2. The dollar amount of the risk assumed does not exceed ~~one-half of~~ its surplus as to policyholders, unless the excess is simultaneously reinsured in one or more authorized ~~approved~~ insurers or one or more reinsurers that may provide reinsurance under s. 624.610.

Section 2. This act shall take effect July 1, 2016.

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)

1-13-16
Meeting Date

548
Bill Number (if applicable)

Topic Title Insurance

Amendment Barcode (if applicable)

Name Beth A. Vecchioli

Job Title Sr. Policy Advisor

Address 315 S. Calhoun St, Ste 600
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850-425-5623

Email beth.vecchioli@ltgfla.com

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

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

Representing Stewart Title Guaranty Co.

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-13-16
Meeting Date

548
Bill Number (if applicable)

926508
Amendment Barcode (if applicable)

Topic Title Insurance

Name Beth A. Vecchioli

Job Title Sr. Policy Advisor

Address 315 S. Calhoun St, Ste 600
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-425-5623

Email beth.vecchioli@ltgfw.com

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

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

Representing Stewart Title Guaranty Co.

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/13/15
Meeting Date

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

0548
Bill Number (if applicable)

926508
Amendment Barcode (if applicable)

Topic TITLE INS

Name DOUG MANN

Job Title

Address 1424 PIEDMONT DR
Street

TALLAHASSEE FL 32308
City State Zip

Phone 222-7110

Email DMANN@MANNLAW.COM

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

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

Representing FIRST AMERICAN TITLE INS

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/13/15
Meeting Date

SB 0548
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic TITLE INSURANCE

Name DOUG MANG

Job Title

Address 1424 PIEDMONT DR
Street

TALLY FL 32308
City *State* *Zip*

Phone 222-7710

Email DMANG@MANGLAW.COM

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

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

Representing FIRST AMERICAN TITLE

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Banking and Insurance, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Commerce and Tourism
Regulated Industries
Rules

SENATOR GARRETT RICHTER
President Pro Tempore
23rd District

November 17, 2015

The Honorable Alan Hays, Chair
Appropriations Subcommittee on General Government
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Hays:

Senate Bill 548, relating to Title Insurance, has been referred to the Committee on General Government Appropriations. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Garrett Richter

cc: Jamie DeLoach, Staff Director

REPLY TO:
☐ 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
☐ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
☐ 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL:	SB 7008
INTRODUCER:	Governmental Oversight and Accountability Committee
SUBJECT:	Housing Discrimination
DATE:	January 12, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Peacock	McVaney		**GO Submitted as Committee Bill**
1.	Brown	Cibula	JU	**Favorable**
2.	Davis	DeLoach	AGG	**Recommend: Favorable**
3.			AP	

I. Summary:

SB 7008 eliminates a prerequisite to filing a civil action alleging an injury caused by a discriminatory housing practice. Under an interpretation of the Florida Fair Housing Act by the Fourth District Court of Appeal, a person must first exhaust his or her administrative remedies before pursuing a civil action under the Florida Fair Housing Act.

According to the United States Department of Housing and Urban Development (HUD), the Florida Fair Housing Act, as interpreted by the Fourth DCA, is not substantially equivalent to the federal Fair Housing Act. As a result, HUD has notified the Florida Commission on Human Relations (Commission) that its participation in the Fair Housing Assistance Program will be terminated if the prerequisite to filing a civil action is not eliminated by March 12, 2016.

There is no fiscal impact to state funds. Federal funds currently provided by HUD to support the investigations, training and administrative costs of the Commission may be at risk (see section V, Fiscal Impact Statement).

The effective date of the bill is July 1, 2016.

II. Present Situation:

Florida Civil Rights Act (Part I, Chapter 760, F.S.)

The Florida Civil Rights Act (FCRA) protects persons from discrimination based on race, color, religion, sex, pregnancy,[1] national origin, age, handicap, and marital or familial status.

[1] The 2015 Florida Legislature added pregnancy as a protected status from discrimination (Chapter 2015-68, L.O.F.); Section 760.01(2), F.S.

The Florida Commission on Human Relations

The FCRA establishes the Florida Commission on Human Relations within the Department of Management Services. The Commission is granted broad powers to enforce the FCRA.[2] The Governor appoints, and the Senate confirms, the 12 members of the Commission.[3] The Commission is empowered to receive, initiate, investigate, conciliate and hold hearings on and act upon complaints alleging discriminatory practice.[4] Additionally, the Attorney General may initiate a civil action for damages, injunctive relief, civil penalties of up to $10,000 a violation, and other appropriate relief.[5]

Timeline for Filing and Processing Claims

An aggrieved person, the Commission, a Commissioner, or the Attorney General has 365 days after the alleged violation to file a complaint with the Commission.[6] Within 180 days of the filing, the Commission must make a determination of reasonable cause.[7] If the Commission issues a finding of reasonable cause, the aggrieved person may request an administrative hearing or bring civil action.[8] A civil action must be brought within a year of the determination of reasonable cause.[9] The FCRA expressly requires a plaintiff to exhaust his or her administrative remedy as a prerequisite to filing a civil action alleging unlawful discrimination, including housing discrimination.[10]

Remedies

The remedy available through an administrative hearing is affirmative relief, including back pay, and reasonable attorney fees and other costs.[11] Remedies available through a civil action are injunctive and affirmative relief, which includes back pay, compensatory damages, punitive damages of up to $100,000, and reasonable attorney fees and other costs.[12]

Bases of Discrimination under the Florida Civil Rights Act

The FCRA specifically defines and prohibits discrimination based on unlawful practices in employment and public accommodations.[13] Remedies are also available for unlawful discrimination in the areas of education, employment, housing discrimination, and public accommodation. Other than in the section of law on remedies, the term "housing discrimination" is not addressed elsewhere in the FCRA.[14] Additionally, housing discrimination is specifically prohibited in the Florida Fair Housing Act.[15]

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[2] Section 760.06(6), F.S.
[3] Section 760.03(1), F.S.
[4] Section 760.06(5), F.S.
[5] Section 760.021(1), F.S.
[6] Section 760.11(1), F.S.
[7] Section 760.11(3), F.S.
[8] Section 760.11(4), F.S.
[9] Section 760.11(5), F.S.
[10] Section 760.07, F.S.
[11] Section 760.11(6) and (7), F.S.
[12] Section 760.11(5), F.S.
[13] Sections 760.02(7), (8), and (11), 760.08, and 760.10, F.S.
[14] Section 760.07, F.S.
[15] Part II of Chapter 760, F.S. The inclusion of housing discrimination in the FCRA may have been a drafting oversight because the issue is addressed fully in the Florida Fair Housing Act.

Florida Fair Housing Act

Purpose of the Florida Fair Housing Act

The Florida Fair Housing Act (FFHA) is modelled after the Federal Fair Housing Act.[16] The FFHA prohibits a person from refusing to sell or rent, or otherwise make unavailable a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.[17] In addition, protection is afforded to persons who are pregnant or in the process of becoming legal custodians of children of 18 years of age or younger, or persons who are themselves handicapped or associated with a handicapped person.[18]

Timeline for Filing and Processing Claims

A person alleging discrimination under the FFHA has one year after the discriminatory housing practice to file a complaint with the Commission.[19] The Commission has 100 days after receiving the complaint to complete its investigation and issue a determination.[20] The Commission can also decide to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.[21] If, within 180 days after a complaint is filed, the Commission has been unable to obtain voluntary compliance, the complainant may initiate civil action or petition for an administrative determination.[22] If the Commission finds reasonable cause, the claimant may request that the Attorney General bring an action against the respondent.[23]

A civil action must be commenced within two years after the alleged discriminatory act occurred.[24] The court may continue a civil case if conciliation efforts by the Commission or by the local housing agency are likely to result in a satisfactory settlement.[25] If the court finds that a discriminatory housing practice has occurred, the court must issue an order prohibiting the practice and providing affirmative relief.[26] If the Commission is unable to obtain voluntary compliance or has reasonable cause to believe that a discriminatory act has occurred, the Commission may institute an administrative proceeding. Alternatively, the aggrieved person may request administrative relief under ch. 120, F.S., within 30 days after receiving notice that the Commission has concluded its investigation.[27]

The Commission may institute a civil action if it is unable to achieve voluntary compliance with the FFHA and is not required to have petitioned for an administrative hearing or exhausted its

[16] Part II of Chapter 760, F.S., is the Florida Fair Housing Act. See Florida Fair Housing Commission, *Fair Housing Laws* http://fchr.state.fl.us/resources/the_laws/florida_fair_housing_laws (last visited Oct. 27, 2015).
[17] Section 760.23(1), F.S.
[18] Sections 760.23(6)-(9), F.S.
[19] Section 760.34(1) and (2), F.S.
[20] Section 760.34(1), F.S.
[21] *Id.*
[22] Section 760.34(4), F.S.
[23] *Id.*
[24] Section 760.35(1), F.S.
[25] *Id.*
[26] Section 760.35(2), F.S.
[27] Section 760.35(3), F.S.

administrative remedies prior to bringing a civil action.[28] Remedies available under the FFHA include fines and actual and punitive damages.[29] The court may also award reasonable attorney's fees and costs to the Commission.[30]

The Commission, or any local agency certified as substantially equivalent, may institute a civil action in an appropriate court if it is unable to obtain voluntary compliance with the local fair housing law.[31] The local agency does not have to petition for an administrative hearing or exhaust its administrative remedies prior to bringing civil action.[32]

Financial Reimbursement from HUD

The federal Fair Housing Assistance Program (FHAP) permits HUD to reimburse state and local agencies for services that further the purposes of the federal Fair Housing Act. To be eligible for participation in the FHAP, a state or local agency must enforce a fair housing law that is substantially equivalent to the federal Fair Housing Act. The HUD will then certify these agencies as substantially equivalent, qualifying the agencies for federal funding.[33] In Florida, in addition to the Florida Commission on Human Relations serving as the main agency certified as substantially equivalent, six other localities also qualify.[34]

Through annual work-share agreements with HUD, the Commission, in its capacity as a substantially equivalent agency, accepts and investigates housing discrimination cases from HUD. The Commission is reimbursed by HUD for closing housing cases, through deposit from HUD into the Human Relations Commission Operating Trust Fund within the Commission. Trust fund monies received from HUD in Fiscal Year 2014-15 totaled $604,978, an increase from the Fiscal Year 2013-14 total of $516,536.[35]

According to the Commission's Fiscal Year 2010-11 through Fiscal Year 2014-15 Annual Reports, housing complaints represented on average 15 percent of all complaints received by the Commission. From Fiscal Year 2010-11 through Fiscal Year 2014-15, 1,009 cases were closed, distributed as follows:

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[28] Section 760.34(7)(a), F.S.

[29] Fines are capped in a tiered system based on the number of prior violations of the Fair Housing Act: up to $10,000 if the respondent has no prior findings of guilt under the Fair Housing Act; up to $25,000 if the respondent has had one prior violation of the Fair Housing Act; and up to $50,000, if the respondent has had two or more violations of the Fair Housing Act. Section 760.34(7)(b), F.S.

[30] Section 760.34(7)(c), F.S.

[31] Sections 760.22(9) and 760.34(8), F.S.

[32] Section 760.34(8), F.S.

[33] United States Department of Housing and Urban Development, *Fair Housing Assistance Program (FHAP),* http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP (last visited Nov. 2, 2015).

[34] HUD additionally certified as substantially equivalent the Broward County Office of Equal Opportunity, Jacksonville Human Rights Commission, Office of Community Affairs – Human Relations Department (Orlando), Palm Beach County Office of Equal Opportunity, Pinellas County Office of Human Rights, and City of Tampa Office of Community Relations. United States Department of Housing and Urban Development, *Fair Housing Assistance Program (FHAP) Agencies,* http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP/agencies#FL (last visited Oct. 29, 2015).

[35] E-mail from Michelle Wilson, Executive Director, Florida Commission on Human Relations (July 8, 2015) (on file with the Senate Committee on Judiciary).

Closure Type	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
No Cause	171 (64%)	126 (69%)	92 (50%)	138 (73%)	123 (67%)
Administrative Closure	46 (17%)	15 (8%)	50 (27%)	29 (15%)	52 (28%)
Cause	20 (7%)	14 (8%)	4 (2%)	11 (6%)	0 (0%)
Settlement	16 (6%)	16 (9%)	18 (10%)	0 (0%)	0 (0%)
Withdrawal with Benefits	16 (6%)	11 (6%)	19 (11%)	12 (6%)	10 (5%)
Total Closures	269	182	183	190	185

Case Law on the Exhaustion of Administrative Remedies

In *Belletete v. Halford*, the Florida Fourth District Court of Appeal (DCA) held that individuals claiming discrimination under the FFHA must first exhaust administrative remedies before bringing a judicial claim, citing the doctrine of exhaustion of administrative remedies.[36] In a 2012 opinion, *Sun Harbor Homeowners' Association v. Bonura,* the Fourth DCA reiterated that the FFHA requires exhaustion of administrative remedies as a condition precedent to bringing a civil suit.[37] The court, however, did not rule on that particular issue because it was moot.[38] To date, the Florida Supreme Court has not addressed this issue, making the Fourth DCA decision the only one on point in the state court system.

However, in a case brought before the U.S. District Court for the Southern District of Florida and decided in 2010, the Florida Attorney General, in a motion to intervene, stated that "as co-enforcer with the Florida Commission on Human Relations of the FFHA, it has always interpreted the right of the private individual to file a judicial action under the FFHA without first pursuing an administrative remedy."[39] The U.S. District court agreed that the Fourth DCA decided *Belletete* incorrectly and that aggrieved parties did not have to exhaust administrative remedies before filing a civil lawsuit in a cause of action grounded in the FFHA.[40]

Based upon the Fourth DCA holdings, the HUD notified the Commission that the HUD will suspend the Commission's participation in the FHAP if the FFHA is not amended to overcome the judicially-created requirement that a state court plaintiff must exhaust their administrative remedies as a precondition to filing a housing discrimination claim in state court.[41] HUD has

[36] *Belletete v. Halford*, 886 So. 2d 308, 310 (Fla. 4th DCA 2004); S*ee also Fla. Welding & Erection Serv., Inc. v. Am. Mut. Ins. Co. of Boston*, 285 So. 2d 386, 389-90 (Fla. 1973). The doctrine of the exhaustion of administrative remedies is the principle that if an administrative remedy is provided by statute, a claimant must first seek relief from the administrative body before judicial relief is available. BLACK'S LAW DICTIONARY (2014).
[37] *Sun Harbor Homeowners' Ass'n, Inc. v. Bonura*, 95 So. 3d 262, 267 (Fla. 4th DCA 2012).
[38] *Id.*
[39] *Milsap v. Cornerstone Residential Mgmt., Inc*., 2010 WL 427436, *1 (S.D. Fla. 2010).
[40] *Id.* at 2. The court held that the FFHA should be interpreted similarly to the federal Fair Housing Act, which has been interpreted by federal courts as allowing for actions in court whether or not all administrative remedies have been exhausted. "The Court is now of the opinion that were this issue before the Florida Supreme Court, that Court would not follow the *Belletete* decision on this narrow issue, and that this Court's ruling dismissing the FFHA claims for failure to exhaust administrative remedies based on *Belletete* was incorrect." *Id.* at 2.
[41] Letter from HUD to Michelle Wilson, Executive Director, Florida Commission on Human Relations (July 8, 2015) (on file with the Senate Committee on Judiciary).

agreed to extend the deadline for the Commission to have the FFHA amended until March 12, 2016.[42]

III. Effect of Proposed Changes:

Removal of Housing Discrimination from the Florida Civil Rights Act

The bill removes housing discrimination as one of the forms of prohibited discrimination under the Florida Civil Rights Act (FCRA). The FCRA expressly requires the exhaustion of administrative remedies as a prerequisite to a civil action. The Florida Fair Housing Act, which has similar prohibitions against housing discrimination, does not include any express prerequisites. As such, the bill clarifies that a person must pursue housing discrimination claims exclusively through the FFHA.

According to the Commission, this change will clear up confusion by the courts that plaintiffs who wish to file a civil action for housing discrimination must first exhaust administrative remedies.[43]

Flexibility and Limits on Filing a Claim

The bill clarifies that a person does not have to petition for an administrative hearing or exhaust administrative remedies as a condition to bringing a civil action. The bill also removes the requirement that an aggrieved person wait to file the civil action until 180 days after filing a complaint with the Florida Commission on Human Relations or a local agency. Therefore, a person who alleges that he or she has been injured by unlawful housing discrimination may file a civil action at any time.

The bill also prohibits the filing of a civil action if the claimant and the respondent have entered into a conciliation agreement which has been approved by the Commission other than to enforce the terms of the agreement. Also, an aggrieved person may not file a civil action regarding a discriminatory housing practice once an administrative hearing has begun.

Continuation of Federal Funding

In removing the term "housing discrimination" from the FCRA and specifying that a petitioner is not required to petition for an administrative hearing or exhaust administrative remedies prior to filing a lawsuit, the bill will make the FFHA substantially equivalent to its federal counterpart. These changes appear sufficient to preserve the eligibility of the Commission to receive federal funds for investigations, administrative costs, and training for use in housing discrimination cases filed with the HUD.[44]

The bill takes effect July 1, 2016.

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[42] *Id*.
[43] Email from Michelle Wilson, Executive Direction, Florida Commission on Human Relations (Nov. 5, 2015) (copy on file with the Senate Committee on Judiciary).
[44] E-mail from Michelle Wilson, Executive Director, Florida Commission on Human Relations (July 7, 2015) (copy on file with the Senate Committee on Judiciary).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18, Fla. Const., provides that a mandate potentially exists if a law:

- Requires cities or counties to spend funds or take action requiring the expenditure of funds;
- Reduces the authority of cities or counties to raise revenues in the aggregate; or
- Reduces the percentage of a state tax shared with cities and counties in the aggregate.[45]

This bill does not impact the ability of a city or county to raise revenue. The bill also does not negatively impact the tax base of a city or county. Therefore, the bill does not appear to be a mandate.

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 eliminating a requirement that a person exhaust his or her administrative remedies before filing a lawsuit, some housing discrimination claims may be resolved by the court system instead of the conciliation processes available through the Florida Commission on Human Relations.

C. Government Sector Impact:

Florida Commission on Human Relations

The Commission does not expect a fiscal or workload impact from SB 7008.[46] While the Commission maintains that existing law allows a person aggrieved by a discriminatory housing practice to commence a civil action without first filing a complaint for an administrative remedy, the bill clarifies that individuals can bypass the investigation and conciliation process in order to better access Florida's court system.

[45] Article VII, x. 18(a) through (c), Fla. Const.
[46] E-mail from Cheyanne Costilla, General Counsel, Florida Commission on Human Relations (Aug. 20, 2015) (on file with the Senate Committee on Judiciary).

According to the Commission, if the proposed bill does not pass, this agency will continue to investigate any complaints of housing discrimination directly filed with the Commission, but would no longer receive or investigate cases for HUD.[47] Additionally, federal funding from HUD for investigations, administrative costs, or training would be at risk.[48] The HUD has indicated to the Commission that cases previously referred by HUD would have to be investigated by HUD. [49]

The Commission received $604,978 from HUD in the 2014-2015 fiscal year.[50] The ending fund balance of the Human Relations Commission Operating Trust Fund for Fiscal Year 2015-2016 is estimated to be $17,360.[51] As a result of the potential loss of federal funds, a deficit of ($1,264,105) is projected to occur in the Human Relations Commission Operating Trust Fund in Fiscal Year 2016-2017.[52] If the bill does pass and federal funds continue to be received from HUD for investigations, the Commission projects an ending fund balance of ($664,105) in Fiscal Year 2016-2017.[53]

Office of the State Courts Administrator

The Office of the State Courts Administrator indicates that the fiscal impact of the bill is unknown due to the unavailability of data needed to establish both additional revenue expected to be generated from an increase in civil filings and increased expenditures due to additional workload.[54]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 760.07, 760.34, and 760.35.

[47] E-mail from Cheyanne Costilla, General Counsel, Florida Commission on Human Relations (Aug. 19, 2015) (on file with the Senate Committee on Judiciary).
[48] Letter from Michael Keller, Chair of the Florida Commission on Human Relations, to Senator Diaz de La Portilla (Oct. 22, 2015) (on file with the Senate Committee on Judiciary).
[49] E-mail from Michelle Wilson, Executive Director, Florida Commission on Human Relations (July 7, 2015) (on file with the Senate Committee on Judiciary).
[50] *Id.*
[51] Accrual Fund Balance Analysis – Human Relations Commission Operating Trust Fund (Jan 11, 2016).
[52] *Id.*
[53] *Id.*
[54] Office of the State Courts Administrator, *2016 Judicial Impact Statement* (Nov. 2, 2015).

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 Governmental Oversight and Accountability

585-00725-16 20167008__

A bill to be entitled

An act relating to housing discrimination; amending s. 760.07, F.S.; removing housing discrimination as a cause of action for certain relief and damages stemming from violations of the Florida Civil Rights Act of 1992; amending s. 760.34, F.S.; making technical changes; revising the conditions under which an aggrieved person may commence a civil action in any appropriate court against a specified respondent to enforce specified rights; providing that the aggrieved person does not need to take specified actions before bringing a civil action; amending s. 760.35, F.S.; authorizing, rather than requiring, a civil action to commence within 2 years after an alleged discriminatory housing practice; authorizing an aggrieved person to commence a civil action regardless of whether a specified complaint has been filed and regardless of the status of any such complaint; prohibiting an aggrieved person from filing a specified action in certain circumstances; providing an exception; prohibiting an aggrieved person from commencing a specified civil action if an administrative law judge has commenced a hearing on the record on the allegation; providing an effective date.

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

Section 1. Section 760.07, Florida Statutes, is amended to

585-00725-16 20167008__

read:

760.07 Remedies for unlawful discrimination.—Any violation of any Florida statute that makes ~~making~~ unlawful discrimination because of race, color, religion, gender, pregnancy, national origin, age, handicap, or marital status in the areas of education, employment, ~~housing,~~ or public accommodations gives rise to a cause of action for all relief and damages described in s. 760.11(5), unless greater damages are expressly provided for. If the statute prohibiting unlawful discrimination provides an administrative remedy, the action for equitable relief and damages provided for in this section may be initiated only after the plaintiff has exhausted his or her administrative remedy. The term "public accommodations" does not include lodge halls or other similar facilities of private organizations which are made available for public use occasionally or periodically. The right to trial by jury is preserved in any case in which the plaintiff is seeking actual or punitive damages.

Section 2. Subsections (2) and (4) of section 760.34, Florida Statutes, are amended to read:

760.34 Enforcement.—

(2) Any person who files a complaint under subsection (1) must do so ~~be filed~~ within 1 year after the alleged discriminatory housing practice occurred. The complaint must be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. A complaint may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him or her and, with the leave of the commission, which shall be granted whenever it would be reasonable and fair to do so, may amend his or her

answer at any time. Both the complaint and the answer shall be verified.

(4) ~~If, within 180 days after a complaint is filed with the commission or within 180 days after expiration of any period of reference under subsection (3), the commission has been unable to obtain voluntary compliance with ss. 760.20-760.37,~~ The person aggrieved may commence a civil action in any appropriate court against the respondent named in the complaint or petition for an administrative determination pursuant to s. 760.35 to enforce the rights granted or protected by ss. 760.20-760.37. The person aggrieved is not required to petition for an administrative hearing or exhaust administrative remedies before bringing a civil action. If, as a result of its investigation under subsection (1), the commission finds there is reasonable cause to believe that a discriminatory housing practice has occurred, at the request of the person aggrieved, the Attorney General may bring an action in the name of the state on behalf of the aggrieved person to enforce the provisions of ss. 760.20-760.37.

Section 3. Section 760.35, Florida Statutes, is amended to read:

760.35 Civil actions and relief; administrative procedures.—

(1) An aggrieved person may commence a civil action ~~shall be commenced~~ no later than 2 years after an alleged discriminatory housing practice has occurred. However, the court shall continue a civil case brought pursuant to this section or s. 760.34 from time to time before bringing it to trial if the court believes that the conciliation efforts of the commission

or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the commission or to the local agency and which practice forms the basis for the action in court. Any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of ss. 760.20-760.37 and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of ss. 760.20-760.37 shall not be affected.

(2) An aggrieved person may commence a civil action under this section regardless of whether a complaint has been filed under s. 760.34(1) and regardless of the status of any such complaint. If the commission has obtained a conciliation agreement with the consent of an aggrieved person under s. 760.36, the aggrieved person may not file any action under this section regarding the alleged discriminatory housing practice that forms the basis for the complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this section regarding an alleged discriminatory housing practice if an administrative law judge has commenced a hearing on the record on the allegation.

(4)~~(2)~~ If the court finds that a discriminatory housing practice has occurred, it shall issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, including injunctive and other equitable relief, actual and punitive damages, and reasonable attorney ~~attorney's~~ fees and costs.

(5) ~~(3)~~ (a) If the commission is unable to obtain voluntary compliance with ss. 760.20-760.37 or has reasonable cause to believe that a discriminatory practice has occurred:

1. The commission may institute an administrative proceeding under chapter 120; or

2. The person aggrieved may request administrative relief under chapter 120 within 30 days after receiving notice that the commission has concluded its investigation under s. 760.34.

(b) Administrative hearings shall be conducted pursuant to ss. 120.569 and 120.57(1). The respondent must be served written notice by certified mail. If the administrative law judge finds that a discriminatory housing practice has occurred or is about to occur, he or she shall issue a recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including quantifiable damages and reasonable attorney ~~attorney's~~ fees and costs. The commission may adopt, reject, or modify a recommended order only as provided under s. 120.57(1). Judgment for the amount of damages and costs assessed pursuant to a final order by the commission may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

(c) The district courts of appeal may, upon the filing of appropriate notices of appeal, review final orders of the commission pursuant to s. 120.68. Costs or fees may not be assessed against the commission in any appeal from a final order issued by the commission under this subsection. Unless specifically ordered by the court, the commencement of an appeal does not suspend or stay an order of the commission.

(d) This subsection does not prevent any other legal or

administrative action provided by law.

Section 4. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Judiciary, *Vice Chair*
Appropriations
Appropriations Subcommittee on Education
Children, Families, and Elder Affairs
Commerce and Tourism

SENATOR JEREMY RING
29th District

December 7, 2015

Honorable Alan Hays
Appropriations Subcommittee on General Government
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Mr. Chairman,

I am writing to respectfully request your cooperation in placing Senate Bill 7008, relating to Housing Discrimination, on the Appropriations Subcommittee on General Government agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

Jeremy Ring

Jeremy Ring
Senator District 29

cc: Jamie DeLoach, Staff Director
Lisa Waddell, Committee Administrative Assistant

REPLY TO:
☐ 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
☐ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: EL 110 **Case No.:** **Type:**
Caption: Senate Appropriations Subcommittee on General Government **Judge:**

Started: 1/13/2016 1:35:25 PM
Ends: 1/13/2016 2:27:24 PM Length: 00:52:00

1:35:28 PM Senator Hays (Chair)
1:36:18 PM SB 374
1:36:31 PM Sen. Montford
1:39:55 PM Sen. Hays
1:40:12 PM Todd Steibly, Attorney, Winewood, Northwood
1:40:14 PM Doug Mannheimer, Attorney, Hall Investments/Koger Center
1:40:22 PM Sen. Braynon
1:41:02 PM Sen. Altman
1:42:13 PM SB 286
1:42:28 PM Sen. Brandes
1:42:54 PM Sen. Hays
1:43:00 PM Sen. Lee
1:43:30 PM Sen. Brandes
1:43:50 PM Sen. Margolis
1:44:07 PM Sen. Brandes
1:44:11 PM Sen. Margolis
1:44:27 PM Sen. Brandes
1:44:47 PM Sen. Margolis
1:45:13 PM Sen. Brandes
1:45:31 PM Sen. Hays
1:45:40 PM Meredith Hinshelwood, Deputy Director of Governmental Relations, Office of Financial Regulation
1:45:51 PM Sen. Margolis
1:47:45 PM M. Hinshelwood
1:48:34 PM Sen. Margolis
1:49:45 PM M. Hinshelwood
1:49:54 PM Sen. Braynon
1:51:57 PM M. Hinshelwood
1:52:29 PM Sen. Braynon
1:53:06 PM M. Hinshelwood
1:54:05 PM Sen. Braynon
1:54:35 PM M. Hinshelwood
1:55:02 PM Sen. Lee
1:57:14 PM M. Hinshelwood
1:58:11 PM Sen. Lee
1:59:27 PM Sen. Hays
1:59:38 PM Ross Nobles waives in support
1:59:53 PM Sen. Braynon
2:01:38 PM Sen. Margolis
2:03:08 PM Sen. Brandes
2:04:25 PM SB 548
2:04:33 PM Senator Richter
2:04:50 PM Am. 926508
2:04:56 PM Sen. Richter
2:05:35 PM Doug Mang waives in support
2:05:42 PM Beth A. Vecchioli waives in support
2:06:48 PM SB 7008
2:07:01 PM J.J. Piskadlo, Senator Ring's aide
2:08:48 PM SB 372
2:08:55 PM Sen. Lee
2:11:10 PM Am. 970140
2:11:15 PM Sen. Lee
2:11:38 PM Am. 933300

2:11:43 PM Sen. Lee
2:12:02 PM SB 372 (cont.)
2:12:41 PM SB 394
2:12:48 PM Sen. Hays
2:14:25 PM David Mica Jr. waives in support
2:14:36 PM Jennifer Green speaking for Information
2:17:22 PM SB 400
2:17:27 PM Sen. Hays
2:18:42 PM Andrew Ketchel waives in support
2:18:58 PM Julie Wraithmell, Director of Wildlife Conservation, Audubon, FL
2:21:47 PM Sen. Braynon
2:22:04 PM Sen. Hays
2:23:09 PM Sen. Braynon
2:23:34 PM Lennie Zeiler, Chief of Staff, Department of Evironmental Protection
2:25:05 PM Sen. Simpson
2:25:43 PM Sen. Lee
2:25:50 PM Sen. Hays
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