

<b>Tab 1</b>	<b>SB 282 by Rouson (CO-INTRODUCERS) Jones, Book, Rodrigues;</b> (Similar to CS/H 00795) Mental Health and Substance Use Disorders					
388896	D	S	RCS	AP, Rouson	Delete everything after	01/27 05:45 PM
<b>Tab 2</b>	<b>SB 350 by Bean;</b> (Identical to H 00269) Procedures for Petitions for Utility Rate Relief					
<b>Tab 3</b>	<b>SB 406 by Berman;</b> (Identical to H 00451) Secured Transactions					
<b>Tab 4</b>	<b>SB 434 by Hooper (CO-INTRODUCERS) Torres, Stewart;</b> (Similar to H 00489) Florida Tourism Marketing					
<b>Tab 5</b>	<b>SB 454 by Perry;</b> (Identical to H 00327) Florida Commission on Offender Review					
<b>Tab 6</b>	<b>CS/CS/SB 468 by JU, BI, Perry (CO-INTRODUCERS) Broxson;</b> (Similar to CS/H 00503) Insurance					
571360	A	S	WD	AP, Brandes	Before L.73:	01/27 05:59 PM
<b>Tab 7</b>	<b>CS/SB 494 by EN, Hutson;</b> (Similar to CS/H 00323) Fish and Wildlife Conservation Commission					
602302	PCS	S	RCS	AP, AEG		01/27 05:58 PM
476130	A	S	RCS	AP, Hutson	Delete L.360 - 362:	01/27 05:58 PM
<b>Tab 8</b>	<b>CS/SB 498 by BI, Baxley (CO-INTRODUCERS) Perry, Taddeo, Book;</b> (Similar to H 00079) Coverage for Hearing Aids for Children					
<b>Tab 9</b>	<b>SB 534 by Harrell;</b> (Identical to H 00885) Prescription Drugs Used in the Treatment of Schizophrenia for Medicaid Recipients					
<b>Tab 10</b>	<b>SB 544 by Boyd;</b> (Similar to CS/H 00731) Drug-related Overdose Prevention					
455298	PCS	S	RCS	AP, AHS		01/27 05:21 PM
<b>Tab 11</b>	<b>SB 838 by Wright (CO-INTRODUCERS) Polsky, Hooper;</b> (Identical to H 00557) Fire Investigators					
865484	A	S	RCS	AP, Wright	Delete L.20 - 24:	01/27 01:44 PM
814112	AA	S	RCS	AP, Wright	Delete L.6 - 8:	01/27 01:44 PM
<b>Tab 12</b>	<b>SB 1680 by Gruters;</b> (Similar to CS/H 00431) Financial Institutions					

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**APPROPRIATIONS**  
**Senator Stargel, Chair**  
**Senator Bean, Vice Chair**

**MEETING DATE:** Thursday, January 27, 2022  
**TIME:** 11:30 a.m.—1:30 p.m.  
**PLACE:** Pat Thomas Committee Room, 412 Knott Building

**MEMBERS:** Senator Stargel, Chair; Senator Bean, Vice Chair; Senators Albritton, Baxley, Book, Bracy, Brandes, Broxson, Diaz, Gainer, Gibson, Hooper, Hutson, Mayfield, Passidomo, Perry, Pizzo, Powell, Rouson, and Stewart

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 282</b> Rouson (Similar CS/H 795)	Mental Health and Substance Use Disorders; Providing that the use of peer specialists is an essential element of a coordinated system of care in recovery from a substance use disorder or mental illness; revising background screening requirements for certain peer specialists; requiring the Department of Children and Families to develop a training program for peer specialists and to give preference to trainers who are certified peer specialists; authorizing the department to certify peer specialists, either directly or by approving a third-party credentialing entity, etc.  CF     11/30/2021 Favorable AHS    01/19/2022 Favorable AP     01/27/2022 Fav/CS	Fav/CS Yeas 19 Nays 0
With subcommittee recommendation – Health and Human Services			
2	<b>SB 350</b> Bean (Identical H 269)	Procedures for Petitions for Utility Rate Relief; Increasing the maximum annual sales, expressed in gigawatt hours, which natural gas or public electric utilities may have to be eligible to request that the Public Service Commission use certain procedures for the utility's petition for rate relief, etc.  RI     11/02/2021 Favorable AEG    01/12/2022 Favorable AP     01/27/2022 Favorable	Favorable Yeas 17 Nays 0
With subcommittee recommendation - Agriculture, Environment, and General Government			
3	<b>SB 406</b> Berman (Identical H 451)	Secured Transactions; Providing that a description of certain accounts and entitlements by a certain type of collateral is insufficient for the purpose of security agreements; providing retroactive application, etc.  CA     11/03/2021 Favorable FT     01/13/2022 Favorable AP     01/27/2022 Favorable	Favorable Yeas 16 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations

Thursday, January 27, 2022, 11:30 a.m.—1:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 434</b> Hooper (Similar H 489)	Florida Tourism Marketing; Delaying the scheduled repeal of provisions governing the Florida Tourism Industry Marketing Corporation and the Division of Tourism Marketing of Enterprise Florida, Inc., respectively, etc.  CM 11/02/2021 Favorable AP 01/27/2022 Favorable	Favorable Yeas 19 Nays 0
5	<b>SB 454</b> Perry (Identical H 327)	Florida Commission on Offender Review; Increasing the rate of payment for work performed by retired or former commissioners assigned to temporary duty, etc.  CJ 11/30/2021 Favorable ACJ 01/12/2022 Favorable AP 01/27/2022 Favorable	Favorable Yeas 17 Nays 0
With subcommittee recommendation – Criminal and Civil Justice			
6	<b>CS/CS/SB 468</b> Judiciary / Banking and Insurance / Perry (Similar CS/H 503, Compare CS/H 959, S 1874)	Insurance; Redefining the term “covered policy” under the Florida Hurricane Catastrophe Fund in relation to certain collateral protection insurance policies; authorizing any association, trust, or pool created for the purpose of forming a risk management mechanism or providing self-insurance for a public entity to use communications media technology to establish a quorum and conduct public business; authorizing insurers to file certain insurance rating plans based on certain windstorm mitigation construction standards, if certain requirements are met, etc.  BI 12/01/2021 Fav/CS JU 01/10/2022 Fav/CS AP 01/27/2022 Favorable	Favorable Yeas 18 Nays 0

**A proposed committee substitute** for the following bill (CS/SB 494) is available:

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations

Thursday, January 27, 2022, 11:30 a.m.—1:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	<b>CS/SB 494</b> Environment and Natural Resources / Hutson (Similar CS/H 323)	Fish and Wildlife Conservation Commission; Revising the notices a person must be given for failure to submit to certain tests for alcohol, chemical substances, or controlled substances; authorizing certain athletic teams or sports affiliated with specified educational institutions to operate a human-powered vessel within the marked channel of the Florida Intracoastal Waterway; revising the vessel conditions that an officer of the Fish and Wildlife Conservation Commission or a law enforcement agency may use to determine that a vessel is at risk of becoming derelict; prohibiting municipalities and counties from designating public bathing beach areas or swim areas within their jurisdictions which are within the marked channel portion of the Florida Intracoastal Waterway or within a specified distance from any portion of the marked channel; providing that all employees of the commission or the Florida Forest Service may operate drones for specified purposes, etc.  EN 11/30/2021 Fav/CS AEG 01/12/2022 Fav/CS AP 01/27/2022 Fav/CS	Fav/CS Yeas 18 Nays 0
With subcommittee recommendation - Agriculture, Environment, and General Government			
8	<b>CS/SB 498</b> Banking and Insurance / Baxley (Similar H 79)	Coverage for Hearing Aids for Children; Requiring certain individual health insurance policies to provide coverage for hearing aids for certain children 18 years of age or younger under certain circumstances; requiring certain individual health maintenance organization contracts to provide coverage for hearing aids for certain children 18 years of age or younger under certain circumstances; specifying certain coverage requirements; providing an exception, etc.  BI 01/12/2022 Fav/CS HP 01/19/2022 Favorable AP 01/27/2022 Favorable	Favorable Yeas 17 Nays 0
9	<b>SB 534</b> Harrell (Identical H 885)	Prescription Drugs Used in the Treatment of Schizophrenia for Medicaid Recipients; Authorizing the approval of drug products or certain medication prescribed for the treatment of schizophrenia or schizotypal or delusional disorders for Medicaid recipients who have not met the step-therapy prior authorization criteria, when the drug product or certain medication meets specified criteria, etc.  HP 12/02/2021 Favorable AHS 01/19/2022 Favorable AP 01/27/2022 Favorable	Favorable Yeas 19 Nays 0
With subcommittee recommendation – Health and Human Services			

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations

Thursday, January 27, 2022, 11:30 a.m.—1:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
<b>A proposed committee substitute</b> for the following bill (SB 544) is available:			
10	<b>SB 544</b> Boyd (Similar CS/H 731)	Drug-related Overdose Prevention; Requiring the Florida Public Health Institute, Inc., in consultation with the Department of Health, to educate the public regarding the use of emergency opioid antagonists; authorizing pharmacists to order certain emergency opioid antagonists; providing certain authorized persons immunity from civil or criminal liability for administering emergency opioid antagonists under certain circumstances; authorizing civilian personnel of law enforcement agencies to administer emergency opioid antagonists under certain circumstances, etc.  HP 12/02/2021 Favorable AHS 01/19/2022 Fav/CS AP 01/27/2022 Fav/CS	Fav/CS Yeas 18 Nays 0
With subcommittee recommendation – Health and Human Services			
11	<b>SB 838</b> Wright (Identical H 557)	Fire Investigators; Revising the definition of the term “firefighter” to include full-time, Florida-certified fire investigators for the purpose of expanding eligibility for certain cancer treatment benefits to include such investigators, etc.  BI 12/01/2021 Favorable CA 01/18/2022 Favorable AP 01/27/2022 Fav/CS	Fav/CS Yeas 18 Nays 0
12	<b>SB 1680</b> Gruters (Similar CS/H 431)	Financial Institutions; Providing that the failure of foreign nationals to appear through video conference at certain hearings is grounds for denial of certain applications; providing that the imposition of fees or charges upon consumers for online audit verifications of financial institution accounts is a violation of the Florida Deceptive and Unfair Trade Practices Act; revising the circumstances pursuant to which the Office of Financial Regulation is required to conduct certain examinations; requiring the office, upon receiving applications for authority to organize a bank or trust company, to investigate the need for new bank facilities in a primary service area or for a target market and the ability of such service area or target market to support new and existing bank facilities, etc.  BI 01/18/2022 Favorable AP 01/27/2022 Favorable RC	Favorable Yeas 18 Nays 0

Other Related Meeting Documents

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations

Thursday, January 27, 2022, 11:30 a.m.—1:30 p.m.

---

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: CS/SB 282

INTRODUCER: Appropriations Committee; and Senator Rouson and others

SUBJECT: Mental Health and Substance Use Disorders

DATE: January 31, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Sneed</u>	<u>Money</u>	<u>AHS</u>	<b>Recommend: Favorable</b>
3.	<u>Sneed</u>	<u>Sadberry</u>	<u>AP</u>	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 282 promotes the use of peer specialists to assist an individual's recovery from substance use disorder (SUD) or mental illness. Peer specialists are persons who have recovered from a substance use disorder or mental illness who support a person with a current substance use disorder or mental illness.

Specifically, the bill:

- Adds the use of peer specialists as an essential element of a coordinated system of care;
- Provides legislative findings and intent related to the use of peer specialists in the provision of behavioral health care;
- Requires the DCF to designate a managing entity with an existing certified recovery peer specialist training program to provide training for persons seeking certification as peer specialists. The managing entity must give preference to trainers who are currently certified peer specialists;
- Requires the training program to coincide with a competency exam and be based on current practice standards;
- Revises background screening requirements for peer specialists;
- Adds offenses for which individuals seeking certification as a peer specialist may seek an exemption from eligibility disqualification;
- Allows peer specialists to work with adults with mental health disorders, in addition to SUDs and co-occurring disorders, while a request for an exemption from a background check disqualification is pending;

- Expands the statutory limit for the number of days during which a service provider can work while a request for exemption from a background check disqualification is pending to 180 days from the current 90 days; and
- Provides that individuals certified as peer specialists by July 1, 2022, will be deemed to have met the requirements for certification under the bill, but will be required to comply with minimum standards and requirements needed to maintain certification.

The bill is expected to have an insignificant negative fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

## II. Present Situation:

### Substance Abuse

Substance abuse is the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs. Substance use disorder (SUD) is determined based on specified criteria included in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).<sup>1</sup> According to the DSM-5, a diagnosis of SUD is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.<sup>2</sup> SUD occurs when an individual chronically uses alcohol or drugs, resulting in significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.<sup>3</sup> Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.<sup>4</sup> Imaging studies of brains belonging to persons with SUD reveal physical changes in areas of the brain critical to judgment, decision making, learning and memory, and behavior control.<sup>5</sup>

In 2020, approximately 40.3 million people aged 12 or older had a SUD related to corresponding use of alcohol or illicit drugs within the previous year, including 28.3 million people diagnosed with alcohol use disorder (AUD), 18.4 million people diagnosed with drug use disorder, and 6.5 million people diagnosed with both AUD and SUD.<sup>6</sup> The most common substance abuse

<sup>1</sup> The World Health Organization, *Mental Health and Substance Abuse*, available at <https://www.who.int/westernpacific/about/how-we-work/programmes/mental-health-and-substance-abuse>; the National Institute on Drug Abuse (NIDA), *The Science of Drug Use and Addiction: The Basics*, available at <https://www.drugabuse.gov/publications/media-guide/science-drug-use-addiction-basics> (last visited January 27, 2022).

<sup>2</sup> The National Association of Addiction Treatment Providers, *Substance Use Disorder*, available at <https://www.naatp.org/resources/clinical/substance-use-disorder> (last visited January 27, 2022).

<sup>3</sup> The Substance Abuse and Mental Health Services Administration (The SAMHSA), *Substance Use Disorders*, available at <https://www.samhsa.gov/disorders/substance-use> (last visited January 27, 2022).

<sup>4</sup> The NIDA, *Drugs, Brains, and Behavior: The Science of Addiction*, available at <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction> (last visited January 27, 2022).

<sup>5</sup> *Id.*

<sup>6</sup> The SAMHSA, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2020 National Survey on Drug Use and Health*, p. 3, available at <https://www.samhsa.gov/data/sites/default/files/reports/rpt35325/NSDUHFFRPDFWHTMLFiles2020/2020NSDUHFFR1PD FW102121.pdf> (last visited January 27, 2022).



disorders in the United States are from the use of alcohol, tobacco, cannabis, opioids, hallucinogens, and stimulants.<sup>7</sup>

The number of drug overdose deaths in the U.S. rose by nearly 29% over a 12-month period ending in April 2021, to an estimated 100,306.<sup>8</sup> Over 75% of overdose deaths during this period were attributable to opioids.<sup>9</sup> Opioid-related deaths increased by 35% over comparative 12-month periods, from approximately 56,064 as of April 2020 to 75,673 in the period ending in April 2021.<sup>10</sup>

### ***Substance Abuse Treatment in Florida***

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse.<sup>11</sup> The laws resulted in separate funding streams and requirements for alcoholism and drug abuse. In response to the laws, the Florida Legislature enacted chs. 396 and 397, F.S., relating to alcohol and drug abuse, respectively.<sup>12</sup> Each of these laws governed different aspects of addiction, and thus had different rules adopted by the state to fully implement the respective pieces of legislation.<sup>13</sup> However, because persons with substance abuse issues often do not restrict their misuse to one substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address Florida's substance abuse problem.<sup>14</sup> In 1993, legislation was adopted to combine ch. 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).<sup>15</sup>

The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider.<sup>16</sup> However, denial of addiction is a prevalent symptom of SUD, creating a barrier to timely intervention and effective treatment.<sup>17</sup>

---

<sup>7</sup> The Rural Health Information Hub, *Defining Substance Abuse and Substance Use Disorders*, available at <https://www.ruralhealthinfo.org/toolkits/substance-abuse/1/definition> (last visited January 27, 2022).

<sup>8</sup> The Center for Disease Control and Prevention, National Center for Health Statistics, *Vital Statistics Rapid Release: Provisional Drug Overdose Death Counts*, available at <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> (last visited January 27, 2022).

<sup>9</sup> U.S. News and World Report, *CDC Data: Drug Overdose Deaths Top 100k for First Time*, November 17, 2021, available at <https://www.usnews.com/news/health-news/articles/2021-11-17/drug-overdose-deaths-top-100k-over-12-months-for-first-time> (last visited January 27, 2022).

<sup>10</sup> *Id.*

<sup>11</sup> The DCF, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5. (on file with the Senate Children, Families, and Elder Affairs Committee).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Chapter 93-39, s. 2, Laws of Fla., codifying current ch. 397, F.S.

<sup>16</sup> See s. 397.601(1) and (2), F.S. An individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.

<sup>17</sup> Darran Duchene and Patrick Lane, *Fundamentals of the Marchman Act*, Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Programs, available at <http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/> (last visited January 27, 2022).

As a result, treatment typically must stem from a third party providing the intervention needed for SUD treatment.<sup>18</sup>

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. Services are provided based upon state and federally established priority populations.<sup>19</sup> The DCF provides treatment for SUD through a community-based provider system offering detoxification,<sup>20</sup> treatment services<sup>21</sup> and recovery support<sup>22</sup> for individuals affected by substance misuse, abuse or dependence.<sup>23</sup>

### Peer Specialists

Research has shown that social support provided by peers is beneficial to those in recovery from a SUD or mental illness.<sup>24</sup> Section 397.311, F.S., defines a peer specialist as “a person who has been in recovery from a SUD or mental illness for at least 2 years who uses his or her personal experience to provide services in behavioral health settings to support others in their recovery, or a person who has at least 2 years of experience as a family member or caregiver of an individual who has a SUD or mental illness. The term does not include a qualified professional or a person otherwise certified under ch. 394 or ch. 397.”<sup>25</sup>

There are four primary types of social support provided by peers:

- Emotional: where a peer demonstrates empathy, caring or concern to bolster a person’s self-esteem (i.e., peer mentoring or peer-led support groups).
- Informational: where a peer shares knowledge and information to provide life or vocational skills training (i.e., parenting classes, job readiness training, or wellness seminars).
- Instrumental: where a peer provides concrete assistance to help others accomplish tasks (i.e., child care, transportation, and help accessing health and human services).
- Affiliational: where a peer facilitates contacts with other people to promote learning of social skills, create a sense of community, and acquire a sense of belonging (i.e., recovery centers, sports league participation, and alcohol or drug free socialization opportunities).<sup>26</sup>

<sup>18</sup> *Id.*

<sup>19</sup> See chs. 394 and 397, F.S.

<sup>20</sup> Detoxification services use medical and clinical procedures to assist individuals and adults as they withdraw from the physiological and psychological effects of substance abuse.

<sup>21</sup> Treatment services include a wide array of assessment, counseling, case management, and support that are designed to help individuals who have lost their abilities to control their substance use on their own and require formal, structured intervention and support.

<sup>22</sup> Recovery support services, including transitional housing, life skills training, parenting skills, and peer-based individual and group counseling, are offered during and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.

<sup>23</sup> The DCF, *Treatment for Substance Abuse*, available at <https://www.myflfamilies.com/service-programs/samh/substance-abuse.shtml> (last visited January 27, 2022).

<sup>24</sup> Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, *What Are Peer Recovery Support Services?*, available at <https://store.samhsa.gov/system/files/sma09-4454.pdf> (last visited January 27, 2022).

<sup>25</sup> Section 397.311(30), F.S.

<sup>26</sup> The DCF, *Florida Peer Services Handbook* at p. 4-5, 2016, available at <https://www.myflfamilies.com/service-programs/samh/publications/docs/peer-services/DCF-Peer-Guidance.pdf> (last visited January 27, 2022).

In Florida, the DCF and Medicaid both allow reimbursement for peer support services, but only if provided by certified peer specialists.<sup>27</sup>

An individual seeking to become a certified peer specialist must have either been in recovery from a SUD or mental illness for at least two years, or must have at least two years of experience as a family member or caregiver of an individual suffering from a substance use disorder or mental illness.<sup>28</sup> The DCF must approve one or more third-party credentialing entities for the purposes of certifying peer specialists, approving training programs for individuals seeking certification as peer specialists, approving continuing education programs, and establishing the minimum requirements and standards that applicants must achieve to maintain certification.<sup>29</sup> To obtain approval, the third-party credentialing entity must demonstrate compliance with nationally recognized standards for developing and administering professional certification programs to certify peer specialists.<sup>30</sup> All individuals providing DCF-funded recovery support services as a peer specialist must be certified, however an individual who is not currently certified may work as a peer specialist for a maximum of one year if they are working toward certification and are supervised by a qualified professional or by a certified peer specialist with at least three years of full-time experience as a peer specialist at a licensed behavioral health organization.<sup>31</sup>

The Florida Certification Board (FCB) is currently the only credentialing entity approved by the DCF for certifying peer specialists in the state.<sup>32</sup> The FCB credentials Certified Recovery Peer Specialist (CRPS) which assist in providing client directed care by helping individuals develop skills and relationships that will allow them to achieve and maintain recovery from SUDs and mental illness.<sup>33</sup> CRPS applicants must attest to having been in recovery for a minimum of two years.<sup>34</sup> The CRPS must also have demonstrated competency through training and experience in the performance domains of: Recovery Support, Advocacy, Mentoring, and Professional Responsibilities.<sup>35</sup> As of June 2020, 630 individuals maintain active CRPS certifications statewide.<sup>36</sup>

Individuals seeking certification must adhere to the CRPS credentialing standards and requirements, complete a background screening, and have completed all court-ordered sanctions related to any prior crimes committed for at least three years.<sup>37</sup> Prospective CRPS must also

---

<sup>27</sup> The DCF, *Agency Analysis for HB 369 (2019)*, p. 2, February 8, 2019 (on file with the Senate Committee on Children, Families, and Elder Affairs). Florida's Medicaid program currently covers peer recovery services; the DCF allows the state's behavioral health managing entities to reimburse for peer recovery services.

<sup>28</sup> Section 397.417(1), F.S.

<sup>29</sup> Section 397.417(2), F.S.

<sup>30</sup> *Id.*

<sup>31</sup> Section 397.417(3), F.S.

<sup>32</sup> The DCF, *Agency Analysis for SB 130 (2021 Regular Session)*, p. 2, December 10, 2020 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as, "The DCF SB 130 (2021) Analysis"). CS/CS/SB 130 (2021) is substantially identical to SB 282.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

successfully complete training and a competency exam demonstrating proficiency in certain educational areas.<sup>38</sup>

## **Background Screening**

### ***Substance Use Disorder and Criminal History***

Certain individuals receiving substance abuse treatment may have a criminal or violent history: about 54 percent of state prisoners and 61 percent of sentenced jail inmates incarcerated for violent offenses met the Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> Edition, (DSM-IV) criteria for drug dependence or abuse.<sup>39</sup> Additionally, individuals who use illicit drugs are more likely to commit crimes, and it is common for many offenses, including violent crimes, to be committed by individuals who had used drugs or alcohol prior to committing the crime, or who were using at the time of the offense.<sup>40</sup> As a result, individuals who have recovered from a SUD or mental illness often have a criminal history, which may disqualify them from employment in the substance abuse treatment industry due to Florida's background screening process.

### ***Background Screening Process***

Current law establishes standard procedures for criminal history background screening of prospective employees; ch. 435, F.S., outlines the screening requirements. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,<sup>41</sup> and may include criminal records checks through local law enforcement agencies. A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.<sup>42</sup>

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.<sup>43</sup> Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to the FDLE.<sup>44</sup>

---

<sup>38</sup> *Id.*

<sup>39</sup> Jennifer Bronson, et al., *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics at p. 1, June 2017, available at <https://www.bjs.gov/content/pub/pdf/dudaspi0709.pdf> (last visited November 17, 2021).

<sup>40</sup> National Institute on Drug Abuse, *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide* at p. 12, available at [https://d14rmgrtwzf5a.cloudfront.net/sites/default/files/txcriminaljustice\\_0.pdf](https://d14rmgrtwzf5a.cloudfront.net/sites/default/files/txcriminaljustice_0.pdf) (last visited January 27, 2022).

<sup>41</sup> The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site, available at <https://www.nsopw.gov/> (last visited January 27, 2022).

<sup>42</sup> Section 435.04, F.S.

<sup>43</sup> Section 435.05(1)(a), F.S.

<sup>44</sup> Sections 435.03(1) and 435.04(1)(a), F.S.

For both level 1 and 2 screenings, an employer must submit the information necessary for screening to the FDLE within five working days after receiving it.<sup>45</sup> Additionally, for both levels of screening, the FDLE must perform a criminal history record check of its records.<sup>46</sup> For a level 1 screening, this is the only information searched, and once complete, the FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.<sup>47</sup> For level 2 screening, the FDLE also requests the FBI to conduct a national criminal history record check of its records for each employee for whom the request is made.<sup>48</sup>

The person undergoing screening must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.<sup>49</sup>

### *Disqualifying Offenses*

Regardless of whether the screening is level 1 or level 2, the screening employer or agency must make sure that the applicant has good moral character by ensuring that the employee has not been arrested for and is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any of the following 52 offenses prohibited under Florida law, or similar law of another jurisdiction:

- Section 393.135, F.S., relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- Section 394.4593, F.S., relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- Section 415.111, F.S., relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
- Section 777.04, F.S., relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.
- Section 782.04, F.S., relating to murder.
- Section 782.07, F.S., relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- Section 782.071, F.S., relating to vehicular homicide.
- Section 782.09, F.S., relating to killing of an unborn child by injury to the mother.
- Chapter 784, F.S., relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 784.011, F.S., relating to assault, if the victim of the offense was a minor.
- Section 784.03, F.S., relating to battery, if the victim of the offense was a minor.
- Section 787.01, F.S., relating to kidnapping.
- Section 787.02, F.S., relating to false imprisonment.
- Section 787.025, F.S., relating to luring or enticing a child.

---

<sup>45</sup> Section 435.05(1)(b)-(c), F.S.

<sup>46</sup> *Id.*

<sup>47</sup> Section 435.05(1)(b), F.S.

<sup>48</sup> Section 435.05(1)(c), F.S.

<sup>49</sup> Section 435.05(1)(d), F.S.

- Section 787.04(2), F.S., relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- Section 787.04(3), F.S., relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
- Section 790.115(1), F.S., relating to exhibiting firearms or weapons within 1,000 feet of a school.
- Section 790.115(2)(b), F.S., relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- Section 794.011, F.S., relating to sexual battery.
- Former s. 794.041, F.S., relating to prohibited acts of persons in familial or custodial authority.
- Section 794.05, F.S., relating to unlawful sexual activity with certain minors.
- Chapter 796, F.S., relating to prostitution.
- Section 798.02, F.S., relating to lewd and lascivious behavior.
- Chapter 800, F.S., relating to lewdness and indecent exposure.
- Section 806.01, F.S., relating to arson.
- Section 810.02, F.S., relating to burglary.
- Section 810.14, F.S., relating to voyeurism, if the offense is a felony.
- Section 810.145, F.S., relating to video voyeurism, if the offense is a felony.
- Chapter 812, F.S., relating to theft, robbery, and related crimes, if the offense is a felony.
- Section 817.563, F.S., relating to fraudulent sale of controlled substances, only if the offense was a felony.
- Section 825.102, F.S., relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- Section 825.103, F.S., relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- Section 826.04, F.S., relating to incest.
- Section 827.03, F.S., relating to child abuse, aggravated child abuse, or neglect of a child.
- Section 827.04, F.S., relating to contributing to the delinquency or dependency of a child.
- Former s. 827.05, F.S., relating to negligent treatment of children.
- Section 827.071, F.S., relating to sexual performance by a child.
- Section 843.01, F.S., relating to resisting arrest with violence.
- Section 843.025, F.S., relating to depriving a law enforcement, correctional, or correctional probation officer of means of protection or communication.
- Section 843.12, F.S., relating to aiding in an escape.
- Section 843.13, F.S., relating to aiding in the escape of juvenile inmates in correctional institutions.
- Chapter 847, F.S., relating to obscene literature.
- Section 874.05, F.S., relating to encouraging or recruiting another to join a criminal gang.
- Chapter 893, F.S., relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.

- Section 916.1075, F.S., relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- Section 944.35(3), F.S., relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Section 944.40, F.S., relating to escape.
- Section 944.46, F.S., relating to harboring, concealing, or aiding an escaped prisoner.
- Section 944.47, F.S., relating to introduction of contraband into a correctional facility.
- Section 985.701, F.S., relating to sexual misconduct in juvenile justice programs.
- Section 985.711, F.S., relating to contraband introduced into detention facilities.<sup>50</sup>

### ***Exemption from Disqualification***

If an individual is disqualified due to a pending arrest, conviction, plea of nolo contendere, or adjudication of delinquency to one or more of the disqualifying offenses, s. 435.07, F.S., allows the Secretary of the appropriate agency (in the case of substance abuse treatment, the DCF) to exempt applicants from disqualification under certain circumstances.<sup>51</sup>

Receiving an exemption allows that individual to work despite the disqualifying crime in that person's past. However, an individual who is considered a sexual predator,<sup>52</sup> career offender,<sup>53</sup> or sexual offender (unless not required to register)<sup>54</sup> cannot ever be exempted from disqualification.<sup>55</sup>

Additionally, individuals (including peer specialists) employed, or applicants for employment, by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of certain crimes may be exempted from disqualification from employment, without applying the 3-year waiting period.<sup>56</sup> These crimes include certain offenses related to:

- Prostitution;
- Unarmed burglary of a structure;
- Third degree felony grand theft;
- Sale of imitation controlled substance;
- Forgery;
- Uttering or publishing a forged instrument;
- Sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver controlled substances (excluding drug trafficking);
- Use, possession, manufacture, delivery, transportation, advertisement, or sale of drug paraphernalia; and
- Any related criminal attempt, solicitation, or conspiracy.<sup>57</sup>

<sup>50</sup> Section 435.04(2), F.S.

<sup>51</sup> See Section 435.07(1), F.S.

<sup>52</sup> Section 775.21, F.S.

<sup>53</sup> Section 775.261, F.S.

<sup>54</sup> Section 943.0435, F.S.

<sup>55</sup> Section 435.07(4)(b), F.S.

<sup>56</sup> Section 435.07(2), F.S.

<sup>57</sup> *Id.*

To seek exemption from disqualification, an employee must submit a request for an exemption from disqualification within 30 days after being notified of a pending disqualification, and the DCF must grant or deny the application within 60 days of the receipt of a completed application.<sup>58</sup>

To be exempted from disqualification and thus be able to work, the applicant must demonstrate by clear and convincing evidence that he or she should not be disqualified from employment.<sup>59</sup> Clear and convincing evidence is a heavier burden than the preponderance of the evidence standard but less than beyond a reasonable doubt.<sup>60</sup> This means that the evidence presented is credible and verifiable, and that the memories of witnesses are clear and without confusion.<sup>61</sup> This evidence must create a firm belief and conviction of the truth of the facts presented and, considered as a whole, must convince DCF representatives without hesitancy that the requester will not pose a threat if allowed to hold a position of special trust relative to children, vulnerable adults, or to developmentally disabled individuals.<sup>62</sup> Evidence that may support an exemption includes, but is not limited to:

- Personal references.
- Letters from employers or other professionals.
- Evidence of rehabilitation, including documentation of successful participation in a rehabilitation program.
- Evidence of further education or training.
- Evidence of community involvement.
- Evidence of special awards or recognition.
- Evidence of military service.
- Parenting or other caregiver experiences.<sup>63</sup>

After the DCF receives a complete exemption request package from the applicant, the background screening coordinator searches available data, including, but not limited to, a review of records and pertinent court documents including case disposition and the applicant's plea in order to determine the appropriateness of granting the applicant an exemption.<sup>64</sup> These materials, in addition to the information provided by the applicant, form the basis for a recommendation as to whether the exemption should be granted.<sup>65</sup>

After all reasonable evidence is gathered, the background screening coordinator consults with his or her supervisor and, after consultation with the supervisor, the coordinator and the supervisor will recommend whether the exemption should be granted.<sup>66</sup> The regional legal counsel's office

---

<sup>58</sup> Section 397.4073(1)(f), F.S.

<sup>59</sup> Section 435.07(3)(a), F.S.

<sup>60</sup> The DCF, *CF Operating Procedure 60-18, Personnel: Exemption from Disqualification*, at p. 1, (Aug. 1, 2010), available at <https://www.myflfamilies.com/admin/publications/cfops/CFOP%20060-xx%20Human%20Resources/CFOP%2060-18,%20Exemption%20from%20Disqualification.pdf> (last visited January 27, 2022) (hereinafter, "The DCF Operating Procedure").

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 3-4.

<sup>64</sup> *Id.* at 5.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*



reviews the recommendation to grant or deny an exemption to determine legal sufficiency. The criminal justice coordinator in the region in which the background screening coordinator is located also reviews the exemption request file and recommendation and makes an initial determination whether to grant or deny the exemption.<sup>67</sup>

If the regional criminal justice coordinator makes an initial determination that the exemption should be granted, the exemption request file and recommendations are forwarded to the regional director, who has delegated authority from the DCF Secretary to grant or deny the exemption.<sup>68</sup> After an exemption request decision is final, the background screener provides a written response to the applicant as to whether the request is granted or denied.<sup>69</sup>

If the DCF grants the exemption, the applicant and the facility or employer are notified of the decision by regular mail.<sup>70</sup> However, if the request is denied, notification of the decision is sent by certified mail, return receipt requested, to the applicant, addressed to the last known address and a separate letter of denial is sent by regular mail to the facility or employer.<sup>71</sup> If the application is denied, the denial letter must set forth pertinent facts that the background screening coordinator, the background screening coordinator's supervisor, the criminal justice coordinator, and regional director, where appropriate, used in deciding to deny the exemption request.<sup>72</sup> It must also inform the denied applicant of the availability of an administrative review<sup>73</sup> pursuant to ch. 120, F.S.<sup>74</sup>

#### ***Individuals Requiring Background Screening Under Ch. 397, F.S.***

Only certain individuals affiliated with substance abuse treatment providers require background screening. Section 397.4073, F.S., requires peer specialists who have direct contact<sup>75</sup> with individuals receiving services must undergo a level 2 background screening as provided under s. 408.809 and ch. 435.<sup>76</sup> Applicant peer specialists are required to pay the costs associated with such screenings.<sup>77</sup> Similarly, all owners, directors, chief financial officers, and clinical supervisors of service providers, as well as all service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services must also undergo level 2 background screening.

Other statutory provisions are tailored to facilitate individuals in recovery who have disqualifying offenses being able to work in substance abuse treatment. The DCF may grant exemptions from disqualification for an individual seeking certification as a peer specialist if at least three years have passed since the individual has completed, or been lawfully released from,

---

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 5.

<sup>70</sup> *Id.* at 6.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> All notices of denial of an exemption shall advise the applicant of the basis for the denial, that an administrative hearing pursuant to s. 120.57, F.S., may be requested, and that the request must be made within 21 days of receipt of the denial letter or the applicant's right to an appeal will be waived.

<sup>74</sup> The DCF Operating Procedure at 6.

<sup>75</sup> Direct contact is not defined in ch. 397, F.S.

<sup>76</sup> Section 397.4073(a)3., F.S.

<sup>77</sup> Section 408.809(5), F.S.

any confinement, supervision, or nonmonetary condition imposed by a court for the individual's most recent disqualifying offense.<sup>78</sup> Similar to the conditional employment granted to other select applicants in s. 397.4073, certified peer specialists may work with adults with SUD for up to 90 days after being notified of his or her disqualification or until the DCF makes a final determination regarding the request for an exemption from disqualification if three years or more have elapsed since the most recent disqualifying offense, whichever is earlier.<sup>79</sup>

### **Managing Entities (MEs)**

The DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. SAMH programs include a range of prevention, acute interventions (e.g. crisis stabilization), residential treatment, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally established priority populations.<sup>80</sup>

In 2001, the Legislature authorized the DCF to implement behavioral health managing entities (ME) as the management structure for the delivery of local mental health and substance abuse services.<sup>81</sup> The implementation of the ME system initially began on a pilot basis and, in 2008, the Legislature authorized DCF to implement MEs statewide.<sup>82</sup> Full implementation of the statewide ME system occurred in 2013 and all geographic regions are now served by a managing entity.<sup>83</sup>

The DCF contracts with the following seven MEs below:

- Northwest Florida Health Network.
- Lutheran Services Florida.
- Central Florida Cares Health System.
- Central Florida Behavioral Health Network, Inc.
- Southeast Florida Behavioral Health.
- Broward Behavioral Health Network, Inc.
- Thriving Mind South Florida.<sup>84</sup>

---

<sup>78</sup> Section 397.4073(4)(b)1.a., F.S.

<sup>79</sup> Section 397.4073(1)(g), F.S.

<sup>80</sup> See chs. 394 and 397, F.S.

<sup>81</sup> Chapter 2001-191, L.O.F.

<sup>82</sup> Chapter 2008-243, L.O.F.

<sup>83</sup> Florida Tax Watch, *Analysis of Florida's Behavioral Health Managing Entity Models*, p. 4, March 2015, available at <https://floridataxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/15758/Analysis-of-Floridas-Behavioral-Health-Managing-Entities-Model> (last visited January 27, 2022).

<sup>84</sup> The DCF, *Assessment of Behavioral Health Services, Fiscal Year 2021-2022*, Dec. 1, 2021, p. 5, available at <https://www.myflfamilies.com/service-programs/samh/publications/docs/Assessment%20of%20Behavioral%20Health%20Services%20FY%2021-22%20with%20Appendix%201.pdf> (last visited January 27, 2022)(hereinafter cited as "The 2021-2022 Report").

The MEs in turn contract with local service providers for the delivery of mental health and substance abuse services.<sup>85</sup> In Fiscal Year 2020-21, the network service providers under contract with the MEs served 225,927 individuals.<sup>86</sup>

### **III. Effect of Proposed Changes:**

#### **Coordinated System of Care**

The bill amends s. 394.4573, F.S., relating to coordinated systems of care, to add the use of peer specialists to assist in an individual's recovery from a substance use disorder or mental illness to the list of essential elements of a coordinated system of behavioral health care.

#### **Legislative Findings and Intent**

The bill provides legislative findings and intent, as follows:

- The Legislature finds that the ability to provide adequate behavioral health services is limited by a shortage of professionals and paraprofessionals.
- The Legislature finds that the state is experiencing an increase in opioid addictions, many of which prove fatal.
- The Legislature finds that peer specialists provide effective support services because they share common life experiences with the persons they assist.
- The Legislature finds that peer specialists promote a sense of community among those in recovery.
- The Legislature finds that research has shown that peer support facilitates recovery and reduces health care costs.
- The Legislature finds that persons who are otherwise qualified to serve as peer specialists may have a criminal history that prevents them from meeting background screening requirements.
- It is the intent of the Legislature that the use of peer specialists be expanded as a cost-effective means of providing services.
- It is the intent of the Legislature to ensure that peer specialists meet specified qualifications and modified background screening requirements and are adequately reimbursed for their services.

#### **Criteria for Becoming a Certified Peer Specialist**

The bill codifies a number of criteria currently used by the Florida Certification Board (FCB) in the process of certifying peer specialists. Specifically, the bill requires that persons seeking certification as peer specialists:

- Be in recovery from a substance use disorder (SUD) or mental illness for the past two years, or be a family member or caregiver of an individual with a history of SUD or mental illness;
- Pass a competency exam developed under the bill by the Department of Children and Families (DCF); and

---

<sup>85</sup> Managing entities create and manage provider networks by contracting with service providers for the delivery of substance abuse and mental health services.

<sup>86</sup> The 2021-2022 Report at p. 10.

- Undergo background screening as provided under the bill.

### **Duties of the Department of Children and Families (DCF)**

Currently, the FCB provides training and administers a competency exam for peer specialists seeking certification. The bill requires the Department of Children and Families (DCF) to designate an ME with an existing certified peer specialist training program to provide training for those applying to become certified peer specialists. The ME must give preference to trainers who have already achieved certification, and the training program offered by the managing entity must be based on current practice standards.

Individuals may practice as a peer specialist prior to becoming certified for up to one year if the individual is actively working toward certification and is supervised by a qualified professional<sup>87</sup> or a certified peer specialist with at least two years of full-time experience as a peer specialist at a licensed behavioral health organization.

### **Background Screening**

The bill specifies revised background screening requirements, requiring applicants to submit a full set of fingerprints to the DCF, or to a vendor, entity, or agency<sup>88</sup> that has entered into an agreement with the Florida Department of Law Enforcement (FDLE). Fingerprints must then be forwarded to the FDLE for state processing and retention, and to the FBI for national processing and retention. This will enable the FDLE to conduct ongoing, fingerprint-based, state and national background checks on certified peer specialists. The bill mandates any arrest record discovered be reported to the DCF. The bill requires the DCF to screen results in order to ensure an applicant meets the requirements of certification, and it provides that the applicant peer specialist is to pay all fees charged in connection with state and federal fingerprint processing and retention.<sup>89</sup>

The bill authorizes the DCF or the Agency for Health Care Administration (the AHCA) to contract with vendors for electronic fingerprinting, provided that such contracts ensure the integrity and security of all personal identifying information obtained. Vendors who submit fingerprints on behalf of employees must:

- Meet the requirements of s. 943.053, F.S.;<sup>90</sup>

---

<sup>87</sup> Section 397.311(35) defines “qualified professional” to mean “a physician or a physician assistant licensed under chapter 458 or chapter 459; a professional licensed under chapter 490 or chapter 491; an advanced practice registered nurse licensed under part I of chapter 464; or a person who is certified through a department-recognized certification process for substance abuse treatment services and who holds, at a minimum, a bachelor’s degree.” A person who is certified in substance abuse treatment services by a state-recognized certification process in another state at the time of employment with a licensed substance abuse provider in this state may perform the functions of a qualified professional as defined in this chapter but must meet certification requirements contained in this subsection no later than 1 year after his or her date of employment.

<sup>88</sup> Section 943.053(13), F.S., provides criteria which must be followed in order for the FDLE to accept fingerprint submissions from private vendors, entities, or agencies.

<sup>89</sup> This cost is already borne by the applicant under current law requiring level 2 background screening for certified peer specialists. *See* ss. 397.4073(1)(a)3. and 408.809(5), F.S.

<sup>90</sup> Section 943.053, F.S., provides, among other things, standards for vendors meant to ensure that all persons having direct or indirect responsibility for verifying identification, taking fingerprints, and electronically submitting fingerprints are qualified to do so and will ensure the integrity and security of all personal information gathered from the persons whose fingerprints are submitted.

- Be capable of communicating electronically with the state agency accepting screening results from the FDLE; and
- Be capable of providing the applicant's:
  - Full first name, middle initial, and last name;
  - Social security number or individual taxpayer identification number;
  - Date of birth;
  - Mailing address;
  - Sex; and
  - Race.

The bill provides that a background screening of a peer specialist must ensure that a prospective peer specialist has not been arrested for and awaiting final disposition of, found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any felony within the past three years. The bill also requires that background screening ensure the applicant has not, at any time, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, the following laws or similar laws of other jurisdictions:

- Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- Section 409.920, relating to Medicaid provider fraud, if the offense was a felony of the first or second degree.
- Section 415.111, relating to abuse, neglect, or exploitation of vulnerable adults.
- Any offense that constitutes domestic violence as defined in s. 741.28, F.S.
- Section 777.04, relating to attempts, solicitation, and conspiracy to commit an offense listed in this paragraph.
- Section 782.04, relating to murder.
- Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or a disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.
- Section 782.071, relating to vehicular homicide.
- Section 782.09, relating to killing an unborn child by injury to the mother.
- Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 787.01, relating to kidnapping.
- Section 787.02, relating to false imprisonment.
- Section 787.025, relating to luring or enticing a child.
- Section 787.04(2), relating to leading, taking, enticing, or removing a minor beyond state limits, or concealing the location of a minor, with criminal intent pending custody proceedings.
- Section 787.04(3), relating to leading, taking, enticing, or removing a minor beyond state limits, or concealing the location of a minor, with criminal intent pending dependency proceedings or proceedings concerning alleged abuse or neglect of a minor.
- Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.

- Section 790.115(2)(b), relating to possessing an electric weapon or device, a destructive device, or any other weapon on school property.
- Section 794.011, relating to sexual battery.
- Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
- Section 794.05, relating to unlawful sexual activity with certain minors.
- Section 794.08, relating to female genital mutilation.
- Section 796.07, relating to procuring another to commit prostitution, except for those offenses expunged pursuant to s. 943.0583.
- Section 798.02, relating to lewd and lascivious behavior.
- Chapter 800, relating to lewdness and indecent exposure.
- Section 806.01, relating to arson.
- Section 810.02, relating to burglary, if the offense was a felony of the first degree.
- Section 810.14, relating to voyeurism, if the offense was a felony.
- Section 810.145, relating to video voyeurism, if the offense was a felony.
- Section 812.13, relating to robbery.
- Section 812.131, relating to robbery by sudden snatching.
- Section 812.133, relating to carjacking.
- Section 812.135, relating to home-invasion robbery.
- Section 817.034, relating to communications fraud, if the offense was a felony of the first degree.
- Section 817.234, relating to false and fraudulent insurance claims, if the offense was a felony of the first or second degree.
- Section 817.50, relating to fraudulently obtaining goods or services from a health care provider and false reports of a communicable disease.
- Section 817.505, relating to patient brokering.
- Section 817.568, relating to fraudulent use of personal identification, if the offense was a felony of the first or second degree.
- Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or a disabled adult.
- Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or a disabled person.
- Section 825.103, relating to exploitation of an elderly person or a disabled adult, if the offense was a felony.
- Section 826.04, relating to incest.
- Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- Section 827.04, relating to contributing to the delinquency or dependency of a child.
- Former s. 827.05, relating to negligent treatment of children.
- Section 827.071, relating to sexual performance by a child.
- Section 831.30, relating to fraud in obtaining medicinal drugs.
- Section 831.31, relating to sale, manufacture, delivery, possession with intent to sell, manufacture, or deliver of any counterfeit controlled substance, if the offense was a felony.
- Section 843.01, relating to resisting arrest with violence.
- Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer of the means of protection or communication.
- Section 843.12, relating to aiding in an escape.

- Section 843.13, relating to aiding in the escape of juvenile inmates of correctional institutions.
- Chapter 847, relating to obscenity.
- Section 874.05, relating to encouraging or recruiting another to join a criminal gang.
- Chapter 893, relating to drug abuse prevention and control, if the offense was a felony of the second degree or greater severity.
- Section 895.03, relating to racketeering and collection of unlawful debts.
- Section 896.101, relating to the Florida Money Laundering Act.
- Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Section 944.40, relating to escape.
- Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.
- Section 944.47, relating to introduction of contraband into a correctional institution.
- Section 985.701, relating to sexual misconduct in juvenile justice programs.
- Section 985.711, relating to introduction of contraband into a detention facility.

The new screening requirements of the bill eliminate the following disqualifying offenses from current law for peer specialists:

- Misdemeanor assault, or battery (Ch. 784, F.S.).
- Prostitution (Ch. 796, F.S.), with the exception of those offenses listed in s. 796.07, F.S., which have not been expunged.
- Lower level burglary offenses (s. 810.02, F.S.).
- Lower level theft and robbery offenses (Ch. 812, F.S.).
- Lower level drug abuse offenses (s. 817.563 and Ch. 893, F.S.).
- Credit card fraud (ss. 817.481, 817.60, and 817.61, F.S.).
- Forgery (ss. 831.01, 831.02, 831.07 and 831.09, F.S.).

The bill allows individuals who wish to become peer specialists, but have a disqualifying offense in their background, to request an exemption from disqualification pursuant to s. 435.07, F.S., from the DCF or the AHCA, as applicable.

The bill also allows service provider personnel, including peer specialists, to work with adults with mental health disorders (in addition to the current allowance to work with adults suffering from SUDs or co-occurring disorders) while an exemption request is pending, and extends the time limit for such work from 90 days to 180 days.

The bill grandfathers in all peer specialists certified as of July 1, 2022, by stating they are recognized as having met the requirements of the bill. However, the bill specifies that certification for such individuals is subject to ongoing compliance with minimum standards and requirements needed for maintaining certification.

**Deleted Provisions of s. 397.417, F.S.**

The bill eliminates and replaces several of the current provisions of s. 397.417, F.S. Specifically, the bill:

- Eliminates the requirement that a family member or caregiver of an individual with a SUD or mental illness have at least two years of experience in order to attain certification as a peer specialist; and
- Permits an individual with two years of full-time experience as a peer specialist to supervise an individual providing recovery support services and working toward certification (supervisory certified peer specialists currently must have at least three years of experience).

**Effective Date**

The bill is effective July 1, 2022

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

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

CS/SB 282 eliminates several disqualifying criminal offenses that often result in disqualification from certification eligibility, and as a result the DCF stated that there



might be additional revenues generated for certification providers from fees paid by a greater number of individuals seeking certification.<sup>91</sup>

**C. Government Sector Impact:**

The DCF estimates there may be a negative impact to state government due to a potential increase in background screenings being conducted, and a possible increase in the number of exemptions from disqualification requested, leading to a heavier workload for the department's Background Screening Office.<sup>92</sup> However, any additional workload will likely be absorbed within existing department resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 394.4573, 397.4073, and 397.417.

**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 Appropriations on January 27, 2022:**

The committee substitute:

- Removes the requirement that the DCF develop a training program for peer specialists;
- Removes the ability of the DCF to directly certify peer specialists;
- Requires the DCF to designate an ME with an existing certified recovery peer specialist training program to provide training for persons seeking certification as peer specialists. The ME must give preference to trainers who are currently certified peer specialists;
- Requires the training program to coincide with a competency exam and be based on current practice standards;
- Keeps language from current law that was struck from the original bill requiring DCF to approve one or more third-party credentialing entities for the purposes of certifying peer specialists, approving training programs and continuing education programs, and establishing minimum requirements and standards applicants must achieve to maintain certification;

<sup>91</sup> The DCF SB 130 (2021) Analysis at p. 6.

<sup>92</sup> *Id* at p. 5.

- Keeps language from current law that was struck from the original bill requiring third-party credentialing entities to demonstrate compliance with nationally recognized standards for developing and administering professional certification programs to certify peer specialists;
- Removes language permitting recovery support services to be reimbursed through the DCF, a managing entity, or Medicaid, and removes language encouraging managed care plans to use peer specialists in providing recovery services;
- Revises background screening requirements from those provided under the original bill; and
- Revises the grandfather clause in the original bill to specify that a peer specialist certified as of the bill's effective date (July 1, 2022) is grandfathered in and considered certified subject to compliance with minimum standards and requirements needed for maintaining certification. These minimum standards and requirements are developed by approved third-party credentialing entities under the bill.

B. Amendments:

None.



388896

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/27/2022	.	
	.	
	.	
	.	

---

The Committee on Appropriations (Rouson) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (1) of subsection (2) and subsection  
(3) of section 394.4573, Florida Statutes, are amended to read:

394.4573 Coordinated system of care; annual assessment;  
essential elements; measures of performance; system improvement  
grants; reports.—On or before December 1 of each year, the  
department shall submit to the Governor, the President of the



388896

11 Senate, and the Speaker of the House of Representatives an  
12 assessment of the behavioral health services in this state. The  
13 assessment shall consider, at a minimum, the extent to which  
14 designated receiving systems function as no-wrong-door models,  
15 the availability of treatment and recovery services that use  
16 recovery-oriented and peer-involved approaches, the availability  
17 of less-restrictive services, and the use of evidence-informed  
18 practices. The assessment shall also consider the availability  
19 of and access to coordinated specialty care programs and  
20 identify any gaps in the availability of and access to such  
21 programs in the state. The department's assessment shall  
22 consider, at a minimum, the needs assessments conducted by the  
23 managing entities pursuant to s. 394.9082(5). Beginning in 2017,  
24 the department shall compile and include in the report all plans  
25 submitted by managing entities pursuant to s. 394.9082(8) and  
26 the department's evaluation of each plan.

27 (2) The essential elements of a coordinated system of care  
28 include:

29 (1) Recovery support, including, but not limited to, the  
30 use of peer specialists to assist in the individual's recovery  
31 from a substance use disorder or mental illness; support for  
32 competitive employment, educational attainment, independent  
33 living skills development, family support and education,  
34 wellness management, and self-care; r and assistance in obtaining  
35 housing that meets the individual's needs. Such housing may  
36 include mental health residential treatment facilities, limited  
37 mental health assisted living facilities, adult family care  
38 homes, and supportive housing. Housing provided using state  
39 funds must provide a safe and decent environment free from abuse



388896

40 and neglect.

41 (3) ~~SYSTEM IMPROVEMENT GRANTS.~~ Subject to a specific  
42 appropriation by the Legislature, the department may award  
43 system improvement grants to managing entities based on a  
44 detailed plan to enhance services in accordance with the no-  
45 wrong-door model as defined in subsection (1) and to address  
46 specific needs identified in the assessment prepared by the  
47 department pursuant to this section. Such a grant must be  
48 awarded through a performance-based contract that links payments  
49 to the documented and measurable achievement of system  
50 improvements.

51 Section 2. Paragraphs (a) and (g) of subsection (1) of  
52 section 397.4073, Florida Statutes, are amended to read:

53 397.4073 Background checks of service provider personnel.—

54 (1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND  
55 EXCEPTIONS.—

56 (a) For all individuals screened on or after July 1, 2022  
57 ~~2019~~, background checks shall apply as follows:

58 1. All owners, directors, chief financial officers, and  
59 clinical supervisors of service providers are subject to level 2  
60 background screening as provided under s. 408.809 and chapter  
61 435. Inmate substance abuse programs operated directly or under  
62 contract with the Department of Corrections are exempt from this  
63 requirement.

64 2. All service provider personnel who have direct contact  
65 with children receiving services or with adults who are  
66 developmentally disabled receiving services are subject to level  
67 2 background screening as provided under s. 408.809 and chapter  
68 435.



388896

69           3. All peer specialists who have direct contact with  
70 individuals receiving services are subject to a background  
71 screening as provided in s. 397.417(4) ~~level 2 background~~  
72 ~~screening as provided under s. 408.809 and chapter 435.~~

73           (g) If 5 years or more, or 3 years or more in the case of a  
74 certified peer specialist or an individual seeking certification  
75 as a peer specialist pursuant to s. 397.417, have elapsed since  
76 an applicant for an exemption from disqualification has  
77 completed or has been lawfully released from confinement,  
78 supervision, or a nonmonetary condition imposed by a court for  
79 the applicant's most recent disqualifying offense, the applicant  
80 may work with adults with substance use disorders, mental health  
81 disorders, or co-occurring disorders under the supervision of  
82 persons who meet all personnel requirements of this chapter for  
83 up to 180 ~~90~~ days after being notified of his or her  
84 disqualification or until the department makes a final  
85 determination regarding his or her request for an exemption from  
86 disqualification, whichever is earlier.

87           Section 3. Section 397.417, Florida Statutes, is amended to  
88 read:

89           397.417 Peer specialists.—

90           (1) LEGISLATIVE FINDINGS AND INTENT.—

91           (a) The Legislature finds that:

92           1. The ability to provide adequate behavioral health  
93 services is limited by a shortage of professionals and  
94 paraprofessionals.

95           2. The state is experiencing an increase in opioid  
96 addictions, many of which prove fatal.

97           3. Peer specialists provide effective support services



388896

98 because they share common life experiences with the persons they  
99 assist.

100 4. Peer specialists promote a sense of community among  
101 those in recovery.

102 5. Research has shown that peer support facilitates  
103 recovery and reduces health care costs.

104 6. Persons who are otherwise qualified to serve as peer  
105 specialists may have a criminal history that prevents them from  
106 meeting background screening requirements.

107 (b) The Legislature intends to expand the use of peer  
108 specialists as a cost-effective means of providing services. The  
109 Legislature also intends to ensure that peer specialists meet  
110 specified qualifications and modified background screening  
111 requirements and are adequately reimbursed for their services.

112 (2) QUALIFICATIONS.—A person may seek certification as a  
113 peer specialist if he or she has been in recovery from a  
114 substance use disorder or mental illness for the past 2 years or  
115 if he or she is a family member or caregiver of a person with a  
116 substance use disorder or mental illness.

117 (3) DUTIES OF THE DEPARTMENT.—

118 (a) The department shall designate a managing entity with  
119 an existing certified recovery peer specialist training program  
120 to provide training for persons seeking certification as peer  
121 specialists. The managing entity must give preference to  
122 trainers who are certified peer specialists. The training  
123 program must coincide with a competency exam and be based on  
124 current practice standards.

125 (b) The department shall approve one or more third-party  
126 credentialing entities for the purposes of certifying peer



388896

127 specialists, approving training programs for individuals seeking  
128 certification as peer specialists, approving continuing  
129 education programs, and establishing the minimum requirements  
130 and standards that applicants must achieve to maintain  
131 certification. To obtain approval, the third-party credentialing  
132 entity must demonstrate compliance with nationally recognized  
133 standards for developing and administering professional  
134 certification programs to certify peer specialists.

135 (c) The department must ensure that background screening  
136 required for achieving certification be conducted as provided in  
137 subsection (4) and may not be conducted by third-party  
138 credentialing entities.

139 (d) The department shall require that a peer specialist  
140 providing recovery support services be certified; however, an  
141 individual who is not certified may provide recovery support  
142 services as a peer specialist for up to 1 year if he or she is  
143 working toward certification and is supervised by a qualified  
144 professional or by a certified peer specialist who has at least  
145 2 years of full-time experience as a peer specialist at a  
146 licensed behavioral health organization.

147 (4) BACKGROUND SCREENING.—

148 (a) A peer specialist, or an individual who is working  
149 toward certification and providing recovery support services as  
150 provided in subsection (3), must have completed or have been  
151 lawfully released from confinement, supervision, or any  
152 nonmonetary condition imposed by the court for any felony and  
153 must undergo a background screening as a condition of initial  
154 and continued employment. The applicant must submit a full set  
155 of fingerprints to the department or to a vendor, an entity, or





388896

156 an agency that enters into an agreement with the Department of  
157 Law Enforcement as provided in s. 943.053(13). The department,  
158 vendor, entity, or agency shall forward the fingerprints to the  
159 Department of Law Enforcement for state processing and the  
160 Department of Law Enforcement shall forward the fingerprints to  
161 the Federal Bureau of Investigation for national processing. The  
162 department shall screen the results to determine if a peer  
163 specialist meets certification requirements. The applicant is  
164 responsible for all fees charged in connection with state and  
165 federal fingerprint processing and retention. The state cost for  
166 fingerprint processing shall be as provided in s. 943.053(3) (e)  
167 for records provided to persons or entities other than those  
168 specified as exceptions therein. Fingerprints submitted to the  
169 Department of Law Enforcement pursuant to this paragraph shall  
170 be retained as provided in s. 435.12 and, when the Department of  
171 Law Enforcement begins participation in the program, enrolled in  
172 the Federal Bureau of Investigation's national retained  
173 fingerprint arrest notification program, as provided in s.  
174 943.05(4). Any arrest record identified must be reported to the  
175 department.

176 (b) The department or the Agency for Health Care  
177 Administration, as applicable, may contract with one or more  
178 vendors to perform all or part of the electronic fingerprinting  
179 pursuant to this section. Such contracts must ensure that the  
180 owners and personnel of the vendor performing the electronic  
181 fingerprinting are qualified and will ensure the integrity and  
182 security of all personal identifying information.

183 (c) Vendors who submit fingerprints on behalf of employers  
184 must:



388896

- 185       1. Meet the requirements of s. 943.053; and  
186       2. Have the ability to communicate electronically with the  
187 state agency accepting screening results from the Department of  
188 Law Enforcement and provide the applicant's full first name,  
189 middle initial, and last name; social security number or  
190 individual taxpayer identification number; date of birth;  
191 mailing address; sex; and race.
- 192       (d) The background screening conducted under this  
193 subsection must ensure that a peer specialist has not, during  
194 the previous 3 years, been arrested for and is awaiting final  
195 disposition of, been found guilty of, regardless of  
196 adjudication, or entered a plea of nolo contendere or guilty to,  
197 or been adjudicated delinquent and the record has not been  
198 sealed or expunged for, any felony.
- 199       (e) The background screening conducted under this  
200 subsection must ensure that a peer specialist has not been  
201 arrested for and is awaiting final disposition of, found guilty  
202 of, regardless of adjudication, or entered a plea of nolo  
203 contendere or guilty to, or been adjudicated delinquent and the  
204 record has not been sealed or expunged for, any offense  
205 prohibited under any of the following state laws or similar laws  
206 of another jurisdiction:
- 207       1. Section 393.135, relating to sexual misconduct with  
208 certain developmentally disabled clients and reporting of such  
209 sexual misconduct.
- 210       2. Section 394.4593, relating to sexual misconduct with  
211 certain mental health patients and reporting of such sexual  
212 misconduct.
- 213       3. Section 409.920, relating to Medicaid provider fraud, if



388896

214 the offense was a felony of the first or second degree.  
215 4. Section 415.111, relating to abuse, neglect, or  
216 exploitation of vulnerable adults.  
217 5. Any offense that constitutes domestic violence as  
218 defined in s. 741.28.  
219 6. Section 777.04, relating to attempts, solicitation, and  
220 conspiracy to commit an offense listed in this paragraph.  
221 7. Section 782.04, relating to murder.  
222 8. Section 782.07, relating to manslaughter, aggravated  
223 manslaughter of an elderly person or a disabled adult,  
224 aggravated manslaughter of a child, or aggravated manslaughter  
225 of an officer, a firefighter, an emergency medical technician,  
226 or a paramedic.  
227 9. Section 782.071, relating to vehicular homicide.  
228 10. Section 782.09, relating to killing an unborn child by  
229 injury to the mother.  
230 11. Chapter 784, relating to assault, battery, and culpable  
231 negligence, if the offense was a felony.  
232 12. Section 787.01, relating to kidnapping.  
233 13. Section 787.02, relating to false imprisonment.  
234 14. Section 787.025, relating to luring or enticing a  
235 child.  
236 15. Section 787.04(2), relating to leading, taking,  
237 enticing, or removing a minor beyond state limits, or concealing  
238 the location of a minor, with criminal intent pending custody  
239 proceedings.  
240 16. Section 787.04(3), relating to leading, taking,  
241 enticing, or removing a minor beyond state limits, or concealing  
242 the location of a minor, with criminal intent pending dependency



388896

243 proceedings or proceedings concerning alleged abuse or neglect  
244 of a minor.

245 17. Section 790.115(1), relating to exhibiting firearms or  
246 weapons within 1,000 feet of a school.

247 18. Section 790.115(2) (b), relating to possessing an  
248 electric weapon or device, a destructive device, or any other  
249 weapon on school property.

250 19. Section 794.011, relating to sexual battery.

251 20. Former s. 794.041, relating to prohibited acts of  
252 persons in familial or custodial authority.

253 21. Section 794.05, relating to unlawful sexual activity  
254 with certain minors.

255 22. Section 794.08, relating to female genital mutilation.

256 23. Section 796.07, relating to procuring another to commit  
257 prostitution, except for those offenses expunged pursuant to s.  
258 943.0583.

259 24. Section 798.02, relating to lewd and lascivious  
260 behavior.

261 25. Chapter 800, relating to lewdness and indecent  
262 exposure.

263 26. Section 806.01, relating to arson.

264 27. Section 810.02, relating to burglary, if the offense  
265 was a felony of the first degree.

266 28. Section 810.14, relating to voyeurism, if the offense  
267 was a felony.

268 29. Section 810.145, relating to video voyeurism, if the  
269 offense was a felony.

270 30. Section 812.13, relating to robbery.

271 31. Section 812.131, relating to robbery by sudden



388896

272 snatching.  
273 32. Section 812.133, relating to carjacking.  
274 33. Section 812.135, relating to home-invasion robbery.  
275 34. Section 817.034, relating to communications fraud, if  
276 the offense was a felony of the first degree.  
277 35. Section 817.234, relating to false and fraudulent  
278 insurance claims, if the offense was a felony of the first or  
279 second degree.  
280 36. Section 817.50, relating to fraudulently obtaining  
281 goods or services from a health care provider and false reports  
282 of a communicable disease.  
283 37. Section 817.505, relating to patient brokering.  
284 38. Section 817.568, relating to fraudulent use of personal  
285 identification, if the offense was a felony of the first or  
286 second degree.  
287 39. Section 825.102, relating to abuse, aggravated abuse,  
288 or neglect of an elderly person or a disabled adult.  
289 40. Section 825.1025, relating to lewd or lascivious  
290 offenses committed upon or in the presence of an elderly person  
291 or a disabled person.  
292 41. Section 825.103, relating to exploitation of an elderly  
293 person or a disabled adult, if the offense was a felony.  
294 42. Section 826.04, relating to incest.  
295 43. Section 827.03, relating to child abuse, aggravated  
296 child abuse, or neglect of a child.  
297 44. Section 827.04, relating to contributing to the  
298 delinquency or dependency of a child.  
299 45. Former s. 827.05, relating to negligent treatment of  
300 children.



388896

- 301       46. Section 827.071, relating to sexual performance by a  
302 child.
- 303       47. Section 831.30, relating to fraud in obtaining  
304 medicinal drugs.
- 305       48. Section 831.31, relating to the sale, manufacture,  
306 delivery, or possession with intent to sell, manufacture, or  
307 deliver of any counterfeit controlled substance, if the offense  
308 was a felony.
- 309       49. Section 843.01, relating to resisting arrest with  
310 violence.
- 311       50. Section 843.025, relating to depriving a law  
312 enforcement, correctional, or correctional probation officer of  
313 the means of protection or communication.
- 314       51. Section 843.12, relating to aiding in an escape.
- 315       52. Section 843.13, relating to aiding in the escape of  
316 juvenile inmates of correctional institutions.
- 317       53. Chapter 847, relating to obscenity.
- 318       54. Section 874.05, relating to encouraging or recruiting  
319 another to join a criminal gang.
- 320       55. Chapter 893, relating to drug abuse prevention and  
321 control, if the offense was a felony of the second degree or  
322 greater severity.
- 323       56. Section 895.03, relating to racketeering and collection  
324 of unlawful debts.
- 325       57. Section 896.101, relating to the Florida Money  
326 Laundering Act.
- 327       58. Section 916.1075, relating to sexual misconduct with  
328 certain forensic clients and reporting of such sexual  
329 misconduct.



388896

330 59. Section 944.35(3), relating to inflicting cruel or  
331 inhuman treatment on an inmate resulting in great bodily harm.

332 60. Section 944.40, relating to escape.

333 61. Section 944.46, relating to harboring, concealing, or  
334 aiding an escaped prisoner.

335 62. Section 944.47, relating to introduction of contraband  
336 into a correctional institution.

337 63. Section 985.701, relating to sexual misconduct in  
338 juvenile justice programs.

339 64. Section 985.711, relating to introduction of contraband  
340 into a detention facility.

341 (4) EXEMPTION REQUESTS.—A person who wishes to become a  
342 peer specialist and is disqualified under subsection (4) may  
343 request an exemption from disqualification pursuant to s. 435.07  
344 from the department or the Agency for Health Care  
345 Administration, as applicable.

346 (5) GRANDFATHER CLAUSE.—A peer specialist certified as of  
347 July 1, 2022, is deemed to satisfy the requirements of this  
348 section, however such peer specialists must comply with the  
349 minimum standards and requirements needed to maintain  
350 certification established pursuant to subsection (3).

351 ~~(1) An individual may seek certification as a peer~~  
352 ~~specialist if he or she has been in recovery from a substance~~  
353 ~~use disorder or mental illness for at least 2 years, or if he or~~  
354 ~~she has at least 2 years of experience as a family member or~~  
355 ~~caregiver of a person with a substance use disorder or mental~~  
356 ~~illness.~~

357 ~~(2) The department shall approve one or more third-party~~  
358 ~~credentialing entities for the purposes of certifying peer~~



388896

359 ~~specialists, approving training programs for individuals seeking~~  
360 ~~certification as peer specialists, approving continuing~~  
361 ~~education programs, and establishing the minimum requirements~~  
362 ~~and standards that applicants must achieve to maintain~~  
363 ~~certification. To obtain approval, the third-party credentialing~~  
364 ~~entity must demonstrate compliance with nationally recognized~~  
365 ~~standards for developing and administering professional~~  
366 ~~certification programs to certify peer specialists.~~

367 ~~(3) An individual providing department-funded recovery~~  
368 ~~support services as a peer specialist shall be certified~~  
369 ~~pursuant to subsection (2). An individual who is not certified~~  
370 ~~may provide recovery support services as a peer specialist for~~  
371 ~~up to 1 year if he or she is working toward certification and is~~  
372 ~~supervised by a qualified professional or by a certified peer~~  
373 ~~specialist who has at least 3 years of full-time experience as a~~  
374 ~~peer specialist at a licensed behavioral health organization.~~

375 Section 4. This act shall take effect July 1, 2022.

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

377 And the title is amended as follows:

378 Delete everything before the enacting clause  
379 and insert:

380 A bill to be entitled  
381 An act relating to mental health and substance use  
382 disorders; amending s. 394.4573, F.S.; providing that  
383 the use of peer specialists is an essential element of  
384 a coordinated system of care in recovery from a  
385 substance use disorder or mental illness; making a  
386 technical change; amending s. 397.4073, F.S.; revising  
387 background screening requirements for certain peer





388896

388 specialists; revising authorizations relating to work  
389 by applicants who have committed disqualifying  
390 offenses; making a technical change; amending s.  
391 397.417, F.S.; providing legislative findings and  
392 intent; revising requirements for certification as a  
393 peer specialist; providing qualifications for becoming  
394 a peer specialist; requiring the department to  
395 designate a managing entity with an existing certified  
396 recovery peer specialist training program to provide  
397 training for peer specialists and to give preference  
398 to trainers who are certified peer specialists;  
399 requiring the training program to coincide with a  
400 competency exam and be based on current practice  
401 standards; requiring the department to approve one or  
402 more third-party credentialing entities for certain  
403 purposes; requiring third-party credentialing entities  
404 to meet certain requirements for approval; prohibiting  
405 third-party credentialing entities from conducting  
406 background screenings for peer specialists; requiring  
407 that a person providing recovery support services be  
408 certified or be supervised by a licensed behavioral  
409 health care professional or a certain certified peer  
410 specialist; requiring peer specialists and certain  
411 persons to meet the requirements of a background  
412 screening as a condition of employment and continued  
413 employment; requiring certain entities to forward  
414 fingerprints to specified entities; requiring the  
415 department to screen results to determine if the peer  
416 specialist meets the certification requirements;



388896

417 requiring that fees for state and federal fingerprint  
418 processing be borne by the peer specialist applying  
419 for employment; requiring that any arrest record  
420 identified through background screening be reported to  
421 the department; authorizing the department or the  
422 Agency for Health Care Administration to contract with  
423 certain vendors for fingerprinting; specifying  
424 requirements for vendors; specifying disqualifying  
425 offenses for a peer specialist who applies for  
426 certification; authorizing a person who does not meet  
427 background screening requirements to request an  
428 exemption from disqualification from the department or  
429 the agency; providing that a peer specialist certified  
430 as of the effective date of the act is deemed to  
431 satisfy the requirements of the act; providing an  
432 effective date.

By Senator Rouson

19-00096-22

2022282\_\_

1 A bill to be entitled  
 2 An act relating to mental health and substance use  
 3 disorders; amending s. 394.4573, F.S.; providing that  
 4 the use of peer specialists is an essential element of  
 5 a coordinated system of care in recovery from a  
 6 substance use disorder or mental illness; making a  
 7 technical change; amending s. 397.4073, F.S.; revising  
 8 background screening requirements for certain peer  
 9 specialists; revising authorizations relating to work  
 10 by applicants who have committed disqualifying  
 11 offenses; making a technical change; amending s.  
 12 397.417, F.S.; providing legislative findings and  
 13 intent; revising requirements for certification as a  
 14 peer specialist; requiring the Department of Children  
 15 and Families to develop a training program for peer  
 16 specialists and to give preference to trainers who are  
 17 certified peer specialists; requiring the training  
 18 program to coincide with a competency exam and be  
 19 based on current practice standards; authorizing the  
 20 department to certify peer specialists, either  
 21 directly or by approving a third-party credentialing  
 22 entity; prohibiting third-party credentialing entities  
 23 from conducting background screenings for peer  
 24 specialists; requiring that a person providing  
 25 recovery support services be certified or be  
 26 supervised by a licensed behavioral health care  
 27 professional or a certain certified peer specialist;  
 28 authorizing the department, a behavioral health  
 29 managing entity, or the Medicaid program to reimburse

Page 1 of 15

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

19-00096-22

2022282\_\_

30 recovery support services as a recovery service;  
 31 encouraging Medicaid managed care plans to use peer  
 32 specialists in providing recovery services; requiring  
 33 peer specialists and certain persons to meet the  
 34 requirements of a background screening as a condition  
 35 of employment and continued employment; requiring  
 36 certain entities to forward fingerprints to specified  
 37 entities; requiring the department to screen results  
 38 to determine if the peer specialist meets the  
 39 certification requirements; requiring that fees for  
 40 state and federal fingerprint processing be borne by  
 41 the peer specialist applying for employment; requiring  
 42 that any arrest record identified through background  
 43 screening be reported to the department; authorizing  
 44 the department or the Agency for Health Care  
 45 Administration to contract with certain vendors for  
 46 fingerprinting; specifying requirements for vendors;  
 47 specifying disqualifying offenses for a peer  
 48 specialist who applies for certification; authorizing  
 49 a person who does not meet background screening  
 50 requirements to request an exemption from  
 51 disqualification from the department or the agency;  
 52 providing that a peer specialist certified as of the  
 53 effective date of the act is deemed to satisfy the  
 54 requirements of the act; providing an effective date.

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

58 Section 1. Paragraph (1) of subsection (2) and subsection

Page 2 of 15

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

19-00096-22 2022282\_\_

59 (3) of section 394.4573, Florida Statutes, are amended to read:  
 60 394.4573 Coordinated system of care; annual assessment;  
 61 essential elements; measures of performance; system improvement  
 62 grants; reports.—On or before December 1 of each year, the  
 63 department shall submit to the Governor, the President of the  
 64 Senate, and the Speaker of the House of Representatives an  
 65 assessment of the behavioral health services in this state. The  
 66 assessment shall consider, at a minimum, the extent to which  
 67 designated receiving systems function as no-wrong-door models,  
 68 the availability of treatment and recovery services that use  
 69 recovery-oriented and peer-involved approaches, the availability  
 70 of less-restrictive services, and the use of evidence-informed  
 71 practices. The assessment shall also consider the availability  
 72 of and access to coordinated specialty care programs and  
 73 identify any gaps in the availability of and access to such  
 74 programs in the state. The department’s assessment shall  
 75 consider, at a minimum, the needs assessments conducted by the  
 76 managing entities pursuant to s. 394.9082(5). Beginning in 2017,  
 77 the department shall compile and include in the report all plans  
 78 submitted by managing entities pursuant to s. 394.9082(8) and  
 79 the department’s evaluation of each plan.

80 (2) The essential elements of a coordinated system of care  
 81 include:

82 (1) Recovery support, including, but not limited to, the  
 83 use of peer specialists to assist in the individual’s recovery  
 84 from a substance use disorder or mental illness; support for  
 85 competitive employment, educational attainment, independent  
 86 living skills development, family support and education,  
 87 wellness management, and self-care; and assistance in obtaining

Page 3 of 15

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

19-00096-22 2022282\_\_

88 housing that meets the individual’s needs. Such housing may  
 89 include mental health residential treatment facilities, limited  
 90 mental health assisted living facilities, adult family care  
 91 homes, and supportive housing. Housing provided using state  
 92 funds must provide a safe and decent environment free from abuse  
 93 and neglect.

94 (3) ~~SYSTEM IMPROVEMENT GRANTS.~~—Subject to a specific  
 95 appropriation by the Legislature, the department may award  
 96 system improvement grants to managing entities based on a  
 97 detailed plan to enhance services in accordance with the no-  
 98 wrong-door model as defined in subsection (1) and to address  
 99 specific needs identified in the assessment prepared by the  
 100 department pursuant to this section. Such a grant must be  
 101 awarded through a performance-based contract that links payments  
 102 to the documented and measurable achievement of system  
 103 improvements.

104 Section 2. Paragraphs (a) and (g) of subsection (1) of  
 105 section 397.4073, Florida Statutes, are amended to read:  
 106 397.4073 Background checks of service provider personnel.—  
 107 (1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND  
 108 EXCEPTIONS.—  
 109 (a) For all individuals screened on or after July 1, 2022  
 110 ~~2019~~, background checks shall apply as follows:  
 111 1. All owners, directors, chief financial officers, and  
 112 clinical supervisors of service providers are subject to level 2  
 113 background screening as provided under s. 408.809 and chapter  
 114 435. Inmate substance abuse programs operated directly or under  
 115 contract with the Department of Corrections are exempt from this  
 116 requirement.

Page 4 of 15

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

19-00096-22

2022282\_\_

117 2. All service provider personnel who have direct contact  
 118 with children receiving services or with adults who are  
 119 developmentally disabled receiving services are subject to level  
 120 2 background screening as provided under s. 408.809 and chapter  
 121 435.

122 3. All peer specialists who have direct contact with  
 123 individuals receiving services are subject to a background  
 124 screening as provided in s. 397.417(5) level 2 background  
 125 screening as provided under s. 408.809 and chapter 435.

126 (g) If 5 years or more, or 3 years or more in the case of a  
 127 certified peer specialist or an individual seeking certification  
 128 as a peer specialist pursuant to s. 397.417, have elapsed since  
 129 an applicant for an exemption from disqualification has  
 130 completed or has been lawfully released from confinement,  
 131 supervision, or a nonmonetary condition imposed by a court for  
 132 the applicant's most recent disqualifying offense, the applicant  
 133 may work with adults with substance use disorders, mental health  
 134 disorders, or co-occurring disorders under the supervision of  
 135 persons who meet all personnel requirements of this chapter for  
 136 up to 180 ~~90~~ days after being notified of his or her  
 137 disqualification or until the department makes a final  
 138 determination regarding his or her request for an exemption from  
 139 disqualification, whichever is earlier.

140 Section 3. Section 397.417, Florida Statutes, is amended to  
 141 read:

142 397.417 Peer specialists.—

143 (1) LEGISLATIVE FINDINGS AND INTENT.—

144 (a) The Legislature finds that:

145 1. The ability to provide adequate behavioral health

Page 5 of 15

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

19-00096-22

2022282\_\_

146 services is limited by a shortage of professionals and  
 147 paraprofessionals.

148 2. The state is experiencing an increase in opioid  
 149 addictions, many of which prove fatal.

150 3. Peer specialists provide effective support services  
 151 because they share common life experiences with the persons they  
 152 assist.

153 4. Peer specialists promote a sense of community among  
 154 those in recovery.

155 5. Research has shown that peer support facilitates  
 156 recovery and reduces health care costs.

157 6. Persons who are otherwise qualified to serve as peer  
 158 specialists may have a criminal history that prevents them from  
 159 meeting background screening requirements.

160 (b) The Legislature intends to expand the use of peer  
 161 specialists as a cost-effective means of providing services. The  
 162 Legislature also intends to ensure that peer specialists meet  
 163 specified qualifications and modified background screening  
 164 requirements and are adequately reimbursed for their services.

165 (2) QUALIFICATIONS.—

166 (a) A person may seek certification as a peer specialist if  
 167 he or she has been in recovery from a substance use disorder or  
 168 mental illness for the past 2 years or if he or she is a family  
 169 member or caregiver of a person with a substance use disorder or  
 170 mental illness.

171 (b) To obtain certification as a peer specialist, a person  
 172 must complete the training program developed under subsection  
 173 (3), achieve a passing score on the competency exam described in  
 174 paragraph (3) (a), and meet the background screening requirements

Page 6 of 15

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

19-00096-22

2022282\_\_

175 specified in subsection (5).

176 (3) DUTIES OF THE DEPARTMENT.—

177 (a) The department shall develop a training program for  
 178 persons seeking certification as peer specialists. The  
 179 department must give preference to trainers who are certified  
 180 peer specialists. The training program must coincide with a  
 181 competency exam and be based on current practice standards.

182 (b) The department may certify peer specialists directly or  
 183 may approve one or more third-party credentialing entities for  
 184 the purposes of certifying peer specialists, approving training  
 185 programs for individuals seeking certification as peer  
 186 specialists, approving continuing education programs, and  
 187 establishing the minimum requirements and standards applicants  
 188 must meet to maintain certification. Background screening  
 189 required for achieving certification must be conducted as  
 190 provided in subsection (5) and may not be conducted by third-  
 191 party credentialing entities.

192 (c) The department shall require that a person providing  
 193 recovery support services be certified; however, an individual  
 194 who is not certified may provide recovery support services as a  
 195 peer specialist for up to 1 year if he or she is working toward  
 196 certification and is supervised by a qualified professional or  
 197 by a certified peer specialist who has at least 2 years of full-  
 198 time experience as a peer specialist at a licensed behavioral  
 199 health organization.

200 (4) PAYMENT.—Recovery support services may be reimbursed as  
 201 a recovery service through the department, a behavioral health  
 202 managing entity, or the Medicaid program. Medicaid managed care  
 203 plans are encouraged to use peer specialists in providing

19-00096-22

2022282\_\_

204 recovery services.

205 (5) BACKGROUND SCREENING.—

206 (a) A peer specialist, or an individual who is working  
 207 toward certification and providing recovery support services as  
 208 provided in subsection (3), must have completed or have been  
 209 lawfully released from confinement, supervision, or any  
 210 nonmonetary condition imposed by the court for any felony and  
 211 must undergo a background screening as a condition of initial  
 212 and continued employment. The applicant must submit a full set  
 213 of fingerprints to the department or to a vendor, an entity, or  
 214 an agency that enters into an agreement with the Department of  
 215 Law Enforcement as provided in s. 943.053(13). The department,  
 216 vendor, entity, or agency shall forward the fingerprints to the  
 217 Department of Law Enforcement for state processing and the  
 218 Department of Law Enforcement shall forward the fingerprints to  
 219 the Federal Bureau of Investigation for national processing. The  
 220 department shall screen the results to determine if a peer  
 221 specialist meets certification requirements. The applicant is  
 222 responsible for all fees charged in connection with state and  
 223 federal fingerprint processing and retention. The state cost for  
 224 fingerprint processing shall be as provided in s. 943.053(3) (e)  
 225 for records provided to persons or entities other than those  
 226 specified as exceptions therein. Fingerprints submitted to the  
 227 Department of Law Enforcement pursuant to this paragraph shall  
 228 be retained as provided in s. 435.12 and, when the Department of  
 229 Law Enforcement begins participation in the program, enrolled in  
 230 the Federal Bureau of Investigation's national retained  
 231 fingerprint arrest notification program, as provided in s.  
 232 943.05(4). Any arrest record identified must be reported to the

19-00096-22 2022282\_\_

233 department.

234 (b) The department or the Agency for Health Care  
 235 Administration, as applicable, may contract with one or more  
 236 vendors to perform all or part of the electronic fingerprinting  
 237 pursuant to this section. Such contracts must ensure that the  
 238 owners and personnel of the vendor performing the electronic  
 239 fingerprinting are qualified and will ensure the integrity and  
 240 security of all personal identifying information.

241 (c) Vendors who submit fingerprints on behalf of employers  
 242 must:

- 243 1. Meet the requirements of s. 943.053; and
- 244 2. Have the ability to communicate electronically with the  
 245 state agency accepting screening results from the Department of  
 246 Law Enforcement and provide the applicant's full first name,  
 247 middle initial, and last name; social security number or  
 248 individual taxpayer identification number; date of birth;  
 249 mailing address; sex; and race.

250 (d) The background screening conducted under this  
 251 subsection must ensure that a peer specialist has not, during  
 252 the previous 3 years, been arrested for and is awaiting final  
 253 disposition of, been found guilty of, regardless of  
 254 adjudication, or entered a plea of nolo contendere or guilty to,  
 255 or been adjudicated delinquent and the record has not been  
 256 sealed or expunged for, any felony.

257 (e) The background screening conducted under this  
 258 subsection must ensure that a peer specialist has not been found  
 259 guilty of, regardless of adjudication, or entered a plea of nolo  
 260 contendere or guilty to, or been adjudicated delinquent and the  
 261 record has not been sealed or expunged for, any offense

19-00096-22 2022282\_\_

262 prohibited under any of the following state laws or similar laws  
 263 of another jurisdiction:

264 1. Section 393.135, relating to sexual misconduct with  
 265 certain developmentally disabled clients and reporting of such  
 266 sexual misconduct.

267 2. Section 394.4593, relating to sexual misconduct with  
 268 certain mental health patients and reporting of such sexual  
 269 misconduct.

270 3. Section 409.920, relating to Medicaid provider fraud, if  
 271 the offense was a felony of the first or second degree.

272 4. Section 415.111, relating to abuse, neglect, or  
 273 exploitation of vulnerable adults.

274 5. Any offense that constitutes domestic violence as  
 275 defined in s. 741.28.

276 6. Section 777.04, relating to attempts, solicitation, and  
 277 conspiracy to commit an offense listed in this paragraph.

278 7. Section 782.04, relating to murder.

279 8. Section 782.07, relating to manslaughter, aggravated  
 280 manslaughter of an elderly person or a disabled adult,  
 281 aggravated manslaughter of a child, or aggravated manslaughter  
 282 of an officer, a firefighter, an emergency medical technician,  
 283 or a paramedic.

284 9. Section 782.071, relating to vehicular homicide.

285 10. Section 782.09, relating to killing an unborn child by  
 286 injury to the mother.

287 11. Chapter 784, relating to assault, battery, and culpable  
 288 negligence, if the offense was a felony.

289 12. Section 787.01, relating to kidnapping.

290 13. Section 787.02, relating to false imprisonment.

19-00096-22 2022282\_\_

291 14. Section 787.025, relating to luring or enticing a  
 292 child.

293 15. Section 787.04(2), relating to leading, taking,  
 294 enticing, or removing a minor beyond state limits, or concealing  
 295 the location of a minor, with criminal intent pending custody  
 296 proceedings.

297 16. Section 787.04(3), relating to leading, taking,  
 298 enticing, or removing a minor beyond state limits, or concealing  
 299 the location of a minor, with criminal intent pending dependency  
 300 proceedings or proceedings concerning alleged abuse or neglect  
 301 of a minor.

302 17. Section 790.115(1), relating to exhibiting firearms or  
 303 weapons within 1,000 feet of a school.

304 18. Section 790.115(2)(b), relating to possessing an  
 305 electric weapon or device, a destructive device, or any other  
 306 weapon on school property.

307 19. Section 794.011, relating to sexual battery.

308 20. Former s. 794.041, relating to prohibited acts of  
 309 persons in familial or custodial authority.

310 21. Section 794.05, relating to unlawful sexual activity  
 311 with certain minors.

312 22. Section 794.08, relating to female genital mutilation.

313 23. Section 796.07, relating to procuring another to commit  
 314 prostitution, except for those offenses expunged pursuant to s.  
 315 943.0583.

316 24. Section 798.02, relating to lewd and lascivious  
 317 behavior.

318 25. Chapter 800, relating to lewdness and indecent  
 319 exposure.

19-00096-22 2022282\_\_

320 26. Section 806.01, relating to arson.

321 27. Section 810.02, relating to burglary, if the offense  
 322 was a felony of the first degree.

323 28. Section 810.14, relating to voyeurism, if the offense  
 324 was a felony.

325 29. Section 810.145, relating to video voyeurism, if the  
 326 offense was a felony.

327 30. Section 812.13, relating to robbery.

328 31. Section 812.131, relating to robbery by sudden  
 329 snatching.

330 32. Section 812.133, relating to carjacking.

331 33. Section 812.135, relating to home-invasion robbery.

332 34. Section 817.034, relating to communications fraud, if  
 333 the offense was a felony of the first degree.

334 35. Section 817.234, relating to false and fraudulent  
 335 insurance claims, if the offense was a felony of the first or  
 336 second degree.

337 36. Section 817.50, relating to fraudulently obtaining  
 338 goods or services from a health care provider and false reports  
 339 of a communicable disease.

340 37. Section 817.505, relating to patient brokering.

341 38. Section 817.568, relating to fraudulent use of personal  
 342 identification, if the offense was a felony of the first or  
 343 second degree.

344 39. Section 825.102, relating to abuse, aggravated abuse,  
 345 or neglect of an elderly person or a disabled adult.

346 40. Section 825.1025, relating to lewd or lascivious  
 347 offenses committed upon or in the presence of an elderly person  
 348 or a disabled person.



19-00096-22 2022282\_\_

349 41. Section 825.103, relating to exploitation of an elderly  
 350 person or a disabled adult, if the offense was a felony.

351 42. Section 826.04, relating to incest.

352 43. Section 827.03, relating to child abuse, aggravated  
 353 child abuse, or neglect of a child.

354 44. Section 827.04, relating to contributing to the  
 355 delinquency or dependency of a child.

356 45. Former s. 827.05, relating to negligent treatment of  
 357 children.

358 46. Section 827.071, relating to sexual performance by a  
 359 child.

360 47. Section 831.30, relating to fraud in obtaining  
 361 medicinal drugs.

362 48. Section 831.31, relating to the sale, manufacture,  
 363 delivery, or possession with intent to sell, manufacture, or  
 364 deliver of any counterfeit controlled substance, if the offense  
 365 was a felony.

366 49. Section 843.01, relating to resisting arrest with  
 367 violence.

368 50. Section 843.025, relating to depriving a law  
 369 enforcement, correctional, or correctional probation officer of  
 370 the means of protection or communication.

371 51. Section 843.12, relating to aiding in an escape.

372 52. Section 843.13, relating to aiding in the escape of  
 373 juvenile inmates of correctional institutions.

374 53. Chapter 847, relating to obscenity.

375 54. Section 874.05, relating to encouraging or recruiting  
 376 another to join a criminal gang.

377 55. Chapter 893, relating to drug abuse prevention and

19-00096-22 2022282\_\_

378 control, if the offense was a felony of the second degree or  
 379 greater severity.

380 56. Section 895.03, relating to racketeering and collection  
 381 of unlawful debts.

382 57. Section 896.101, relating to the Florida Money  
 383 Laundering Act.

384 58. Section 916.1075, relating to sexual misconduct with  
 385 certain forensic clients and reporting of such sexual  
 386 misconduct.

387 59. Section 944.35(3), relating to inflicting cruel or  
 388 inhuman treatment on an inmate resulting in great bodily harm.

389 60. Section 944.40, relating to escape.

390 61. Section 944.46, relating to harboring, concealing, or  
 391 aiding an escaped prisoner.

392 62. Section 944.47, relating to introduction of contraband  
 393 into a correctional institution.

394 63. Section 985.701, relating to sexual misconduct in  
 395 juvenile justice programs.

396 64. Section 985.711, relating to introduction of contraband  
 397 into a detention facility.

398 (6) EXEMPTION REQUESTS.—A person who wishes to become a  
 399 peer specialist and is disqualified under subsection (5) may  
 400 request an exemption from disqualification pursuant to s. 435.07  
 401 from the department or the Agency for Health Care  
 402 Administration, as applicable.

403 (7) GRANDFATHER CLAUSE.—A peer specialist certified as of  
 404 July 1, 2022, is deemed to satisfy the requirements of this  
 405 section.

406 ~~(1) An individual may seek certification as a peer~~

19-00096-22

2022282\_\_

407 ~~specialist if he or she has been in recovery from a substance~~  
408 ~~use disorder or mental illness for at least 2 years, or if he or~~  
409 ~~she has at least 2 years of experience as a family member or~~  
410 ~~caregiver of a person with a substance use disorder or mental~~  
411 ~~illness.~~

412 ~~(2) The department shall approve one or more third-party~~  
413 ~~credentialing entities for the purposes of certifying peer~~  
414 ~~specialists, approving training programs for individuals seeking~~  
415 ~~certification as peer specialists, approving continuing~~  
416 ~~education programs, and establishing the minimum requirements~~  
417 ~~and standards that applicants must achieve to maintain~~  
418 ~~certification. To obtain approval, the third party credentialing~~  
419 ~~entity must demonstrate compliance with nationally recognized~~  
420 ~~standards for developing and administering professional~~  
421 ~~certification programs to certify peer specialists.~~

422 ~~(3) An individual providing department-funded recovery~~  
423 ~~support services as a peer specialist shall be certified~~  
424 ~~pursuant to subsection (2). An individual who is not certified~~  
425 ~~may provide recovery support services as a peer specialist for~~  
426 ~~up to 1 year if he or she is working toward certification and is~~  
427 ~~supervised by a qualified professional or by a certified peer~~  
428 ~~specialist who has at least 3 years of full-time experience as a~~  
429 ~~peer specialist at a licensed behavioral health organization.~~

430 Section 4. This act shall take effect July 1, 2022.



The Florida Senate

## Committee Agenda Request

**To:** Senator Kelli Stargel, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** January 21, 2022

---

I respectfully request that **Senate Bill #282**, relating to Mental Health Substance Use Disorders, be placed on the:

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

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

---

Senator Darryl Ervin Rouson  
Florida Senate, District 19

The Florida Senate

**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

1-27-22

Meeting Date

Appropriations(s)

Committee

SB 282

Bill Number or Topic

388894

Amendment Barcode (if applicable)

Name Amy Farrington

Phone 850 264 7195

Address 1715 South Gadsden

Email afarrington@flcertificationboard.org

Street

hall FL 32301

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) [flsenate.gov](#)

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

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

01/27/22

Meeting Date

SB 282

Bill Number or Topic

APPROPRIATIONS

Committee

388896

Amendment Barcode (if applicable)

Name NATALIE KELLY

Phone (850) 570-5747

Address 122 S. CALHOUN STREET

Street

Email NATALIE@FLMANAGINGENTITIES.COM

TALLAHASSEE, FL 32301

City

State

Zip

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FLORIDA ASSOCIATION OF MANAGING ENTITIES

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

1/27/22

Meeting Date

SB 282

Bill Number or Topic

Appropriations

Committee

Amendment Barcode (if applicable)

Name Brita "BREETA" LINCOLN

Phone 813 541-6256

Address 1747 Orlando Central Pkwy

Email legislation@florida-pta.org

Orlando FL 32809

City

State

Zip

Speaking: [ ] For [ ] Against [ ] Information OR Waive Speaking: [x] In Support [ ] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[ ] I am appearing without compensation or sponsorship.

[ ] I am a registered lobbyist, representing:

[x] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Florida PTA (parent teacher assoc)

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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

5-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

1/27/2022

Meeting Date

282

Bill Number or Topic

Approps

Committee

Amendment Barcode (if applicable)

Name Joni Hunt

Phone 386 425. 4233

Address Halifax Health  
Street 303 N Clyde Morris Blvd  
City Daytona Beach State FL Zip 32114

Email joni.hunt@halifax.org

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:  
Halifax Health

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

SB 202

Bill Number or Topic

01/27/22

Meeting Date

APPROPRIATIONS

Committee

Amendment Barcode (if applicable)

Name NATALIE KELLY

Phone (850) 570-5747

Address 122 S. CALHOUN STREET

Street

Email NATALIE@FLMANAGINGENTITIES.COM

TALLAHASSEE FL

City

State

32301

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FLORIDA ASSOCIATION OF  
MANAGING ENTITIES

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) ([flsenate.gov](#))

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



The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

27 Jan 2022  
Meeting Date

282  
Bill Number or Topic

Appropriations  
Committee

Amendment Barcode (if applicable)

Name Matthew R. Holliday

Phone 239-826-7864

Address 350 7th Street North  
Street

Email matthew.holliday@nchmd.org

Naples  
City

FL  
State

34102  
Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:  
NCH Healthcare System

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) (flsenate.gov)

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

January 27, 2022

Meeting Date

Committee on Appropriations

Committee

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

SB 282

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Sean Burnfin**

Phone **(850) 922-0358**

Address **500 South Duval Street**

Email **burnfins@flcourts.org**

Street

**Tallahassee**

**Florida**

**32399**

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

### PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

**State Courts System - Steering Committee on Problem-Solving Courts**

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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

S-001 (08/10/2021)

01.27.2022

Meeting Date

Appropriations

Committee

Name Clay Meenan

Address 306 E College Ave

Street

Tallahassee

City

FL

State

32312

Zip

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

SB 282

Bill Number or Topic

Amendment Barcode (if applicable)

Phone 682-276-5245

Email ClayM@fha.org

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Hospital Association

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022-Joint-Rules.pdf)

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

S-001 (08/10/2021)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: SB 350

INTRODUCER: Senator Bean

SUBJECT: Procedures for Petitions for Utility Rate Relief

DATE: January 26, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sharon</u>	<u>Imhof</u>	<u>RI</u>	<b>Favorable</b>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<b>Recommend: Favorable</b>
3.	<u>Sanders</u>	<u>Sadberry</u>	<u>AP</u>	<b>Favorable</b>

---

**I. Summary:**

SB 350 increases the maximum annual sales threshold for public electric utilities to qualify for rate relief under the Florida Public Service Commission’s (PSC or commission) proposed agency action (PAA) procedure to 1,000 gigawatt hours from 500 gigawatt hours.

The bill may have an insignificant positive fiscal impact on state government expenditures.

The bill is effective July 1, 2022.

**II. Present Situation:**

**Florida Public Service Commission**

The PSC is an arm of the legislative branch of government.<sup>1</sup> The PSC ensures that Florida’s consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.<sup>2</sup> To do so, the PSC exercises authority over public utilities in one or more of these areas: (1) rate or economic regulation; (2) market competition oversight; and (3) monitoring of safety, reliability, and service issues.<sup>3</sup>

A public utility includes any person or legal entity supplying electricity or gas, including natural, manufactured, or similar gaseous substance, to or for the public within the state.<sup>4</sup> Notably, courts have ruled that the sale of electricity to even a single customer makes the provider a “public

---

<sup>1</sup> Section 350.001, F.S.

<sup>2</sup> See Florida Public Service Commission (PSC), *The PSC’s Role*, <http://www.psc.state.fl.us> (last visited Jan. 4, 2022).

<sup>3</sup> *Id.*

<sup>4</sup> Section 366.02(1), F.S.

utility” subjecting them to the PSC’s regulatory jurisdiction, under s. 366.02(1), F.S.<sup>5</sup> The PSC’s jurisdiction over public utilities is exclusive and superior to all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and in cases of conflict the PSC prevails.<sup>6</sup>

### Office of the Public Counsel

The Office of Public Counsel (OPC) was established by the Florida Legislature, under the legislative branch.<sup>7</sup> The OPC is tasked with providing legal representation for the general public of Florida in proceedings before the PSC and in other utility related matters.<sup>8</sup> The Public Counsel is appointed by the Joint Committee on Public Counsel Oversight, which is a standing joint legislative committee, established by the Joint Rules of the Florida Legislature.<sup>9</sup> The Public Counsel is appointed to a four year term, and may be reappointed, but may not serve more than 12 consecutive years in the position.<sup>10</sup> The Public Counsel must be an attorney admitted to practice before the Florida Supreme Court.<sup>11</sup>

### Fixing and Charging Rates

The PSC is charged with determining and fixing fair, just, and reasonable rates that are requested, demanded, charged, or collected by any public utility for its service.<sup>12</sup> The process for fixing and charging rates is established in s. 366.06, F.S., and its implementing rules.<sup>13</sup> In addition to a traditional rate case,<sup>14</sup> natural gas and public electric utilities whose annual sales to end users are less than 500 gigawatt hours,<sup>15</sup> may utilize the proposed agency action (PAA) process under s. 366.06(4) F.S.<sup>16</sup>

---

<sup>5</sup> *Florida Public Service Com’n v. Bryson*, 569 So. 2d 1253, 1255 (Fla. 1990) (finding that even a property management company is a public utility within the PSC’s regulatory jurisdiction); *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 284 (Fla. 1988) (finding that “to the public,” as used in ch. 366, F.S., means “to any member of the public,” rather than “to the general public”).

<sup>6</sup> Section 366.04 (1), F.S.

<sup>7</sup> Section 350.0614 (2), F.S.; Florida Office of Public Counsel, *About the Office of Public Counsel*, <http://www.floridaopc.gov/Pages/About.aspx> (last visited Jan. 4, 2022).

<sup>8</sup> Sections 350.0611, F.S.

<sup>9</sup> Section 350.061(1), F.S.; Joint Rule 4.1(1)(b), Joint Rules of the Florida Legislature.

<sup>10</sup> Section 350.061(1), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 366.06(1), F.S.

<sup>13</sup> Fla. Admin. Code R. 25-6.043 (Investor-Owned Electric Utility Petition for Rate Increase) and 25-6.140 (Electric Public Utilities Proposed Agency Action Notification); Fla. Admin. Code R. 25-7.039 (Natural Gas Utility Petition for Rate Increase); and Fla. Admin. Code R. 25-7.140 (Gas Public Utilities Proposed Agency Action Notification).

<sup>14</sup> In a “rate case,” the utility and affected parties present information and propose future prices and targets. This is a formal process much like a court case. Body of Knowledge on Infrastructure Regulation, *Rate Case*, <https://regulationbodyofknowledge.org/glossary/r/rate-case/> (last visited Jan. 4, 2022).

<sup>15</sup> A megawatt is one million watts and a kilowatt is one thousand watts. A 100 watt light bulb is rated to consume 100 watts of electricity. The average South Atlantic home has a monthly consumption of 1,088 kilowatt hours. United States Nuclear Regulatory Commission, *What is a Megawatt?* <https://www.nrc.gov/docs/ML1209/ML120960701.pdf> (last visited Jan. 4, 2022). A gigawatt is equal to one thousand megawatts. Body of Knowledge on Infrastructure Regulation, *Gigawatt-hours (gWh)*, <https://regulationbodyofknowledge.org/glossary/g/gigawatt-hours-gwh/> (last visited Jan. 4, 2022).

<sup>16</sup> See Fla. Admin. Code R. 25-22.029 (Proposed Agency Action Proceedings); Fla. Admin. Code R. 25-6.140 (Electric Public Utilities Proposed Agency Action Notification); and Fla. Admin. Code R. 25-7.140 (Gas Public Utilities Proposed Agency Action Notification).

### ***Standard Rate Case***

The PSC must take final action in a standard rate case within 12 months from the commencement date for final agency action.<sup>17</sup> The “commencement date for final agency action” is determined by the PSC clerk as the date when the utility has met the minimum filing requirements.<sup>18</sup> Minimum filing requirements are established by rule.<sup>19</sup>

During the pre-hearing phase, one of the PSC’s commissioners is assigned to preside as the prehearing officer for the docket.<sup>20</sup> They will enter an order establishing procedure and set the matter for a final hearing.<sup>21</sup> During this time, substantially affected persons have the opportunity to intervene and submit discovery and request information from the utility.<sup>22</sup> Toward the end of discovery, the utility and parties have a prehearing conference to finalize the issues.<sup>23</sup>

The hearing is evidentiary and conducted with the full panel of PSC commissioners, pursuant to ss. 120.569 and 120.57, F.S. In addition, customer service hearings are scheduled where customers provide testimony regarding rates and quality of service. Finally, the parties may file post-hearing briefs. If the parties waive the filing of briefs and consent to a vote at the hearing, the PSC will vote on the merits at another meeting after reviewing the record and any post-hearing filings. At the conclusion of the rate case the PSC issues a written final order, which the parties may appeal.<sup>24</sup>

### ***Proposed Agency Action Procedure***

Under s. 366.06(4), F.S., natural gas utilities and public electric utilities with less than 500 gigawatt hours in annual sales have the option to petition the PSC for rate relief utilizing the PAA procedure.<sup>25</sup>

A PAA docket will not be immediately set for hearing, but will be scheduled for commission consideration at a regular agenda conference. The PSC’s staff recommendation is prepared for

---

<sup>17</sup> Section 366.06(3), F.S. A utility seeking to change the rates it charges must first give the commission notice of its selected test year. *See* Fla. Admin. Code R. 25-6.043 and 25-7.039. The concept of a “test year” is used to calculate future rates. This allows for comparison of a defined period’s rate base costs including operating expenses with its total revenues. *See* Utility Dive, *As the power sector transforms, can utilities and customers find common ground on ratemaking?* (July 2, 2018), <https://www.utilitydive.com/news/as-the-power-sector-transforms-can-utilities-and-customers-find-common-gro/526399/> (last visited Jan. 4, 2022).

<sup>18</sup> *See* s. 366.06(3), F.S.

<sup>19</sup> *See* Fla. Admin. Code R. 25-6.043, (Investor-Owned Electric Utility Petition for Rate Increase); Fla. Admin. Code R. 25- 7.039, (Natural Gas Utility Petition for Rate Increase).

<sup>20</sup> PSC, *Bill Analysis for SB 350* (Oct. 11, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment and General Government).

<sup>21</sup> *Id.*

<sup>22</sup> *See* s. 120.569 F.S.; PSC, *Bill Analysis, supra* at n. 20.

<sup>23</sup> PSC, *Bill Analysis, supra* at n. 20.

<sup>24</sup> *Id.*

<sup>25</sup> Fla. Admin. Code R. 25-22.029 (Proposed Agency Action Notification). The utility must request to use this procedure when it submits its minimum filing requirements. Fla. Admin. Code R. 25-6.140(1)(d); and Fla. Admin. Code R. 25-7.140(1)(d).

the PSC’s consideration at a regular agenda conference.<sup>26</sup> The OPC may appear as a party and conduct limited discovery and staff may request information from the utility.<sup>27</sup> Customer hearings are scheduled to allow customers to comment on the rates and service offered by the utility.<sup>28</sup> Discovery from third parties is not permitted during this initial process. The Administrative Procedure Act only provides for intervention by substantially affected persons after issuance of a written PAA.<sup>29</sup>

At the agenda conference, the commission will consider the staff recommendation, receive input from the utility and any interested persons and the utility’s customers, and will vote on the request made by the utility. The Commission’s decision is memorialized as a PAA order. A party whose substantial interest may be affected by the PAA order must timely file a petition for administrative hearing; otherwise, an order will be entered making the PAA order a final agency action subject only to appeal.<sup>30</sup>

In a PAA docket, the statutory deadline for the PSC to enter a PAA order is five months from the commencement date.<sup>31</sup> If a petition protesting the PAA order is filed, the PSC must render a final decision no later than eight months from the petition’s filing.<sup>32</sup> A hearing on a PAA objection may only address the issues disputed in the petition. All other issues are deemed stipulated.<sup>33</sup>

Subsection 366.06(4), F.S., was last amended by the Florida Legislature in 1993.<sup>34</sup> Currently, none of the public electric utilities regulated by the PSC are eligible to utilize the PAA procedure for rate relief. The following table lists their annual sales in gigawatt hours.<sup>35</sup>

ELECTRIC UTILITIES	
2020	GWh
Florida Power & Light	113,531
Duke Energy Florida	39,230
Tampa Electric	19,954
Gulf Power	10,635
FPUC	650

**I. Effect of Proposed Changes:**

The bill increases the maximum annual sales threshold for public electric utilities to qualify for rate relief under the PSC’s proposed agency action procedure from 500 gigawatt hours to

<sup>26</sup> The commission generally conducts one regular agenda conference in every calendar month. PSC, *Bill Analysis, supra* at n. 20.

<sup>27</sup> Section 350.0611, F.S.; PSC, *Bill Analysis, supra* at n. 20.

<sup>28</sup> PSC, *Bill Analysis, supra* at n. 20.

<sup>29</sup> See ss. 120.569 and 120.57, F.S.

<sup>30</sup> PSC, *Bill Analysis, supra* at n. 20.

<sup>31</sup> See s. 366.06(4), F.S.; PSC, *Bill Analysis, supra* at n. 20.

<sup>32</sup> See s. 366.06(4), F.S.

<sup>33</sup> Section 120.80(13)(b), F.S.

<sup>34</sup> See Ch. 35, s. 5, Laws of Fla. (1993).

<sup>35</sup> PSC, *Bill Analysis, supra* at n. 20.

1,000 gigawatt hours. This would allow the Florida Public Utilities Company – Electric Division to be eligible to utilize the proposed agency action procedure for its petition for rate relief.<sup>36</sup>

The bill is effective July 1, 2022.

## II. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

### B. Public Records/Open Meetings Issues:

None.

### C. Trust Funds Restrictions:

None.

### D. State Tax or Fee Increases:

None.

### E. Other Constitutional Issues:

None.

## III. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

The bill may have a positive fiscal impact on public electric utilities that become eligible to utilize the proposed agency action procedure for rate relief in lieu of a standard rate case. This may minimize litigation and regulatory costs. These cost avoidances may result in savings, or prevent increases, to the ratepayers.

It appears the Florida Public Utilities Company's Electric Division will be eligible to utilize the PAA procedure for rate relief due to its annual sale level.

The bill does not affect natural gas utilities regulated by the PSC as they do not have a statutory annual sales threshold to qualify for the PAA procedure.

---

<sup>36</sup> *Id.*



**C. Government Sector Impact:**

The bill may have an insignificant positive fiscal impact on the PSC and the Office of Public Counsel by saving time and financial resources for rate relief by utilities eligible for the PAA procedure instead of a standard rate case.

**IV. Technical Deficiencies:**

None.

**V. Related Issues:**

None.

**VI. Statutes Affected:**

This bill substantially amends section 366.06 of the Florida Statutes.

**VII. 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 Bean

4-00491-22

2022350\_\_

1 A bill to be entitled  
 2 An act relating to procedures for petitions for  
 3 utility rate relief; amending s. 366.06, F.S.;  
 4 increasing the maximum annual sales, expressed in  
 5 gigawatt hours, which natural gas or public electric  
 6 utilities may have to be eligible to request that the  
 7 Public Service Commission use certain procedures for  
 8 the utility's petition for rate relief; making a  
 9 technical change; providing an effective date.

10  
 11 Be It Enacted by the Legislature of the State of Florida:

12  
 13 Section 1. Subsection (4) of section 366.06, Florida  
 14 Statutes, is amended to read:

15 366.06 Rates; procedure for fixing and changing.—

16 (4) A natural gas utility or a public electric utility  
 17 whose annual sales to end-use customers amount to less than  
 18 1,000 ~~500~~ gigawatt hours may specifically request the commission  
 19 to process its petition for rate relief using the agency's  
 20 proposed agency action procedure, as prescribed by commission  
 21 rule. The commission shall enter its vote on the proposed agency  
 22 action within 5 months of the commencement date for final agency  
 23 action. If the commission's proposed action is protested, the  
 24 final decision must be rendered by the commission within 8  
 25 months after ~~of~~ the date the protest is filed. At the expiration  
 26 of 5 months following the commencement date for final agency  
 27 action, if the commission has not taken action or if the  
 28 commission's action is protested by a party other than the  
 29 utility, the utility may place its requested rates into effect

Page 1 of 2

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

4-00491-22

2022350\_\_

30 under bond, escrow, or corporate undertaking subject to refund,  
 31 upon notice to the commission and upon filing the appropriate  
 32 tariffs. The utility must keep accurate records of amounts  
 33 received as provided by subsection (3).

34 Section 2. This act shall take effect July 1, 2022.

Page 2 of 2

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Kelli Stargel, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** January 12, 2022

---

I respectfully request that **Senate Bill #350**, relating to Procedures for Petitions for Utility Rate Relief, be placed on the:

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

A handwritten signature in blue ink that reads "Aaron Bean".

---

Senator Aaron Bean  
Florida Senate, District 4

The Florida Senate

January 27, 2022

APPEARANCE RECORD

SB 0350

Meeting Date  
Senate Appropriations

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Larry Williams Phone 850.521.1980

Address 215 S. Monroe Street Email LWilliams@gunster.com

Street

Tallahassee FL 32301

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Chesapeake

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

1/27/2022

Meeting Date

Appropriations

Committee

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

SB350

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Victoria Price**

Phone **8503824153**

Address **310 West College Ave.**

Street

Email **vprice@chpk.com**

**Tallahassee**

City

**FL**

State

**32301**

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

### PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

**Florida Public Utilities Corporation  
& Chesapeake Utilities Corporation**

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: SB 406

INTRODUCER: Senator Berman

SUBJECT: Secured Transactions

DATE: January 26, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Covin</u>	<u>Babin</u>	<u>FT</u>	<b>Favorable</b>
3.	<u>Covin</u>	<u>Sadberry</u>	<u>AP</u>	<b>Favorable</b>

---

## I. Summary:

SB 406 provides that language referring only to the type of collateral is insufficient to waive constitutional and statutory protections that prevent creditors from obtaining a judgment against certain assets, allowing the individual to pledge such assets as collateral.

These changes are in response to a recent federal court case which held that mere contractual reference to “all assets” included certain property previously understood to be excluded from such an agreement. Assets unexpectedly put at risk include retirement accounts, pension payments, and education savings accounts.

The bill does not affect state or local revenue.

The bill takes effect upon becoming a law and applies retroactively.

## II. Present Situation:

### Asset Protection from Legal Process

A creditor can collect money owed by filing an action for a judgment in state court. A judgment is an order of the court creating an obligation, typically a debt when creditors are involved. The creditor may then use that judgment to collect assets from the debtor. Chapter 222, F.S., contains exemptions that protect certain assets from legal process under Florida law, absent a waiver. Florida exempts the following assets against creditor claims in most situations:

- Homestead property (ss. 222.01-222.05, F.S.).
- Certain items of personal property (s. 222.061, F.S.).
- Certain disposable earnings of a head of family (s. 222.11, F.S.).
- The proceeds of a life insurance policy (s. 222.13, F.S.).

- The cash surrender value of a life insurance policy and the proceeds of an annuity contract (s. 222.14, F.S.).
- Disability benefits payable from any insurance (s. 222.18, F.S.).
- Certain pension, retirement, or profit sharing benefits (s. 222.21, F.S.).
- Prepaid College Trust Fund moneys and Medical Savings Account funds (s. 222.22, F.S.).
- A debtor's interest in a motor vehicle, up to \$1,000 in value (s. 222.25, F.S.).
- A debtor's interest in any professionally prescribed health aids (s. 222.25, F.S.).
- Social security benefits, unemployment compensation, or public assistance benefits; veterans' benefits; disability, illness, or unemployment benefits; alimony, support, or separate maintenance; and stock or pension plans under specified circumstances (s. 222.201, F.S.).

These exemptions have historically been construed liberally in favor of the consumer against creditors' claims to exempt property.<sup>1</sup> When a consumer enters a security agreement – a contract in which a debtor offers assets as collateral (“security”) to guarantee repayment – the contract describes what assets are offered as security. Historically, a contract's blanket offering of “all assets” as security has not been interpreted to include assets subject to these exemptions.<sup>2</sup>

An individual must take additional steps in order to offer certain exempt assets as collateral. For example, in the case of a Floridian's homestead exemption, which protects homestead property from bankruptcy proceedings, a contractual waiver of those rights must be “knowing, voluntary, and intelligent” to have any effect.<sup>3</sup> As another example, certain wages are exempt from legal process.<sup>4</sup> The wages exemption may only be waived in writing, in a separate document attached to the security agreement, which must contain mandatory waiver language in at least 14-point font.<sup>5</sup>

### **Sufficiency of Description for Collateral in Security Agreements**

An effective description of collateral in a security agreement identifies the asset by specific listing; category; type of collateral; quantity, computational or allocational formula; or any method under which the identity of the collateral is objectively determinable.<sup>6</sup>

Current law specifically provides that a description of collateral as “all the debtor's assets” or “all the debtor's personal property” does not reasonably identify collateral.<sup>7</sup>

---

<sup>1</sup> See e.g. *Patten Package Co. v. Houser*, 102 Fla. 603, 607, 136 So. 353, 355 (1931); *Killian v. Lawson*, 387 So.2d 960, 962 (Fla. 1980); *Havoco of Am. Ltd. v. Hill*, 790 So.2d 1018, 1021 (Fla. 2001); *Connor v. Seaside National Bank*, 135 So.3d 508, 509 (Fla. 5th DCA 2014).

<sup>2</sup> Section 679.1081(3), F.S., Official Comment 2 to U.C.C. s. 9-110 (s. 679.1081(3), F.S.).

<sup>3</sup> See e.g. *Chames v. DeMayo*, 972 So.2d 850, 861 (Fla. 2007) (citing *State v. Upton*, 658 So.2d 86, 87 (Fla. 1995)).

<sup>4</sup> Section 222.11, F.S.

<sup>5</sup> Section 222.11(2), F.S.

<sup>6</sup> Section 679.1081(2), F.S. Chapter 679, F.S., adopts Article 9 of the Universal Commercial Code (U.C.C.), dealing with secured transactions. Every state in the United States has adopted the U.C.C. See <https://www.uniformlaws.org/acts/ucc> (last visited Jan. 18, 2022).

<sup>7</sup> Section 679.1081(3), F.S.

Finally, current law provides that a description defined by “type” of collateral alone for a commercial tort claim or, in a consumer transaction, for a security entitlement, securities account, or commodity account, is not sufficient.<sup>8</sup> For example, “all existing and after-acquired investment property” or “all existing and after-acquired security entitlements,” without more, would be insufficient in a consumer transaction to describe a security entitlement, securities account, or commodity account.<sup>9</sup>

### **Kearney Construction Co, LLC v. Travelers Casualty & Surety Company of America**

A recent federal court case held that general, broad pledges of “all assets” waives ch. 222, F.S., protections.<sup>10</sup> In *Kearney Construction Company, LLC v. Travelers Casualty and Surety Company of America*<sup>11</sup> the debtor obtained a line of credit and pledged collateral in the contract as follows:

Grant of Security Interest. As security for any and all Indebtedness (as defined below), the Pledgor hereby irrevocably and unconditionally grants a security interest in the collateral described in the following properties[:] all assets and rights of the Pledgor, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof, all goods (including inventory, equipment and any accessories thereto), instruments (including promissory notes)[,] documents, accounts, chattel paper, deposit accounts, letters of credit, rights, securities and all other investment property, supporting obligation[s], any contract or contract rights or rights to the payment of money, insurance claims, and proceeds, and general intangibles (the “Collateral”).<sup>12</sup>

The Eleventh Circuit considered whether this language included assets held in the debtor’s Individual Retirement Account (IRA). The debtor argued that the IRA should not have been included in all assets and was never intended to have been offered as collateral.<sup>13</sup> The court found that the security agreement’s language constituted an “unambiguous pledge” of all assets, which includes those exempt under ch. 222, F.S.<sup>14</sup> Kearney’s IRA was not specifically listed in the agreement, but the court concluded that the broad language of the contract “encompassed potential retirement accounts or funds, such as the [IRA] at issue here.”<sup>15</sup>

The courts did not address whether ch. 222, F.S., exemptions or ch. 679, F.S., description requirements should have any weight in interpreting the contract. The courts also did not explain what part of the security agreement encompassed the IRA. It is unclear if it was part of a specific

---

<sup>8</sup> Section 679.1081(5), F.S.

<sup>9</sup> Section 679.1081(5), F.S.; Official Comment 5 to U.C.C. s. 9-108 (s. 679.1081(5), F.S.).

<sup>10</sup> Concerns were raised by the Florida Bar’s Real Property, Probate, and Trust Law Section, which formed a “Kearney Subcommittee” within its Asset Protection Committee. See the Kearney Subcommittee’s White Paper (Oct. 14, 2021) (on file with the Senate Committee on Appropriations).

<sup>11</sup> 795 Fed.Appx. 671 (Fla. 11th Cir. Nov. 13, 2019).

<sup>12</sup> *Id.* at 673.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Magistrate Judge’s Report and Recommendation, Case 8:09-cv-01850-JSM-TBM, Docket 865, at 28.



collateral category such as a deposit account, investment property, general intangible, or another category,<sup>16</sup> each of which could have different treatment.<sup>17</sup>

Federal law treats the use of any funds inside a tax-advantaged retirement account as a taxable distribution from that account.<sup>18</sup> Therefore, any such funds used unexpectedly for a pledge of “all assets” towards a debt risk losing their tax-advantaged status, subject to back taxes and penalties.

### III. Effect of Proposed Changes:

**Section 1** amends s. 679.1081(5), F.S., to provide that those accounts and entitlements described in ss. 222.13 through 222.16, s. 222.18, and ss. 222.201 through 222.22, F.S., are not adequately described by general reference to the type of collateral. In order to include such an asset in a security agreement, the asset must be described by specific reference to the individual asset as provided in s. 679.1081, F.S.

The assets referred to in those sections include life insurance policies, cash surrender value of life insurance policies and annuity contracts; wages or reemployment assistance or unemployment compensation payments due deceased employees; disability income benefits; certain payments protected by the federal Bankruptcy Reform Act of 1978; pension money and tax exempt retirement accounts; and assets in qualified tuition programs, medical savings accounts, Coverdell education savings accounts, and hurricane savings accounts.

**Section 2** provides that the bill applies retroactively.

**Section 3** provides the bill takes effect upon becoming a law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

Article VII, s. 18, of the State Constitution requires a two-thirds vote of the membership of each house of the Legislature to pass legislation requiring counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. The bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a shared state tax. Therefore, the provisions of Art. VII, s. 18 of the State Constitution do not apply.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

---

<sup>16</sup> *Id.*

<sup>17</sup> Sections 679.1021, 679.1031, 679.1041, 679.1051, 679.1061, 679.1071, 679.1081 and 679.1091, F.S.

<sup>18</sup> I.R.C. s. 408(e)(4).

**D. State Tax or Fee Increases:**

The bill does not create or raise state taxes or fees. Therefore, the requirements of Art. VII, s. 19 of the State Constitution do not apply.

**E. Other Constitutional Issues:**

None identified.

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

The bill does not affect state or local revenue.

**B. Private Sector Impact:**

The bill protects consumers from unknowingly pledging otherwise exempt assets.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends section 679.1081 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.

By Senator Berman

31-00385-22

2022406\_\_

1                           A bill to be entitled  
2       An act relating to secured transactions; amending s.  
3       679.1081, F.S.; providing that a description of  
4       certain accounts and entitlements by a certain type of  
5       collateral is insufficient for the purpose of security  
6       agreements; providing retroactive application;  
7       providing an effective date.  
8  
9   Be It Enacted by the Legislature of the State of Florida:  
10  
11       Section 1. Subsection (5) of section 679.1081, Florida  
12       Statutes, is amended to read:  
13       679.1081 Sufficiency of description.—  
14       (5) A description only by type of collateral defined in  
15       this chapter is an insufficient description of:  
16       (a) A commercial tort claim;  
17       (b) In a consumer transaction, consumer goods, a security  
18       entitlement, a securities account, or a commodity account; ~~or~~  
19       (c) An account consisting of a right to payment of a  
20       monetary obligation for the sale of real property that is the  
21       debtor's homestead under the laws of this state; or  
22       (d) Accounts and other entitlements set forth in ss.  
23       222.13-222.16, s. 222.18, and ss. 222.201-222.22.  
24       Section 2. The amendment made by this act to s. 679.1081,  
25       Florida Statutes, is remedial in nature and applies  
26       retroactively.  
27       Section 3. This act shall take effect upon becoming a law.

## WHITE PAPER

PROTECTION OF FLORIDA RESIDENTS FROM UNINTENTIONALLY ASSIGNING, PLEDGING, OR WAIVING RIGHTS TO ASSETS THAT OTHERWISE ARE EXEMPT FROM LEGAL PROCESS UNDER CHAPTER 222 OF THE FLORIDA STATUTES BY IMPLEMENTING CLEARLY DEFINED REQUIREMENTS FOR WAIVING THE PROTECTION OF SUCH EXEMPTIONS

### I. SUMMARY

This legislation protects Florida residents from unintentionally assigning, pledging, or waiving rights to, retirement accounts, annuities, certain life insurance policies and certain other assets that otherwise are exempt from legal process under Chapter 222 of the Florida Statutes by requiring that a Security Agreement purporting to pledge such asset specifically identify the exempt asset, such as in a manner consistent with Fla. Stat. § 679.1081 (Florida's Uniform Commercial Code), in order to constitute a valid and intentional assignment, pledge, or waiver. Because of the adverse economic impact of Covid-19, it is imperative to protect citizens from unknowing forfeiture of assets and potentially disastrous tax consequences. The bill does not have a fiscal impact on state funds.

### II. CURRENT SITUATION

#### A. Current Florida Statutes

Chapter 222 of the Florida Statutes contains most of the statutory exemptions that protect certain assets from legal process under Florida law. Florida Statutes § 222.21(2)(a) allows Florida Consumers to claim an exemption from creditors for funds held in individual retirement accounts (“IRAs”), 401(k) retirement accounts, and other tax-exempt accounts. Florida Statutes § 222.14 provides that the cash surrender values of life insurance policies and the proceeds of annuity contracts issued to citizens or residents of the State of Florida are exempt from creditor attachment. Florida Statutes § 222.22 and Fla. Stat. § 222.25 state that funds held in qualified tuition programs and other qualifying accounts and certain individual property are also protected from creditors.

Under Fla. Stat. § 222.11, wages are exempt from attachment or garnishment unless the Florida Consumer agrees to waive the protection from wage garnishment in a writing complying with the requirements set forth in Fla. Stat. § 222.11(2)(b). Florida Statutes § 222.11(2)(b) provides that the agreement to waive the protection from wage garnishment must be in writing and be written in the same language as the contract to which the waiver relates, be contained in a separate document attached to the contract, and contain the mandatory waiver language specified in Fla. Stat. § 222.11(2)(b) in at least 14-point type. This writing ensures the Consumer understands they are waiving a statutory exemption.

It has been standard result for any asset which is exempt under Chapter 222 of the Florida Statutes to remain exempt from the reach of creditors, if the exempt asset is not specifically pledged. Long standing public policy of the Florida legislature promotes the financial independence of the retired and elderly by protecting their IRAs and pensions plans with an

exemption, thus reducing the need for public financial assistance. This consumer protection built into the framework of the existing law protecting Florida Consumers from overreaching creditors, unfair transactions, and retirement poverty was recently cast aside in the decision of *Kearney Constr. Co., LLC v. Travelers Cas. & Sur. Co. of Am.*, 795 Fed. Appx. 671 (11th Cir. 2019). The *Kearney* result flies in the face of the intent of the Florida legislature and the current statutory framework which requires a Florida Consumer to understand and acknowledge any waiver of a statutory exemption under Florida law.

## **B. Kearney Holding**

On October 27, 2011, the United States District Court Middle District of Florida, Tampa Division granted a motion for entry of final judgment in favor of Travelers Casualty & Surety Company of America and against Bing Charles W. Kearney (“**Kearney**”) and others in the amount of \$3,750,000. Magistrate Judge’s Report and Recommendation, Case 8:09-cv-01850-JSM-TBM, Docket 711, at 1-2 (March 17, 2016). On March 1, 2012, Kearney executed a Revolving Line of Credit Promissory Note (the “**Promissory Note**”) in favor of Moose Investments of Tampa, LLC (“**Moose Investments**”), which was an entity owned by Kearney’s son. Magistrate Judge’s Report and Recommendation, Case 8:09-cv-01850-JSM-TBM, Docket 865, at 9 (August 16, 2017). The Promissory Note was collateralized by a security agreement (the “**Security Agreement**”), in which Kearney pledged a security interest in

**all assets and rights of the Pledgor**, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof, all good (including inventory, equipment and any accessories thereto), instruments (including promissory notes), documents, accounts, chattel paper, **deposit accounts**, letters of credit, rights, securities and all other **investment property**, supporting obligation, any contract or contract rights or rights to the payment of money, insurance claims, and proceeds, and **general intangibles** (the “Collateral”). *Id.* at 9-10 (emphasis added).

On October 25, 2012, Kearney deposited funds into an IRA at USAmeriBank. *Id.* at 10. On July 23, 2015, the Magistrate Judge granted Travelers’ motion for a writ of garnishment directed to USAmeriBank. Magistrate Judge’s Report and Recommendation, Docket 711, at 2.

Magistrate Judge McCoun III submitted a Report and Recommendation on March 17, 2016 (Docket 711) and a Report and Recommendation on August 16, 2017 (Docket 865) addressing the numerous summary judgment motions related to the writ of garnishment directed to USAmeriBank. In the Report and Recommendation submitted on August 16, 2017, Magistrate Judge McCoun III issued a recommendation on three summary judgment motions related to determining whether the funds deposited into Kearney’s IRA at USAmeriBank lost the exempt status because of Kearney’s pledge of collateral in the Security Agreement with Moose Investments. Docket 865, at 7. Kearney argued the funds held in his IRA were exempt from garnishment under Fla. Stat. § 221.21(2). *Id.* at 8. Travelers countered that Kearney pledged the IRA as security to Moose Investments pursuant to the Promissory Note and Security Agreement, and such pledge of the IRA as collateral caused the funds in the IRA to both lose its tax-exempt status and its exempt status from garnishment. *Id.* at 8-9. Kearney responded that the Promissory

Note and Security Agreement did not specify the IRA was intended to be pledged as a “deposit account” as part of the collateral under the Security Agreement. *Id.* at 22- 23.

The Magistrate Judge determined that Kearney pledged all of his assets and rights in the Security Agreement securing the Promissory Note. *Id.* at 22. Thus, the funds held in Kearney’s IRA lost their tax-exempt status and were not protected by Fla. Stat. § 221.21(2) or any other statutory exemption. *Id.* at 29. In arriving at this conclusion, the Magistrate Judge determined the language of the Security Agreement was “clear, unambiguous, and without exception.” *Id.* at 26. Although Kearney’s IRA was not specifically identified as part of the collateral, the Magistrate Judge noted that the broad language of the Security Agreement “encompassed potential retirement accounts or funds, such as the [IRA] at issue here.” *Id.* at 28. The Magistrate Judge did not identify the collateral category in the Security Agreement that purportedly covered the IRA. The Magistrate Judge did not explain whether the IRA was a “deposit account,” “investment property,” a “general intangible,” or something else. Furthermore, the Magistrate Judge did not reference Fla. Stat. § 679.1081(3), which provides that a description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import does not reasonably identify the collateral for purposes of the security agreement. Such general descriptions are legally inadequate to create a lien. The Magistrate Judge did not cite any Florida case law or the Florida Statutes in support of the Magistrate Judge’s position that a pledge of IRA funds causes such funds to lose their creditor exempt status in Florida. In fact, the Magistrate Judge only cited cases from the United States Bankruptcy Court for the Southern District of Ohio and the Eastern District Court of Virginia to support the conclusion. *Id.* at 21-22 (citing *In re Roberts*, 326 B.R. 424, 426 (Bankr. S.D. Ohio 2004), and *XL Specialty Ins. Co. v. Truland*, 2015 WL 2195181, at \*11–13 (E.D. Va., May 11, 2015)).

The United States District Court Middle District of Florida, Tampa Division adopted, confirmed, and approved in all respects the Reports and Recommendations submitted by Magistrate Judge McCoun III in Docket 711 and Docket 865. *Kearney Construction Company, LLC v. Travelers Casualty & Surety Company of America*, 2016 WL 1394372 at \*1; *Kearney Construction Company, LLC v. Travelers Casualty & Surety Company of America*, 2017 WL 4244390 at \*1. In 2019, the United States Court of Appeals for the Eleventh Circuit reexamined whether Kearney pledged his IRA as collateral under the Security Agreement. *Kearney Constr. Co., LLC v. Travelers Cas. & Sur. Co. of Am.*, 795 Fed. Appx. 671, 673 (11th Cir. 2019). The Eleventh Circuit agreed with the United States District Court Middle District of Florida, Tampa Division, and determined the language in the Security Agreement “constitutes an unambiguous pledge of ‘all assets and rights of the Pledgor,’ including his IRA Account . . . .” *Id.* at 674. The Eleventh Circuit concluded the District Court properly held the IRA was pledged as security for Kearney’s loan with Moose Investments and “therefore was not exempt under § 222.21.” *Id.* at 675. As with the Magistrate Judge, the Eleventh Circuit did not identify the collateral category in the Security Agreement that purportedly covered the IRA and did not reference how Fla. Stat. § 679.1081(3) provides that general descriptions of collateral are legally inadequate to create a valid lien.

As discussed in Footnote 7, the Eleventh Circuit rejected Kearney’s argument that the IRA was protected by Fla. Stat. §§ 222.21(2)(a) 1 and 2 even if it was determined that the IRA was pledged under the Security Agreement. *Id.* at 674, n.7. The Eleventh Circuit asserted Fla. Stat. §

222.21(2)(a)(1) can be applied only if the Internal Revenue Service (“IRS”) “pre-approved” the IRA as exempt from taxation. *Id.* The Eleventh Circuit also stated Fla. Stat. § 222.21(2)(a)(2) can be applied only if the IRS has “determined” an IRA is exempt from taxation. *Id.* The Eleventh Circuit concluded Kearney provided no evidence the IRS “pre-approved” Kearney’s IRA as exempt from taxation, or that the IRS made a “determination” that Kearney’s IRA was exempt from taxation. *Id.* Since Kearney had the burden of proving such “pre-approval” or “determination,” the Eleventh Circuit concluded the funds held in Kearney’s IRA lost their tax-exempt status and were not protected by Fla. Stat. § 221.21(2) or any other statutory exemption. *Id.* Although there is a procedure for obtaining a determination letter from the IRS for a qualified plan, employers who sponsor retirement plans are generally not required to apply for a determination letter from the IRS. Furthermore, effective January 1, 2017, Revenue Procedure 2016-37 provides the limited circumstances under which plan sponsors may submit determination letter applications to the IRS. In general, a sponsor of an individually designed plan may submit a determination letter application only for initial plan qualification and for qualification upon plan termination. Thus, the custodians of IRAs rarely seek determination of tax-exempt status from the IRS. Furthermore, it is both absurd and impossible to require all Florida Consumers owning IRAs to obtain the IRS’s approval regarding the status of their IRAs as exempt in order to be protected by Florida’s statutory exemption.

### **C. Issues Resulting from Kearney Holding**

Chapter 222 of the Florida Statutes contains most of the statutory exemptions that protect certain assets from legal process under Florida law. The Magistrate Judge, the District Court, and the Eleventh Circuit concluded that Kearney forfeited the exempt status of the funds held in the IRA by pledging the funds as collateral because the Security Agreement provided Kearney pledged all of his “assets and rights.” In arriving at this conclusion, the three courts ignored Fla. Stat. § 679.1081(3), which provides that a description of collateral as “all the debtor’s assets” or words of similar import does not reasonably identify the collateral for purposes of the security agreement. Such general descriptions are legally inadequate to create a lien. The Security Agreement did not specifically identify the IRA as part of the collateral. It has been standard practice for any asset which is exempt under Chapter 222 of the Florida Statutes to remain exempt from the reach of creditors, if the exempt asset is not specifically pledged. The three courts did not identify the collateral category in the Security Agreement that purportedly covered the IRA, and never explained whether the IRA was a “deposit account,” “investment property,” a “general intangible,” or something else.

The three courts did not cite any Florida case law or relevant statute in the Florida Statutes to support the conclusion that Kearney waived his exemption from creditors for funds held in the IRA by signing the Security Agreement containing a broadly worded security interest provision. The Magistrate Judge cited cases from the United States Bankruptcy Court for the Southern District of Ohio and the Eastern District Court of Virginia to support the conclusion that a pledge of IRA funds causes such funds to lose their creditor exempt status. However, those cases were not decided under Florida law, are not binding on a Florida court, and rest in jurisdictions that do not necessarily have state law creditor exemptions similar to Florida for IRAs.

The Eleventh Circuit, in the *Kearney* decision, without citing any Florida case law supporting its conclusion:

- blind-sides millions of Florida Consumers by rendering moot numerous statutory exemptions from creditors under Florida law for anyone who has signed a contract containing a blanket security interest provision that includes deposit accounts, general intangibles, and/or investment property;
- causes citizens to unintentionally remove the exempt protection they have from their IRAs and qualified retirement plans which may cause them to become so destitute they must become wards of the state;
- creates a toxic environment for business because all business loans requiring a general pledge of assets would force business owners to give their creditors total access to their retirement savings, children's college funds and life insurance cash surrender values; and
- potentially triggers a ruinous immediate financial result for Florida Consumers by causing the loss of the pledged amount of a Consumer's IRAs and qualified retirement plans, plus up to 40% of the full value to taxes and penalties upon making a general pledge of assets.

**1. Forfeiture of Exempt Status for Pledged Assets:** Chapter 222 of the Florida Statutes contains most of the statutory exemptions that protect certain assets from legal process under Florida law. For example, Fla. Stat. § 222.21(2)(a) allows Florida Consumers to claim an exemption from creditors for funds held in IRAs, 401(k) retirement accounts, and other tax-exempt accounts. Florida Consumers have long operated under the belief any asset which is exempt under Chapter 222 of the Florida Statutes is exempt from the reach of creditors unless such exempt asset is specifically pledged in a security agreement. The Magistrate Judge, the District Court, and the Eleventh Circuit cast aside this widely held belief in concluding that *Kearney* forfeited the exempt status of the funds held in the IRA by pledging the funds as collateral because the Security Agreement provided *Kearney* pledged all of his "assets and rights." In arriving at this conclusion, the three courts ignored Fla. Stat. § 679.1081(3), which provides that a description of collateral as "all the debtor's assets" or words of similar import does not reasonably identify the collateral for purposes of the security agreement. Such general descriptions are legally inadequate to create a lien. Furthermore, the Security Agreement at issue in *Kearney* did not specifically identify *Kearney's* IRA as part of the collateral. The three courts did not identify the collateral category in the Security Agreement that purportedly covered the IRA, and never explained whether the IRA was a "deposit account," "investment property," a "general intangible," or something else. A long standing public policy of the Florida legislature is the promotion of the financial independence of the retired and elderly through the protection of their IRAs and pensions plans with an exemption, thus reducing the need for public financial assistance. However, the *Kearney* decision may result in Florida Consumers unintentionally removing the exempt protection they have from their IRAs and qualified retirement plans, which could then cause them to become so destitute they must become wards of the state.

**2. Application of *Kearney* Decision Beyond IRAs:** The *Kearney* decision creates a dangerous precedent by permitting funds held in an IRA or other qualified plans to be garnished by creditors without a Consumer making an express and knowing waiver of the Fla. Stat. § 222.21(2)(a) exemption. The holding in *Kearney* appears to be in contravention with the intent of the Florida legislature to protect the assets of IRAs and pension plans from creditors. *See Dunn v.*



*Doskocz*, 590 So. 2d 521, 522, n.2 (Fla. Dist. Ct. App. 1991) (“It appears the legislature has made the policy decision that it should protect the assets of IRA’s and pension plans, thereby promoting the financial independence of IRA and pension plan beneficiaries in their retirement years—in turn reducing the incidence and amount of requests for public financial assistance”). The ripple effects of the *Kearney* decision go beyond the loss of the statutory exemption for funds held in IRAs or other qualified retirement plans. In *Kearney*, the Eleventh Circuit only examined whether Kearney waived the statutory exemption for his IRA. However, the *Kearney* holding is not necessarily limited to the waiver of the statutory exemption for IRAs. The *Kearney* decision can be used by creditors to pursue other purportedly exempt assets. *Kearney* potentially renders moot numerous statutory exemptions from creditors under Florida law for anyone who has signed a contract containing a broadly worded security interest provision that includes a general reference to deposit accounts, general intangibles, and/or investment property. For example, funds in other tax-exempt accounts protected under Fla. Stat. § 222.21(2)(a), such as 401(k) retirement accounts, are potentially vulnerable to creditors. Since the Eleventh Circuit did not identify which collateral category in the Security Agreement covered the IRA in *Kearney*, it is not unreasonable to believe that the cash surrender values of life insurance policies and the proceeds of annuity contracts protected under Fla. Stat. § 222.14 could be classified as “deposit accounts” or “investment property” in a different security agreement, and thus, potentially accessible to creditors. A similar analysis applies to other assets exempt under Chapter 222, such as funds held in qualified tuition programs and other qualifying accounts and certain individual property currently protected by Fla. Stat. § 222.22 and Fla. Stat. § 222.25, respectively.

**3. Creates a toxic environment for new business:** Mortgages, credit card applications, home equity line of credit agreements, security agreements, financing statements, and personal guarantees on business loans are only a few examples of documents that typically include a general pledge of assets as collateral similar to the provision at issue in *Kearney*. Millions of Florida Consumers are parties to at least one (if not more) of these contracts secured by their assets, which may now, unbeknownst to them, include a pledge of their exempt assets. The *Kearney* holding creates a toxic environment for business because almost all business loans require a general pledge of assets, which forces business owners to unknowingly give their creditors total access to their retirement savings, children’s college funds, life insurance cash surrender values, and coin collections as collateral.

**4. Triggers early distribution taxes and penalties of up to 40%:** The tax result of the *Kearney* decision makes it even worse. Under federal law, if an IRA owner uses the account or any portion of such account as security for a loan, the portion used as security is deemed distributed to the owner. IRC § 408(e)(4). The IRA owner is required to include any amount paid or distributed out of the IRA in gross income and to pay federal income taxes on such gross income. IRC § 408(d)(1). The same adverse federal income tax results will occur if a Consumer pledges an interest in a qualified employer plan. Pursuant to § 72(p)(1)(B) of the Code, if a Consumer “pledges (or agrees to pledge) any portion of his interest in a qualified employer plan, such portion shall be treated as having been received by such individual as a loan from such plan.” IRC § 72(p)(1)(B). A loan from a qualified employer plan is treated as being received as a deemed distribution for purposes of § 72. IRC § 72(p)(1). Additionally, the Code imposes penalties depending on when the deemed distribution from an IRA or qualified employer plan is made. Like an actual distribution, a deemed distribution is subject to the 10% additional tax on certain early distributions

under § 72(t). Treas. Reg. § 1.72(p)-1, Q&A 11(b). For example, if a Consumer is under the age of 59 ½ and not disabled, the deemed distribution under § 408(e)(4) is also subject to the 10% penalty tax under § 72(t). IRC § 72(t).

The *Kearney* holding generates a calamitous financial result for Florida Consumers. If a Consumer signs a document containing a broadly worded security interest provision that includes a general reference to deposit accounts, general intangibles, and/or investment property, that Consumer, under *Kearney*, has arguably pledged the entirety of all such funds owned in an IRA, as well as their other exempt assets, such as cash surrender values of life insurance policies and the proceeds of annuity contracts. If a Consumer pledges an IRA, potentially the entirety of the pledged funds held in the IRA will be treated as a loan to the Consumer and thus taxable as a deemed distribution. If a creditor can garnish the funds held in an IRA, the debtor Consumer would, in addition to losing the pledged funds, be required to pay federal income taxes on all of the funds along with possibly the additional tax penalty for making an early distribution of the IRA!

#### **D. Legislative Fix Needed**

The Eleventh Circuit, without citing any Florida case law supporting its conclusion, potentially rendered moot numerous statutory exemptions from creditors contained in Chapter 222 of the Florida Statutes for any Florida Consumer who has signed any contract containing a blanket security interest provision that includes deposit accounts, general intangibles, and/or investment property. The *Kearney* result flies in the face of the current statutory framework requiring a Consumer to be made aware of, understand, and acknowledge that such Consumer is waiving a statutory exemption under Florida law. In light of the serious issues resulting from the *Kearney* holding, Chapter 222 requires a legislative fix. In the absence of legislative action, a Consumer, by signing a document containing a broadly worded security interest provision, unknowingly places their IRA, pension plan, annuity or life insurance contract at risk of forfeiture and confiscatory taxation. Because of the protection afforded to the ownership of homestead property under Article X Section 4 of the Florida Constitution as well as the Florida Supreme Court's holding in *Havoco of America, Ltd. v. Hill*, 790 So. 2d 1018 (Fla. 2001) and its progeny, no change is necessary with respect to the exemption related to homestead property. The proposed legislative changes described in Section III below therefore are not intended to apply to, or alter the existing protections afforded to, homestead property in any manner.

### **III. EFFECT OF PROPOSED CHANGES**

#### **Florida Statutes § 222.105**

Current Situation: Under Fla. Stat. § 222.11(2)(b), for a Consumer to waive protection from wage garnishment, the Consumer must consent to garnishment of such Consumer's wages in writing. This written waiver document must be written in the same language as the contract to which the waiver relates, be contained in a separate document attached to the contract, and contain the mandatory waiver language specified in Fla. Stat. § 222.11(2)(b) in at least 14-point type. Pursuant to Fla. Stat. § 732.702, a surviving spouse can waive his or her homestead rights by a written contract, agreement, or waiver, signed by two subscribing witnesses, that contains a waiver of "all

rights,” or equivalent language in the homestead property. There is currently no law in the Florida Statutes that discusses when and how a Consumer can waive the statutory exemptions from garnishment set forth in Fla. Stat. § 222.13, Fla. Stat. § 222.14, Fla. Stat. § 222.15, Fla. Stat. § 222.16, Fla. Stat. § 222.18, Fla. Stat. § 222.21, Fla. Stat. § 222.22, and Fla. Stat. § 222.25.

Effect of Proposed Changes: The Committee proposes the insertion of proposed Fla. Stat. § 222.105, which will clarify a Consumer can only waive the exemptions afforded to funds held in an IRA or other qualified retirement accounts (Fla. Stat. § 222.21), funds held in qualified tuition programs and other qualified accounts (Fla. Stat. § 222.22), proceeds from an annuity or life insurance contract (Fla. Stats. §§ 222.13 and 222.14), benefits under unemployment compensation (Fla. Stats. §§ 222.15 and 222.16) and disability insurance (Fla. Stat. § 222.18) by specifically identifying the exempt asset in a security agreement, such as in a manner consistent with Fla. Stat. § 679.1081 (Florida’s Uniform Commercial Code). The proposed legislation protects Florida residents from unintentionally assigning, pledging or waiving rights to, assets that are exempt under Chapter 222 of the Florida Statutes. A general pledge of assets should not allow a creditor to attach those assets otherwise exempt under Florida law without a written waiver that clearly and specifically identifies the exempt asset being pledged. This ensures that the Consumer understands they are waiving their statutory exemptions.

#### **Florida Statutes § 679.1081**

Florida Statutes § 679.1081 is part of Florida’s Uniform Commercial Code. Florida Statutes § 679.1081 sets forth the requirements for the description of collateral in order to perfect a valid security interest in an asset. Specifically, Fla. Stat. § 679.1081(3) currently states that “[a] description of collateral as ‘all the debtor’s assets’ or ‘all the debtor’s personal property’ or using words of similar import does not reasonably identify the collateral for purposes of the security agreement” and, therefore, would not create a valid security interest. Because security interests in assets are largely governed by Florida’s Uniform Commercial Code, coordinating the proposed changes to Chapter 222 with Fla. Stat. § 679.1081 by adding a new subsection (d) to Fla. Stat. § 679.1081 to reference accounts and other Chapter 222 exemptions is essential for consistency and clarity.

#### **IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS**

The proposal does not have a fiscal impact on state or local governments.

#### **V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR**

Millions of Florida Consumers are parties to at least one (if not more) contracts secured by their assets, which may now, unbeknownst to them, include a pledge of their exempt assets. Today, especially given the devastating economic hardships caused by Covid-19, citizens of the state of Florida have but few assets which they can rely upon for a modicum of financial security. The proposed Fla. Stat. § 222.105 protects Florida residents from unintentionally assigning, pledging, or waiving rights to, certain assets that otherwise are exempt from legal process under Chapter 222 of the Florida Statutes by requiring that a Security Agreement purporting to pledge such asset

specifically identify the exempt asset in a manner consistent with Fla. Stat. § 679.1081 in order to constitute a valid and intentional assignment, pledge, or waiver.

The *Kearney* decision unknowingly places a Consumer's IRA, pension plan, annuity or life insurance contract at risk of forfeiture and confiscatory taxation. For example, if a Consumer pledges the funds held in an IRA, the portion used as security is deemed distributed to the Consumer. The Consumer must pay federal income taxes on this deemed distribution. The Consumer may also be required to pay a 10% additional tax for making an early distribution of the IRA. This proposal saves Florida Consumers from unknowingly losing the pledged funds and incurring federal income taxes on the total balance of the pledged funds.

## **VI. CONSTITUTIONAL ISSUES**

There are no constitutional issues that may arise as a result of the proposal.

## **VII. OTHER INTERESTED PARTIES**

Tax Section of The Florida Bar

Name:

Contact Information:

Support, Oppose or No Position: Support pending finalization of language

Business Law Section of The Florida Bar

Name:

Contact Information:

Support, Oppose or No Position: Support pending finalization of language

Florida Bankers Association

Name:

Contact Information:

Support, Oppose or No Position: Pending



The Florida Senate

## Committee Agenda Request

**To:** Senator Kelli Stargel, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** January 13, 2022

---

I respectfully request that **Senate Bill #406**, relating to Secured Transactions, be placed on the:

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

A handwritten signature in black ink, appearing to read "Lori Berman", written over a horizontal line.

Senator Lori Berman  
Florida Senate, District 31

cc: Senator Aaron Bean, Vice Chair  
Tim Sadberry, Staff Director

1/27/22

Meeting Date

The Florida Senate  
**APPEARANCE RECORD**

SB 406

Bill Number or Topic

Deliver both copies of this form to  
Senate professional staff conducting the meeting

**Appropriations**

Committee

Amendment Barcode (if applicable)

Name **Martha Edenfield**

Phone **(850) 999-4100**

Address **106 E. College Ave #1200**

Email **medenfield@deanmead.com**

Street

**Tallahassee**

**FL**

**32301**

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

**The Real Property, Probate and Trust  
Law Section of the Florida Bar**

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

*While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf](#) ([flisenate.gov](#))*

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

1/27

Meeting Date

SB 406

Bill Number or Topic

Appropriations

Committee

Amendment Barcode (if applicable)

Name Arnee Diaz Lyon

Phone 850-205-9000

Address 119 South Monroe Street #200

Email adl@mhdfirm.com

Street

Tallahassee FL 32301

City

State

Zip

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

The Business Law Section of the Florida Bar

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules. [df.flisenate.gov](http://df.flisenate.gov)

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: SB 434

INTRODUCER: Senator Hooper and others

SUBJECT: Florida Tourism Marketing

DATE: January 26, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Renner</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
2.	<u>Hrdlicka</u>	<u>Sadberry</u>	<u>AP</u>	<b>Favorable</b>

---

**I. Summary:**

SB 434 extends the scheduled repeal date for the Florida Tourism Industry Marketing Corporation, doing business as VISIT FLORIDA, and the Division of Tourism Marketing within Enterprise Florida, Inc., until October 1, 2031.

Without the bill, the statutory provisions for these entities will be repealed on October 1, 2023.

The five-year average of appropriations to VISIT FLORIDA is \$65.4 million. If VISIT FLORIDA is repealed on October 1, 2023, the dissolved entity's assets, after all legal liabilities and obligations have been paid or adequate provision for them have been made, will revert to the state.

The bill takes effect upon becoming a law.

**II. Present Situation:**

**Enterprise Florida, Inc., and VISIT FLORIDA**

Enterprise Florida, Inc., (EFI) is a non-profit corporation created to act as the state's economic development organization, using expertise from both the private and public sectors. EFI is not a unit of state government.<sup>1</sup>

EFI is statutorily required to maintain at least five divisions related to the following areas:

- International trade and business development;
- Business retention and recruitment;
- Tourism marketing;

---

<sup>1</sup> Sections 288.901(1) and (2), F.S.



- Minority business development; and
- Sports industry development.<sup>2</sup>

EFI's Division of Tourism Marketing is the mechanism created in statute through which EFI interacts and contracts with its direct support organization, VISIT FLORIDA. VISIT FLORIDA is the fictitious name for the Florida Tourism Industry Marketing Corporation, a nonprofit corporation that serves as Florida's statewide destination marketing organization and represents the state's tourism industry.<sup>3</sup> In practice, VISIT FLORIDA is EFI's tourism marketing division. The division is staffed by VISIT FLORIDA, but that staff is not employed by EFI.<sup>4</sup> VISIT FLORIDA's primary responsibilities include:

- Administering domestic and international advertising campaigns;
- Conducting research on tourism and travel trends;
- Coordinating domestic and international marketing activities; and
- Managing the state's four welcome centers.<sup>5</sup>

VISIT FLORIDA is required to develop a four-year marketing plan for the state that addresses issues such as continuation of tourism growth in Florida, expansion to new or underrepresented markets, coordination with local and private sector partners on tourism advertising, and addressing emergency responses to disasters from a marketing standpoint.<sup>6</sup>

EFI, in conjunction with the Department of Economic Opportunity (DEO), appoints VISIT FLORIDA's 31-member board of directors. The board "provides guidance, input, and insight into the evolution and development of [VISIT FLORIDA] programs, processes, and messages; acts as a steering council for various committees; and works directly with [VISIT FLORIDA] executive staff to guide strategy."<sup>7</sup> VISIT FLORIDA's board of directors is composed of 16 regional members, with at least two representing each of the six statutorily designated geographic areas of the state, and 15 additional tourism industry related members, including:

- One from the statewide rental car industry;
- Seven from tourist-related statewide associations;
- Three from county destination marketing organizations;
- One from the cruise industry;
- One from an automobile and travel services membership organization;
- One from the airline industry; and
- One from the space tourism industry.<sup>8</sup>

---

<sup>2</sup> Section 288.92(1), F.S.

<sup>3</sup> Section 288.1226, F.S. The fictitious name is registered with the Florida Department of State, registration no. G18000088414.

<sup>4</sup> Section 288.923(5), F.S.

<sup>5</sup> Office of Program Policy Analysis and Government Accountability, *Florida Economic Development Program Evaluations – Year 8*, 13 (December 2020), available at <https://oppaga.fl.gov/Documents/Reports/20-08.pdf> (last visited Jan. 21, 2022). Pursuant to s. 288.12265, F.S., VISIT FLORIDA contracts with the Department of Transportation through EFI to employ staff and operate the welcome centers. See also VISIT FLORIDA, *Florida Welcome Centers*, available at <https://www.visitflorida.com/en-us/visitor-services/florida-welcome-centers.html> (last visited Jan. 21, 2022).

<sup>6</sup> Section 288.923(4)(c), F.S.

<sup>7</sup> *Supra* note 5 at 12.

<sup>8</sup> Section 288.1226(4), F.S.

For the 2021-2022 fiscal year, VISIT FLORIDA received an appropriation of \$75 million.<sup>9</sup> Payments are made to VISIT FLORIDA through EFI from the DEO. VISIT FLORIDA enters into a funding agreement with EFI and the DEO and an operating agreement with EFI.<sup>10</sup>

Both VISIT FLORIDA and EFI's division of tourism marketing will sunset on October 1, 2023, unless reviewed and saved from repeal by the Legislature.<sup>11</sup>

### **Economic Development Programs Evaluations**

Pursuant to s. 288.0001(2)(b), F.S., the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA) must provide a detailed analysis of certain economic development programs according to a recurring schedule established in law. The OPPAGA's most recent evaluation of VISIT FLORIDA was completed in December 2020, while EDR's most recent evaluation of VISIT FLORIDA was completed in January 2021 and covered Fiscal Years 2015-2016, 2017-2018, and 2018-2019.

#### ***OPPAGA Review***

The OPPAGA is required to evaluate programs for effectiveness and value to the state taxpayers and to provide recommendations for consideration by the Legislature. The review determined that Florida is outpacing several other states in tourism growth and has a significant competitive advantage compared to other states with strong tourism industries, such as California, Nevada, New York, and Texas.<sup>12</sup>

As a public-private partnership, VISIT FLORIDA is required to obtain private sector contributions to match public contributions. Eligible matching contributions come from four categories:

- Direct cash contributions;
- Fees for services;
- Cooperative advertising, which is limited to partner expenditures for paid media placement and actual market value of contributed products, air time, and print space; and
- In-kind contributions, which is limited to the actual market value of promotional contributions of partner-supplied benefits or of nonpartner-supplied airtime or print space.<sup>13</sup>

VISIT FLORIDA has continually met the statutorily required one-to-one match of public and private funding. Over the review period, 83 percent of private sector contributions were in the form of industry-contributed promotional value.<sup>14</sup> On average, VISIT FLORIDA spends 59 percent of its annual budget on media and industry cooperative advertising efforts; most of

---

<sup>9</sup> Chapter 2021-036, s. 152, Specific Appropriation 2251, Laws of Fla.

<sup>10</sup> See *Funding Agreement SB22-003 – Agreement between the Department of Economic Opportunity, Enterprise Florida, Inc., and the Florida Tourism Industry Marketing Corporation*, executed October 4, 2021, available at <https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=400000&ContractId=S0165&Tab=4> (last visited Jan. 21, 2022).

<sup>11</sup> Sections 288.1226(14) and 288.923(6), F.S. See ch. 2020-16, Laws of Fla.

<sup>12</sup> *Supra* note 5, at 11

<sup>13</sup> Section 288.1226(6), F.S.

<sup>14</sup> *Supra* note 5, at 14

the remaining expenditures are comprised of fees and services and salaries and benefits.<sup>15</sup> Certain contracts are subject to several reporting and transparency requirements.<sup>16</sup>

VISIT FLORIDA's paying partners, which include members of the hospitality, entertainment, and outdoor recreation industries, have expressed overall support for the agency's mission and services.

### ***EDR Review***

The EDR is required to analyze the economic benefits of the programs included in the OPPAGA's program evaluation. Economic benefit is defined as the direct, indirect, and induced gains in state revenues as a percentage of the state's investment, including state grants, tax exemptions, tax refunds, tax credits, and other state incentives.<sup>17</sup> The EDR uses the terms economic benefit and return on investment (ROI) synonymously; these terms do not address the overall effectiveness or benefit of a program and instead focus on tangible financial gains or losses to state revenues.<sup>18</sup>

In its most recent review period, VISIT FLORIDA generated a positive ROI of 3.27. For every dollar spent on VISIT FLORIDA's marketing efforts, the state received \$3.27 back in tax revenue. From the state's investment of \$228 million over the review period, VISIT FLORIDA contributed approximately \$15.85 billion to Florida's GDP and \$744.64 million in state revenue. VISIT FLORIDA's positive ROI benefited from both the aggregate amount of spending and the types of purchases made by tourists, the majority of which are subject to state sales and use tax, and from the investments made by VISIT FLORIDA's marketing partners, as VISIT FLORIDA's total share of marketing spend was lower than in previous years.<sup>19</sup>

Though it is difficult to determine VISIT FLORIDA's precise influence on the state's tourism industry compared to that of other marketing efforts due to the many determinants of tourism demand, the EDR approximates that, over the review period, the agency was responsible for approximately 9.05 percent of all marketing-influenced tourists. This amounts to an estimated 17.57 million domestic out-of-state tourists and 2.35 million international tourists attributable to VISIT FLORIDA's marketing efforts.<sup>20</sup>

---

<sup>15</sup> *Id.*

<sup>16</sup> Chapter 2017-233, s. 17, Laws of Fla., created reporting and transparency requirements for contracts valued at \$500,000 or more as well as new provisions for private sector contributions. *See* s. 288.1226(6) and (13), F.S.

<sup>17</sup> Section 288.005(1), F.S.

<sup>18</sup> Office of Economic and Demographic Research, *Return on Investment for VISIT FLORIDA*, 1 (January 2021), available at <http://edr.state.fl.us/Content/returnoninvestment/Tourism2021.pdf> (last visited Nov. 1, 2021). ROI is calculated by summing state revenues generated by a program less state expenditures invested in the program, and dividing that amount by the state's investment. EDR uses the Statewide Model, a model that simulates Florida's economy and captures the indirect and induced economic activity resulting from direct program effects, to calculate these numbers.

<sup>19</sup> *Id.* at 30-31

<sup>20</sup> *Id.* at 24. This label is used to distinguish tourists from those who visited Florida due to other influences, such as visiting family and friends or participating in a specific hobby or pastime.

**III. Effect of Proposed Changes:**

The bill extends the scheduled repeal date for the Florida Tourism Industry Marketing Corporation, known as VISIT FLORIDA, and the Division of Tourism Marketing within Enterprise Florida, Inc., until October 1, 2031. Without the bill, the statutory authorizations for these entities would be repealed on October 1, 2023.

The bill takes effect upon becoming a law.

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

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The 5-year average of appropriations to VISIT FLORIDA is \$65.4 million.<sup>21</sup> If VISIT FLORIDA is repealed on October 1, 2023, the dissolved entity's assets, after all legal liabilities and obligations have been paid or adequate provisions have been made, will revert to the state.

---

<sup>21</sup> Chapter 2021-036, s. 152, Specific Appropriation 2251, Laws of Fla.; Ch. 2020-111, SA 2294, s. 6, Laws of Fla.; Ch. 2019-115, SA 2328, s. 6, Laws of Fla.; Ch. 2018-9, SA 2239, s. 6, Laws of Fla.; Ch. 2017-233, s. 26, Laws of Fla.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 288.1226 and 288.923.

**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 Hooper

16-00588-22

2022434\_\_

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

A bill to be entitled

An act relating to Florida tourism marketing; amending ss. 288.1226 and 288.923, F.S.; delaying the scheduled repeal of provisions governing the Florida Tourism Industry Marketing Corporation and the Division of Tourism Marketing of Enterprise Florida, Inc., respectively; providing an effective date.

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

Section 1. Subsection (14) of section 288.1226, Florida Statutes, is amended to read:

288.1226 Florida Tourism Industry Marketing Corporation; use of property; board of directors; duties; audit.—

(14) REPEAL.—This section is repealed October 1, 2031 ~~2023~~, unless reviewed and saved from repeal by the Legislature.

Section 2. Subsection (6) of section 288.923, Florida Statutes, is amended to read:

288.923 Division of Tourism Marketing; definitions; responsibilities.—

(6) This section is repealed October 1, 2031 ~~2023~~, unless reviewed and saved from repeal by the Legislature.

Section 3. This act shall take effect upon becoming a law.



The Florida Senate

## Committee Agenda Request

**To:** Senator Kelli Stargel, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** November 2, 2021

---

I respectfully request that **Senate Bill # 434**, relating to Florida Tourism Marketing, be placed on the:

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

A handwritten signature in black ink, appearing to read "Ed Hooper", written over a horizontal line.

Senator Ed Hooper  
Florida Senate, District 16

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

1-27-2022

Meeting Date

434

Bill Number or Topic

Appropriations

Committee

Amendment Barcode (if applicable)

Name

Tim Parson

Phone

850-910-2678

Address

113 E. College Ave.

Email

tim@libertypartnersfl.com

Street

Tallahassee FL 32301

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Attractions Assocation

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. 511.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf flsenate.gov

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



The Florida Senate

**APPEARANCE RECORD**

434

1-27-2022

Meeting Date

Bill Number or Topic

Appropriations

Committee

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Tim Parson

Phone

850-910-2678

Address

113 E. College Avenue

Email

tim@libertypartnersfl.com

Street

Tallahassee FL 32301

City

State

Zip

Speaking:

For

Against

Information

**OR**

Waive Speaking:

In Support

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Chamber of Commerce

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf](#) [flsenate.gov](#)

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

1/27/22

Meeting Date

# The Florida Senate APPEARANCE RECORD

SB 434

Bill Number or Topic

Appropriations

Committee

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Monte Stevens

Phone 850.671.4402

Address 123 S. Adams St.

Email Stevens@thesoutherngroup.com

Street

Tallahassee

FL

32301

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

### PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

AAA

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf](#) [flsenate.gov](#)

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

S-001 (08/10/2021)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1/27/22  
Meeting Date

434  
Bill Number (if applicable)

Topic Florida Tourism Marketing

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title UP Government Relations/General Counsel

Address 230 S Adams Street  
Street

Phone 880-528-5006

Tallahassee FL 32301  
City State Zip

Email spadgett@frla.org

Speaking:  For  Against  Information

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

Representing Florida Restaurant & Lodging Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

The Florida Senate

**APPEARANCE RECORD**

1/27/22

434

Meeting Date

Bill Number or Topic

**Appropriations**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name **Adam Basford**

Phone **850-224-7173**

Address **516 N Adams**

Email **abasford@aif.com**

Street

**Tallahassee**

**FL**

**32301**

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

**Associated Industries of Florida**

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

*While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. § 11.045 and Joint Rule 1, [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)*

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

S-001 (08/10/2021)

The Florida Senate

**APPEARANCE RECORD**

**SB 434**

1/27/22

Meeting Date

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Bill Number or Topic

**Appropriations**

Committee

Amendment Barcode (if applicable)

Name **Bob McKee**

Phone **850-766-1952**

Address **100 South Monroe St.**  
Street

Email **bmckee@fl-counties.com**

**Tallahassee**  
City

**FL**  
State

**32301**  
Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

**Florida Association of Counties**

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

*While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)*

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

S-001 (08/10/2021)

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

1/27/22

Meeting Date

434

Bill Number or Topic

Appropriations

Committee

Amendment Barcode (if applicable)

Name Phillip Swerman

Phone \_\_\_\_\_

Address \_\_\_\_\_  
Street

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Americans for Prosperity

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: SB 454

INTRODUCER: Senator Perry

SUBJECT: Florida Commission on Offender Review

DATE: January 26, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siples</u>	<u>Jones</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Dale</u>	<u>Harkness</u>	<u>ACJ</u>	<b>Recommend: Favorable</b>
3.	<u>Dale</u>	<u>Sadberry</u>	<u>AP</u>	<b>Favorable</b>

---

## I. Summary:

SB 454 increases the rate of payment for retired or former commissioners of the Florida Commission on Offender Review (FCOR) from \$100 to \$200 per day or portion of day, when they are assigned to temporary duty due to a workload need.

The bill will have an insignificant, negative fiscal impact on the General Revenue Fund. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

## II. Present Situation:

### Florida Commission on Offender Review

The FCOR is comprised of three members, who are appointed by the Governor and Cabinet and confirmed by the Florida Senate.<sup>1</sup> Members are appointed for six years and may not serve more than two consecutive 6-year terms.<sup>2</sup>

The FCOR functions as a quasi-judicial body that makes a variety of decisions involving parole, conditional release, and medical conditional release,<sup>3</sup> and also operates as the administrative arm and investigative arm of the Clemency Board.<sup>4</sup>

---

<sup>1</sup> Sections 947.01 and 947.02(2), F.S.

<sup>2</sup> Section 947.03, F.S.

<sup>3</sup> Florida Commission on Offender Review, *Organization Overview*, available at <https://www.fcor.state.fl.us/overview.shtml> (last visited October 26, 2021).

<sup>4</sup> Florida Commission on Offender Review, *2020 Annual Report*, p. 5, available at <https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202020.pdf> (last visited October 26, 2021). The Clemency Board is comprised of the Governor and members of the Cabinet, which includes the Attorney General, the Commissioner of Agriculture, and the Chief Financial Officer. The Clemency Board is constitutionally authorized to provide full or partial

### *Parole*

Parole is a discretionary release that allows certain offenders to serve the remainder of their court-imposed sentences in the community under strict supervision. The FCOR's powers and duties, as it relates to parole, include:

- Determining what persons shall be placed on parole;
- Fixing the time and conditions of parole;
- Determining whether a person has violated parole and taking action with respect to such a violation; and
- Making such investigations as may be necessary.<sup>5</sup>

In 1983, sentencing guidelines were enacted and effectively abolished parole for those offenders who were sentenced for crimes committed on or after October 1, 1983;<sup>6</sup> thus, the only inmates who are eligible for parole consideration are those who committed:

- Any felony prior to October 1, 1983, or those who elected to be sentenced outside the sentencing guidelines for felonies committed prior to July 1, 1984;
- A capitol felony prior to October 1, 1995, except:
  - Murder or felony murder committed after May 25, 1994;
  - Making, possessing, throwing, placing, or discharging a destructive device, or attempting to do so, which resulted in the death of another person after May 25, 1994;
  - First degree murder of a law enforcement officer, correctional officer, state attorney, or assistant state attorney committed after January 1, 1990; and
  - First degree murder of a justice or judge committed after October 1, 1990;
- Any continuing criminal enterprise committed before June 17, 1993; or
- Any attempted murder of a law enforcement officer committed between October 1, 1988, and October 1, 1995.<sup>7</sup>

On June 30, 2020, there were 3,959 inmates who were eligible for parole and 424 releasees on parole supervision.<sup>8</sup> In Fiscal Year 2019–2020, the FCOR made 1,419 parole determinations and granted parole to 41 inmates. In Fiscal Year 2019-2020, the FCOR also made 1,443 revocation determinations.<sup>9</sup>

For each parole-eligible inmate, the FCOR must hold an initial parole interview within a certain timeframe,<sup>10</sup> and establish a presumptive parole release date.<sup>11</sup> The FCOR must also hold subsequent interviews with each parole-eligible inmate at certain time intervals to re-evaluate the

---

pardons, sentence commutations, remissions of fines and forfeitures, restorations of civil rights, restorations of alien status under Florida law, specific authority to own, possess, or use firearms, and capital case (death penalty) reviews.

<sup>5</sup> Section 947.13, F.S.

<sup>6</sup> Florida Commission on Offender Review, *Release Types: Parole*, available at <https://www.fcor.state.fl.us/release-types.shtml> (last visited November 4, 2021).

<sup>7</sup> *Supra* note 4 at p. 6.

<sup>8</sup> *Id.*

<sup>9</sup> *Supra* note 4 at p. 8.

<sup>10</sup> Section 947.16, F.S.

<sup>11</sup> Section 947.172, F.S. “Presumptive parole release date” is the tentative parole release date as determined by the objective parole guidelines. *See* s. 947.005(8), F.S.



presumptive parole release date.<sup>12</sup> Within 90 days of the presumptive parole release date, the FCOR must meet with the inmate to establish the *effective* parole release date and a release plan.<sup>13</sup>

Once an inmate is paroled, he or she is subject to the conditions imposed by the FCOR.<sup>14</sup> At least two commissioners must review the progress of a parolee after two years of supervision in the community and at least biennially thereafter.<sup>15</sup> If a parolee violates the conditions of parole or is subsequently arrested, the FCOR may hold hearings to determine if parole may be restored or if it is to be revoked.<sup>16</sup>

### ***Conditional Release***

Conditional release is a non-discretionary release program that requires mandatory post-prison supervision of inmates who are sentenced for certain violent crimes and who have served a prior felony commitment, who are sentenced as habitual offenders, violent habitual offenders, violent career criminals, or designated sexual predators.<sup>17</sup> The FCOR must determine the terms and conditions of the conditional release and examine and dispose any alleged violations of such terms and conditions.<sup>18</sup>

In Fiscal Year 2019-2020, 5,317 inmates were placed on conditional release supervision and 2,945 inmates were under conditional release supervision on June 30, 2020.<sup>19</sup>

### ***Conditional Medical Release***

Conditional medical release (CMR) is a discretionary release program, in which the FCOR may authorize the release of inmates on supervision who are terminally ill or permanently incapacitated and who are not a danger to themselves or others.<sup>20</sup> The Department of Corrections (DOC) identifies and refers inmates who may be eligible for CMR to the FCOR for consideration. In considering whether to grant CMR, the FCOR may require medical evidence and other investigations to be made.

If CMR is granted, the FCOR must establish the terms and conditions of the release, including periodic medical evaluations at intervals determined by the FCOR.<sup>21</sup> The FCOR must also

---

<sup>12</sup> Section 947.174, F.S.

<sup>13</sup> Section 947.1745, F.S. The “effective parole release date” is the actual parole release date as determined by the presumptive parole release date, satisfactory institutional conduct, and an acceptable parole plan. *See* s. 947.005(5), F.S.

<sup>14</sup> Rule 23-21.0165, F.A.C.

<sup>15</sup> *Id.*

<sup>16</sup> Rule 23-21.022, F.A.C. There is a preliminary hearing to determine probable cause and then there is a separate hearing on the final revocation of parole.

<sup>17</sup> *Supra* note 4 at 6, and s. 947.1405, F.S.

<sup>18</sup> Sections 947.1405(6), and 947.141, F.S.

<sup>19</sup> *Supra* note 4 at p. 6.

<sup>20</sup> Section 947.149, F.S. A “terminally ill inmate” is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or to others. A “permanently incapacitated inmate” is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself, himself, or others.

<sup>21</sup> Section 947.149(3) and (4), F.S.

examine and dispose of any alleged violations of such terms and conditions. The FCOR may also revoke the CMR if the releasee's medical or physical condition improves to the point that he or she no longer meets the CMR criteria.<sup>22</sup>

In the past three fiscal years, the DOC has referred 180 inmates to the FCOR for consideration for CMR. The FCOR has granted release to 94 inmates.<sup>23</sup> In Fiscal Year 2019-2020, the FCOR granted CMR to 35 of the 65 inmates referred to them by the DOC.

### **Temporary Commissioners**

Subject to the approval of the Governor and the Cabinet, current law authorizes the chair of the FCOR to assign retired or former commissioners to serve temporarily when there is a workload need.<sup>24</sup> These temporary commissioners are paid \$100 per day or portion of day spent on work for the FCOR.<sup>25</sup> They are also entitled to reimbursement for travel expenses in accordance with state law.<sup>26</sup>

Temporary commissioners serve when sitting commissioners are on annual or sick leave, or when a vacancy on the FCOR arises.<sup>27</sup> The temporary commissioner's duties include making public safety decisions, revocation decisions, release decisions, and issuing warrants for violations of the terms and conditions of supervision. Additionally, the temporary commissioners also require training on all new and relevant federal and state laws, FCOR rules, and FCOR policies and procedures.<sup>28</sup>

The pay for temporary commissioners has not changed since the authority to appoint such commissioners was enacted in law in 1983.<sup>29</sup> The 2021 Legislature added a provision to the Fiscal Year 2021-2022 Implementing Bill that permitted retired commissioners to be paid \$13 per hour; however, this provision expires July 1, 2021.<sup>30</sup> Over the last two years, the FCOR has utilized temporary commissioners 50 times each year.<sup>31</sup>

### **III. Effect of Proposed Changes:**

The bill increases the rate of payment for retired and former commissioners who serve temporarily from \$100 to \$200 per day or portion of day spent on work for the FCOR, when

---

<sup>22</sup> Section 947.149(5), F.S.

<sup>23</sup> *Supra* note 4 at p. 6.

<sup>24</sup> Section 947.04, F.S.

<sup>25</sup> *Id.*

<sup>26</sup> Section 112.061, F.S., governs the reimbursement of travel expenses.

<sup>27</sup> E-mail from Eric Carr, Director of Legislative Affairs, FCOR, (Nov. 4, 2021) (on file with the Senate Committee on Criminal Justice).

<sup>28</sup> *Id.*

<sup>29</sup> *See* ch. 83-131, s. 22, L.O.F. The original law authorized only retired commissioners to serve temporary duty; former commissioners were authorized to perform such duty in 1986, *see* ch. 86-183, s. 27, L.O.F.

<sup>30</sup> Ch. 2021-37, s. 68, subsection (2), Laws of Fla.

<sup>31</sup> E-mail from Eric Carr, Director of Legislative Affairs, FCOR, (Oct. 25, 2021) (on file with the Senate Committee on Criminal Justice).

there is a workforce need. According to the FCOR, the increase in the daily rate will also meet state minimum wage standards.<sup>32</sup>

The bill is effective July 1, 2022.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Currently, the FCOR spends \$5,000 per year in OPS funding to pay temporary commissioners.<sup>33</sup> The FCOR is requesting an additional \$5,174 in recurring general revenue funding.<sup>34</sup>

---

<sup>32</sup> Florida Commission on Offender Review, *2022 Agency Analysis of SB 454* (Oct. 21, 2021) (on file with the Senate Committee on Criminal Justice).

<sup>33</sup> *Supra* note 31.

<sup>34</sup> Florida Commission on Offender Review, *Legislative Budget Request for Fiscal Year 2022-23: Hearing Before the Fla. S. Comm. on Approp., Subcomm. on Crim. and Civ. Just.*, (Oct. 20, 2021), committee meeting packet available at [https://www.flsenate.gov/Committees/Show/ACJ/MeetingPacket/5289/9510\\_MeetingPacket\\_5289.pdf](https://www.flsenate.gov/Committees/Show/ACJ/MeetingPacket/5289/9510_MeetingPacket_5289.pdf) (last visited November 4, 2021).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 947.04 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

By Senator Perry

8-00658-22

2022454\_\_

1 A bill to be entitled  
 2 An act relating to the Florida Commission on Offender  
 3 Review; amending s. 947.04, F.S.; increasing the rate  
 4 of payment for work performed by retired or former  
 5 commissioners assigned to temporary duty; providing an  
 6 effective date.  
 7  
 8 Be It Enacted by the Legislature of the State of Florida:  
 9  
 10 Section 1. Subsection (1) of section 947.04, Florida  
 11 Statutes, is amended to read:  
 12 947.04 Organization of commission; officers; offices.-  
 13 (1) Before July 1 of each even-numbered year, the Governor  
 14 and Cabinet shall select a chair who shall serve for a period of  
 15 2 years and until a successor is selected and qualified. The  
 16 Governor and Cabinet shall, at the same time that a chair is  
 17 selected, select a vice chair to serve during the same 2-year  
 18 period as the chair, in the absence of the chair. The chair may  
 19 succeed himself or herself. The chair, as chief administrative  
 20 officer of the commission, has the authority and responsibility  
 21 to plan, direct, coordinate, and execute the powers, duties, and  
 22 responsibilities assigned to the commission, except those of  
 23 granting and revoking parole as provided for in this chapter.  
 24 Subject to approval by the Governor and the Cabinet, the chair  
 25 may assign consenting retired commissioners or former  
 26 commissioners to temporary duty when there is a workload need.  
 27 Any such commissioner shall be paid \$200 ~~€100~~ for each day or  
 28 portion of a day spent on the work of the commission and shall  
 29 be reimbursed for travel expenses as provided in s. 112.061. The

Page 1 of 2

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

8-00658-22

2022454\_\_

30 chair is authorized to provide or disseminate information  
 31 relative to parole by means of documents, seminars, programs, or  
 32 otherwise as he or she determines necessary. The chair shall  
 33 establish, execute, and be held accountable for all  
 34 administrative policy decisions. However, decisions to grant or  
 35 revoke parole shall be made in accordance with ~~the provisions of~~  
 36 ss. 947.172, 947.174, and 947.23. The commissioners shall be  
 37 directly accountable to the chair in the execution of their  
 38 duties as commissioners, and the chair has authority to  
 39 recommend to the Governor suspension of a commissioner who fails  
 40 to perform the duties provided for by statute.  
 41 Section 2. This act shall take effect July 1, 2022.

Page 2 of 2

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Kelli Stargel, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** January 19, 2022

---

I respectfully request that **Senate Bill #454**, relating to Florida Commission on Offender Review, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style and is positioned above a horizontal line.

Senator Keith Perry  
Florida Senate, District 8

The Florida Senate

**APPEARANCE RECORD**

SB-454

1/27/2022

Meeting Date

Bill Number or Topic

Appropriations

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name **Melinda Coonrod**

Phone **850-487-1978**

Address **4070 Esplanade Way**  
*Street*

Email **melindacoonrod@fcor.state.fl.us**

**Tallahassee**  
*City*

**FL**  
*State*

**32399**  
*Zip*

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

**Florida Commission on Offender Review**

*While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules pdf \(flsenate.gov\)](#)*

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

S-001 (08/10/2021)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

**BILL:** CS/CS/CS/SB 468

**INTRODUCER:** Appropriations Committee; Judiciary Committee; Banking and Insurance Committee; and Senator Perry and others

**SUBJECT:** Insurance

**DATE:** January 26, 2022

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Sanders</u>	<u>Sadberry</u>	<u>AP</u>	<u>Favorable</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/CS/SB 468 amends several insurance-related statutes. Specifically, the bill:

- Directs the Florida Hurricane Catastrophe Fund (FHCF) to provide reimbursement for a loss under collateral protection insurance (also known as lender-placed or force-placed insurance) when the coverage amount differs from the coverage amount under the lapsed policy if the homeowner received notice of the collateral protection insurance coverage amount, or the homeowner requested a different coverage amount from the collateral protection insurer;
- Provides that current requirements under the Workers' Compensation Law for annual, physical onsite payroll audits of employers in the construction class will only apply when the estimated annual premium is \$10,000 or more;
- Authorizes associations, trusts, and pools formed to provide self-insurance for public entities to use communications media technology to establish quorum and conduct public business;
- Provides that an all-lines adjuster who is appointed and employed by an insurer's affiliate may serve as a company employee adjuster for the purpose of adjusting claims;
- Allows a residential property insurer's rate filing to estimate projected hurricane losses by using a weighted or straight average of two or more models approved by the Florida Commission on Hurricane Loss Projection Methodology;
- Authorizes an insurer to file a personal lines residential property insurance rating plan that provides premium discounts, credits, and other rate differentials based on windstorm construction standards developed by an independent, not-for-profit, scientific research organization;



- Limits the requirement that an insurer provide a policyholder who has an automatic bank withdrawal agreement with the insurer with 15 days advance written notice of any increase in policy premiums. Instead, notice will only be required for premium increases that will result in an increase in the automatic withdrawal of more than \$10 from the previous withdrawal amount;
- Provides Citizens Property Insurance Corporation with discretion to offer wind-only policies to condominium associations when 50 percent or more of their units are rented more than eight times per year for a period of less than 30 days;
- Eliminates a requirement that an insurer that provides electronic delivery of the insurance policy to a policyholder (or the person entitled to delivery) to also provide within the electronic transmission notice of the policyholder's right to receive the policy via United States mail. The bill also eliminates a requirement that the insurer provide a paper copy of the policy to the insured upon his or her request;
- Allows a policyholder to select a hurricane deductible greater than 10 percent, reject windstorm coverage, or reject contents coverage under a residential property insurance policy by typing the existing exclusionary statement language, instead of handwriting it;
- Provides section 627.7152, F.S., governing assignment agreements, applies to instruments that assign or transfer post-loss benefits to a service provider that provides scopes of service or provides inspection services;
- Provides the term "assignment agreement" does not include an instrument by which a licensed public adjuster is compensated for public adjuster services;
- Requires an assignee provide the notice of intent to initiate litigation to the name and mailing address designated by the insurer in the policy forms if notice is sent by certified mail, return receipt requested, or to the e-mail address designated by the insurer in the policy forms if notice is sent by electronic delivery;
- Requires an automobile policy that does not provide coverage for bodily injury liability and property damage liability include notice accompanying the declarations page that the policy does not provide such coverages and does not comply with any financial responsibility laws. Such policies generally cover antique motor vehicles; and
- Exempts licensed personal lines and general lines agents from salesperson licensing requirements otherwise required to solicit, negotiate, advertise, or sell motor vehicle service agreements, home warranty contracts, and service agreement contracts.

The bill has no impact to state funds or expenditures and may have an insignificant impact on the FHCF.

The bill takes effect July 1, 2022, except as otherwise provided.

## II. Present Situation:

### The Florida Hurricane Catastrophe Fund (FHCF)

The FHCF is a tax-exempt<sup>1</sup> fund created in 1993<sup>2</sup> after Hurricane Andrew<sup>3</sup> as a form of mandatory reinsurance for residential property insurers. The FHCF is administered by the State Board of Administration (SBA)<sup>4</sup> and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent)<sup>5</sup> of hurricane losses above the insurer's retention (deductible). The FHCF provides insurers an additional source of reinsurance that is less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the FHCF, the fund acts to lower residential property insurance premiums for consumers.

All insurers admitted to do business in this state writing residential property insurance that includes wind coverage must buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF.<sup>6</sup> The FHCF is authorized by statute to sell \$17 billion of mandatory layer coverage.<sup>7</sup> Each insurer that purchases coverage may receive up to its proportional share of the \$17 billion mandatory layer of coverage based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. Each insurer may select a reimbursement contract wherein the FHCF promises to reimburse the insurer for 45 percent, 75 percent, or 90 percent of covered losses, plus 10 percent<sup>8</sup> of the reimbursed losses for loss adjustment expenses.<sup>9</sup>

The FHCF must charge insurers the actuarially indicated premium<sup>10</sup> for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.<sup>11</sup> The actuarially indicated premium is an amount determined by the principles of actuarial science to be adequate to pay current and future obligations and expenses of the fund.<sup>12</sup> In practice, each insurer pays the FHCF annual reimbursement premiums that are proportionate to each insurer's share of the FHCF's risk exposure. Historically, FHCF coverage generally costs less than private reinsurance because the fund is a tax-exempt non-profit corporation and does not charge a risk load as it relates to overhead and operating expenses incurred by other private insurers.<sup>13</sup>

---

<sup>1</sup> Section 215.555(1)(f), F.S.

<sup>2</sup> Chapter 93-409, Laws of Fla.

<sup>3</sup> Ed Rappaport, *Preliminary Report, Hurricane Andrew* (updated Dec. 10, 1993; addendum Feb. 7, 2005), <https://www.nhc.noaa.gov/1992andrew.html>.

<sup>4</sup> State Board of Administration of Florida (SBA), *About the SBA*, <https://www.sbafla.com/fsb/> (last visited Mar. 23, 2021).

<sup>5</sup> Section 215.555(2)(e), F.S.

<sup>6</sup> *See* s. 215.555(4)(a), F.S.

<sup>7</sup> Section 215.555(4)(c)1., F.S.

<sup>8</sup> Section 215.555(4)(b)1., F.S.

<sup>9</sup> Loss adjustment expenses are costs incurred by insurers when investigating, adjusting, and processing a claim.

<sup>10</sup> Section 215.555(5)(a), F.S.

<sup>11</sup> *See Florida Commission on Hurricane Loss Methodology*, <https://www.sbafla.com/method/> (last visited Mar. 23, 2021).

<sup>12</sup> Section 215.555(2)(a), F.S.

<sup>13</sup> SBA, *Florida Hurricane Catastrophe Fund, 2016 Annual Report*, available at [https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20170606\\_FHCF\\_2016\\_AnnualReport\\_A.pdf?ver=2017-07-06-085215-943](https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20170606_FHCF_2016_AnnualReport_A.pdf?ver=2017-07-06-085215-943) (last visited Mar. 8, 2021).

When the moneys in the FHCF are or will be insufficient to cover losses, the law<sup>14</sup> authorizes the FHCF to issue revenue bonds funded by emergency assessments on all lines of insurance except medical malpractice and workers compensation.<sup>15</sup> Emergency assessments may be levied up to six percent of premium for losses attributable to any one contract year, and up to 10 percent of premium for aggregate losses from multiple years. The FHCF's broad-based assessment authority is one of the reasons the FHCF was able to obtain an exemption from federal taxation from the Internal Revenue Service as an integral part of state government.<sup>16</sup>

### ***Reimbursement of Collateral Protection Insurance***

Collateral protection insurance, sometimes referred to as “lender-placed” or “force-placed” insurance, is insurance placed by a lender, at the expense of the borrower, to protect the lender's security interest in property pursuant to a loan, such as a home mortgage. Collateral protection insurance is placed by the lender when it deems the homeowners' insurance insufficient, usually because the borrower's insurance policy is lapsed or cancelled. The FHCF covers policies of collateral protection insurance if the collateral protection insurance covers a personal residence and protects both the borrower's and the lender's financial interests in an amount at least equal to the coverage for the dwelling in place under the lapsed homeowners policy.<sup>17</sup>

### **Payroll Audits for Construction Classification of Employers**

Florida law currently requires biennial payroll audits for employers in all classes other than construction, with factors for more frequent audits, and annual, physical onsite payroll audits for employers in the construction class, to ensure that the appropriate premium is charged for workers' compensation coverage.<sup>18</sup> Section 440.381, F.S., does not provide a minimum premium threshold for compliance purposes.

An employer that fails to provide reasonable access to payroll records for an audit must pay the insurer a premium not to exceed three times the most recent estimated annual premium.<sup>19</sup> An employer that understates or conceals payroll, misrepresents or conceals employee duties so as to avoid proper classification for premium calculations, or misrepresents or conceals information pertinent to the computation and application of an experience rating modification factor, must pay the insurer a penalty equal to 10 times the amount of the difference in premium paid and the amount the employer should have paid, plus reasonable attorney's fees.<sup>20</sup>

---

<sup>14</sup> Section 215.555(6), F.S.

<sup>15</sup> Section 215.555(6)(b), F.S.

<sup>16</sup> The U.S. Internal Revenue Service has, by a Private Letter Ruling, authorized the Florida Hurricane Catastrophe Fund (FHCF) to issue tax-exempt bonds. The initial ruling was granted on March 27, 1998, for five years until June 30, 2003. On May 28, 2008, the Internal Revenue Service issued a private letter ruling holding that the prior exemption, which was to expire on June 30, 2008, could continue to be relied upon on a permanent basis. See FHCF, *Fiscal Year 2009-2010 Annual Report*, 14, [https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/SBA\\_CATF\\_Annual\\_ReportFHCF\\_Final.pdf?ver=2016-06-08-121900-647](https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/SBA_CATF_Annual_ReportFHCF_Final.pdf?ver=2016-06-08-121900-647) (last visited March 23, 2021).

<sup>17</sup> Section 215.555(2)(c), F.S.

<sup>18</sup> Section 440.381(3), F.S.

<sup>19</sup> Section 440.381(8), F.S.

<sup>20</sup> Section 440.381(6)(a), F.S.

### **Electronic Meetings for Public Self-Insurers**

Florida law authorizes two or more local governmental entities to enter into an interlocal agreement (fund) for the purpose of securing workers' compensation payments, or insuring or self-insuring real or personal property of every kind and every interest in such property against loss or damage from any hazard or cause and against any loss consequential to such loss or damage.<sup>21</sup>

For any fund created after October 1, 2004, the fund is subject to the requirements of group self-insurance funds for the first five years of its existence,<sup>22</sup> including participation in the Florida Self-Insurers Guaranty Association.<sup>23</sup> The Florida Self-Insurers Guaranty Association is exempt from certain public record requirements under s. 119.07(1), F.S., related to claims and minutes meetings, and certain public meeting requirements under s. 286.011, F.S.,<sup>24</sup> related to discussion to claims and other confidential information. Section 286.011, F.S., declares all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the State Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken to be public meetings open to the public at all times. Any resolution, rule, or formal action taken in contravention of this provision is not considered binding.<sup>25</sup>

### **Insurance Adjusters**

Florida law requires all insurance adjusters to be licensed by the Department of Financial Services (DFS) and appointed by the appropriate entity or person<sup>26</sup> in order to adjust claims. General requirements for licensure include submitting an application; paying required fees; satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints.<sup>27</sup>

Under s. 626.864, F.S., there are both public adjusters and all-lines adjuster license types, with all-lines appointments further divided into independent adjusters,<sup>28</sup> company employee adjusters,<sup>29</sup> and public adjuster apprentices.<sup>30</sup> The same adjuster may not be concurrently licensed as a public adjuster and an all-lines adjuster.<sup>31</sup> In the case of an all-lines adjuster, the adjuster may be appointed as an independent adjuster, company employee adjuster, or public adjuster apprentice, but not more than one concurrently.<sup>32</sup>

---

<sup>21</sup> Section 624.4622(1), F.S.

<sup>22</sup> Section 624.4622(3), F.S.

<sup>23</sup> Section 624.4621(9), F.S.

<sup>24</sup> Section 440.3851, F.S.

<sup>25</sup> Section 286.011, F.S.

<sup>26</sup> See s. 626.015(4), F.S., defining "appointment" as the authority given by an insurer or employer to a licensee to adjust claims on behalf of an insurer or employer.

<sup>27</sup> Section 626.171, F.S.

<sup>28</sup> Section 626.855, F.S.

<sup>29</sup> Section 626.856, F.S.

<sup>30</sup> Section 626.8561, F.S.

<sup>31</sup> Section 626.864(2), F.S.

<sup>32</sup> Section 626.864(3), F.S.

A public adjuster is any person, other than a licensed attorney, who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of an insured or third party.<sup>33</sup> Public adjusters operate independently and are not affiliated with any insurer.

An all-lines adjuster is any person who, for compensation, ascertains and determines the amount of any claim, loss, or damage payable under an insurance contract or settles such claim, loss, or damage on behalf of a public adjuster or insurer.<sup>34</sup>

An independent adjuster is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage, or to settle an insurance claim under an insurance contract.<sup>35</sup>

A company employee adjuster is any person employed in-house by an insurer, or a wholly owned subsidiary of the insurer, who ascertains and determines the amount of an insurance claim, loss, or damage, or settles such claim, loss, or damage.<sup>36</sup>

### **Regulation of Property Insurance Rates**

Part I of ch. 627, F.S., is the Rating Law,<sup>37</sup> which governs property, casualty, and surety insurance covering the subjects of insurance resident, located, or to be performed in this state.<sup>38</sup> The rating law provides that the rates for all classes of insurance it governs may not be excessive, inadequate, or unfairly discriminatory.<sup>39</sup> Though the terms “rate” and “premium” are often used interchangeably, the rating law specifies that “rate” is the unit charge that is multiplied by the measure of exposure or amount of insurance specified in the policy to determine the premium, which is the consideration paid by the consumer.<sup>40</sup>

All insurers or rating organizations must file rates with the Office of Insurance Regulation (OIR) either 90 days before the proposed effective date of a new rate, which is considered a “file and use” rate filing, or 30 days after the effective date of a new rate, which is considered a “use and file” rate filing.

Upon receiving a rate filing, the OIR reviews the filing to determine if the rate is excessive, inadequate, or unfairly discriminatory. The OIR makes that determination in accordance with generally acceptable actuarial techniques and, in a property insurance rate filing, considers the following:

- Past and prospective loss experience;
- Past and prospective expenses;

---

<sup>33</sup> Section 626.854(1), F.S.

<sup>34</sup> Section 626.8548, F.S.

<sup>35</sup> Section 626.855, F.S.

<sup>36</sup> Section 626.856, F.S.

<sup>37</sup> Section 627.011, F.S.

<sup>38</sup> Section 627.021, F.S.

<sup>39</sup> Section 627.062(1), F.S.

<sup>40</sup> Section 627.041, F.S.

- The degree of competition among insurers for the risk insured;
- Investment income reasonably expected by the insurer;
- The reasonableness of the judgment reflected in the rate filing;
- Dividends, savings, or unabsorbed premium deposits returned to policyholders;
- The adequacy of loss reserves;
- The cost of reinsurance;
- Trend factors, including trends in actual losses per insured unit for the insurer;
- Conflagration and catastrophe hazards;
- Projected hurricane losses;
- Projected flood losses, if the policy covers the risk of flood;
- A reasonable margin for underwriting profit and contingencies; and
- Other relevant factors that affect the frequency or severity of claims or expenses.

### ***Florida Commission on Hurricane Loss Projection Methodology***

Projected hurricane losses in a rate filing must be estimated using a model or method found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology (commission).<sup>41</sup> The commission consists of 12 members with expertise in the elements used to develop computer models to estimate hurricane and flood loss. Members of the commission include State University System faculty experts in insurance finance, statistics, computer system design, meteorology, and structural engineering; three actuaries; the insurance consumer advocate; the Director of the FHCF; the Executive Director of Citizens Property Insurance Corporation; and the Director of the Division of Emergency Management.<sup>42</sup>

### ***Residential Property Insurance Mitigation Credits, Discounts, or Other Rate Differentials***

Residential property insurance rate filings must account for mitigation measures undertaken by policyholders to reduce hurricane losses.<sup>43</sup> Specifically, the rate filings must include actuarially reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles to consumers who implement windstorm damage mitigation techniques to their properties.<sup>44</sup> Upon their filing by an insurer or rating organization, the OIR determines the discounts, credits, other rate differentials and appropriate reductions in deductibles that reflect the full actuarial value of such revaluation,<sup>45</sup> which in turn may be used in rate filings under the rating law. Windstorm mitigation measures that must be evaluated for purposes of mitigation discounts include fixtures or construction techniques that enhance roof strength; roof covering performance, roof-to-wall strength; wall-to-floor foundation strength; opening protections; and window, door, and skylight strength.<sup>46</sup>

---

<sup>41</sup> Section 627.062(2)(b)11., F.S.

<sup>42</sup> Section 627.0628(2)(b), F.S.

<sup>43</sup> Section 627.062(2)(j), F.S.

<sup>44</sup> Section 627.0629(1), F.S.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

## **Automatic Bank Withdrawal Agreements in the Insurance Context**

Florida law allows insurers and policyholders to enter into automatic bank withdrawal agreements for the purpose of paying insurance premiums.<sup>47</sup> Policyholders generally have the option of selecting between payment plans that divide the premium into two or four separate payments or in monthly installments. Under current law, insurers must provide the policyholder with 15 days advance written notice prior to any automatic bank withdrawal if the premium payment increases from the previous withdrawal period by any amount.

By contrast, federal law requires financial institutions to provide 10 days advance written notice prior to any automatic bank withdrawal either when the amount varies from the previous withdrawal amount, when the amount varies outside a specified range of amounts, or when the amount varies from the previous withdrawal amount by an agreed-upon amount.<sup>48</sup>

## **Citizens Property Insurance Corporation (Citizens)**

Citizens is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide affordable property insurance coverage to those unable to find coverage in the voluntary admitted market.<sup>49</sup> Citizens is not a private insurance company.<sup>50</sup> Citizens was statutorily created in 2002 when the Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association. Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by a nine-member Board of Governors<sup>51</sup> (board) that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission. The President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board. The Governor appoints three members to the board, one of whom serves solely to advocate for consumers. Citizens is subject to regulation by the OIR.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.<sup>52</sup> Assets may not be commingled or used to fund losses in another account.<sup>53</sup>

**The Personal Lines Account (PLA)** offers personal lines residential policies that provide comprehensive, multiperil coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile homeowners, dwellings, tenants, and condominium unit owner's policies.

---

<sup>47</sup> Section 627.0665, F.S.

<sup>48</sup> 12 CFR 1005.10(d).

<sup>49</sup> Admitted market means insurance companies licensed to transact insurance in Florida.

<sup>50</sup> Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the OIR.

<sup>51</sup> The Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives each appoint two members. The Governor appoints three members.

<sup>52</sup> The Personal Lines Account and the Commercial Lines Account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

<sup>53</sup> Section 627.351(6)(b)2b., F.S.

**The Commercial Lines Account (CLA)** offers commercial lines residential and nonresidential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial nonresidential policies covering business properties.

**The Coastal Account** offers personal residential, commercial residential, and commercial nonresidential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multiperil policies.<sup>54</sup>

### ***Citizens Eligibility for Commercial Residential Wind-Only Coverage***

In 2014,<sup>55</sup> the Legislature enacted changes to the statutes governing Citizens that prohibited residential condominium associations from obtaining commercial residential property insurance policies from Citizens which cover damage only from wind if 50 percent or more of the condominiums in the association are rented more than eight times a year for less than 30 days. These changes were intended to provide clarity to the classification of transient occupancy risks and remove inconsistencies between commercial residential and commercial nonresidential properties.<sup>56</sup> Condominiums are presently able to obtain Citizens policies that cover damage from multiple perils, including wind.

### **Delivery of Insurance Policies and Claims Communications**

Under s. 627.421, F.S., Florida law currently requires most insurers<sup>57</sup> to deliver, mail, or electronically transmit the insurance policy to the policyholder within 60 days of such coverage taking effect. Policyholders of personal lines policies may elect electronic transmission of policy documents; however, for commercial lines policies, policy documents are sent via electronic transmission unless the policyholder declines electronic transmission by written or electronic communication to the insurer. The policyholder is further entitled to a paper copy of the policy upon request.<sup>58</sup> An insurer that electronically transmits policy documents must include notice of the right to receive a paper copy of the policy via United States Mail.<sup>59</sup>

Florida law varies with respect to electronic and nonelectronic transmission of claims communications. In some cases, e.g., written proof of loss, claims communications must be

---

<sup>54</sup> In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial nonresidential multiperil policies in this account.

<sup>55</sup> Chapter 2015-140, Laws of Fla.

<sup>56</sup> House Regulatory Affairs Committee, *House Bill 1089 Analysis* (June 16, 2014), available at <https://www.flsenate.gov/Session/Bill/2014/1089/Analyses/h1089z1.JBS.PDF> (last visited Feb. 8, 2021).

<sup>57</sup> Part II of ch. 627, F.S., exempts reinsurers, wet marine and transportation, title, and credit life of credit disability insurers from the delivery provisions of s. 627.421, F.S.

<sup>58</sup> Section 627.421(1), F.S.

<sup>59</sup> *See Id.*



nonelectronic,<sup>60</sup> while on others, e.g., payment of health insurance claims, claims communication may be electronic or nonelectronic.<sup>61</sup>

### **Affirmative Exclusions of Property Insurance Deductibles and Coverages**

A hurricane deductible is the amount paid by the policyholder before the insurer issues any payment for damaged caused by a hurricane.<sup>62</sup> Under Florida law, the hurricane deductible is capped at 10 percent of the policy dwelling limits for a covered risk valued at less than \$500,000, unless the policyholder affirmatively rejects the statutory hurricane deductible limit.<sup>63</sup> In order to do so, the policyholder must personally write and provide the insurer the following statement in his or her own handwriting: “I do not want the insurance on my home to pay for the first (specify dollar value) of damage from hurricanes. I will pay those costs. My insurance will not.” Furthermore, the policyholder and each named insured on the policy must sign and date the statement.<sup>64</sup>

Florida law also requires a residential property insurance policy to include windstorm coverage,<sup>65</sup> unless the policyholder affirmatively rejects the coverage.<sup>66</sup> If the policyholder is a natural person, the policyholder must personally write and provide the insurer the following statement in his or her own handwriting: “I do not want the insurance on my home (home/mobile home/condominium unit) to pay for damage from windstorms. I will pay those costs. My insurance will not.” Furthermore, the policyholder and each named insured on the policy must sign and date the statement.<sup>67</sup>

A similar provision exists in statute for exclusion of contents coverage under a residential property insurance policy, except for a condominium unit owner policy or a tenant policy. Under s. 627.712(3), F.S., the policyholder must personally write and provide the insurer the following statement in his or her own handwriting: “I do not want the insurance on my home (home/mobile) to pay for costs to repair or replace any contents that are damaged. I will pay those costs. My insurance will not.” Furthermore, the policyholder and each named insured on the policy must sign and date the statement.

### **Assignment of Post-Loss Benefits under a Property Insurance Policy**

An assignment is the voluntary transfer of the rights of one party under a contract to another party. Current law generally allows an insurance policyholder to assign the benefits of the policy,

---

<sup>60</sup> Section 627.425, F.S.

<sup>61</sup> Section 627.6131, F.S.

<sup>62</sup> Department of Financial Services, *Florida’s Hurricane Deductible*

<https://www.myfloridacfo.com/division/consumers/floridashurricanedeductible.htm> (last visited Nov. 23, 2021).

<sup>63</sup> Section 627.701(4)(d), F.S.

<sup>64</sup> *See Id.*

<sup>65</sup> This requirement does not apply to a risk that is eligible for wind-only coverage from Citizens Property Insurance Corporation (Citizens). Nor does the requirement apply to a risk that is ineligible for Citizens coverage because the risk: (1) is a structure that has a dwelling replacement cost of \$700,000; (2) is a single condominium unit with a combined dwelling and contents replacement cost of \$700,000 or more; or (3) is located in the “wind-borne” debris region as defined in s. 1609.2 of the International Building Code (2006) and has an insured value on the structure of \$750,000 or more.

<sup>66</sup> Section 627.712, F.S.

<sup>67</sup> Section 627.712(2)(a)1., F.S.

such as the right to be paid, to another party. This assignment is often called an “assignment of benefits” or “AOB.” Once an assignment is made, the assignee can take action to enforce the contract. Accordingly, if the benefits are assigned and the insurer refuses to pay, the assignee may file a lawsuit against the insurer to recover the insurance benefits.<sup>68</sup>

The 2019, the Legislature enacted s. 627.7152, F.S., which governs the execution of assignment of post-loss benefits under a property insurance policy, provides duties that assignees must meet when filing a claim under a property insurance policy, provides requirements pursuant to litigation brought by assignees under property insurance policies, and revises the standards for awarding attorney fees in such litigation. An assignment agreement is any instrument that effectuates the assignment, transfer, or acquisition of post-loss benefits to or from a person providing services to protect, repair, restore, or replace property, or to mitigate against further damage to the property.

Prior to litigation, under s. 627.7152(9), F.S., an assignee must provide the named insured and the assignor a written notice of intent to initiate litigation, delivered at least 10 business days before filing suit, but not before the insurer has made a determination of coverage. The notice must also include a detailed written invoice or estimate of services that includes itemized information and proof work was performed in accordance with accepted industry standards. In a claim arising under an assignment agreement, the assignee has the burden under s. 627.7152(3)(b), F.S., to demonstrate that the insurer is not prejudiced by the assignee’s failure to cooperate with the insurer in the claim investigation.

### **Notice of Limited Coverage for Antique Vehicles**

Some insurers<sup>69</sup> offer motor vehicle insurance coverage for antique vehicles<sup>70</sup> which does not include mandatory personal injury protection<sup>71</sup> and property damage liability<sup>72</sup> coverages. In those cases, Florida law requires the automobile policy to provide notice to the policyholder of the limited coverage and its noncompliance with any financial responsibility law.<sup>73</sup> This coverage is generally appropriate for antique vehicles that are stored in a private collection or as part of a public display and are not driven on the roadways of this state. The notice must be stamped or printed in contrasting color from the color used on the policy and placed on the policy declaration page and on the back of the policy.<sup>74</sup>

---

<sup>68</sup> *Nationwide Mutual Insurance Company v. Pinnacle Medical, Inc.* 753 So. 2d 55, 57 (Fla. 2000) (“The right of assignee to sue for breach of contract to enforce assigned rights predates the Florida Constitution”).

<sup>69</sup> <https://www.statefarm.com/insurance/auto/antique-classic-cars> (last visited Nov. 29, 2021).

<sup>70</sup> See section 320.086, F.S.

<sup>71</sup> Section 627.733, F.S.

<sup>72</sup> Section 324.022, F.S.

<sup>73</sup> Section 627.7276(1), F.S.

<sup>74</sup> Section 627.7276(2), F.S.

## **Agent Licensing**

### ***General Lines Agent***

A general lines agent<sup>75</sup> is one who sells the following lines of insurance: property,<sup>76</sup> casualty,<sup>77</sup> including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,<sup>78</sup> or a workers' compensation self-insurance fund;<sup>79</sup> surety;<sup>80</sup> health;<sup>81</sup> and marine.<sup>82</sup> The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance.<sup>83</sup> If the general lines agent wishes to represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.<sup>84</sup>

### ***Personal Lines Agent***

A personal lines agent is a general lines agent who is limited to transacting business related to property and casualty insurance sold to individuals and families for noncommercial purposes.<sup>85</sup>

### ***Motor Vehicle Servicing Agreements***

Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. A motor vehicle service agreement indemnifies the vehicle owner (or holder of the agreement) against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended.<sup>86</sup> Motor vehicle service agreements can only be sold by a licensed and appointed salesperson.<sup>87</sup> Salespersons are licensed in the same manner as insurance representatives under ch. 626, F.S., with some exceptions to the requirements applied to insurance representatives.<sup>88</sup>

### ***Home Warranty Contracts***

A home warranty is any contract or agreement whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss.<sup>89</sup> No person shall solicit, negotiate, or

---

<sup>75</sup> Section 626.015(7), F.S.

<sup>76</sup> Section 624.604, F.S.

<sup>77</sup> Section 624.605, F.S.

<sup>78</sup> As defined in s. 624.462, F.S.

<sup>79</sup> Pursuant to s. 624.4621, F.S.

<sup>80</sup> Section 626.606, F.S.

<sup>81</sup> Section 624.603, F.S.

<sup>82</sup> Section 624.607, F.S.

<sup>83</sup> Section 626.827, F.S.

<sup>84</sup> Section 626.829, F.S.

<sup>85</sup> Section 626.015(17), F.S.

<sup>86</sup> Section 634.011(8), F.S.

<sup>87</sup> Section 634.031, F.S.

<sup>88</sup> Section 634.171, F.S.

<sup>89</sup> Section 634.301, F.S.

effectuate home warranty contracts for remuneration in this state unless such person is licensed and appointed as a sales representative.<sup>90</sup>

### ***Service Warranty Contracts***

A service warranty is an agreement or maintenance service contract equal to or greater than one year in length to repair, replace, or maintain a consumer product, or for indemnification for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.<sup>91</sup> A person or entity may not solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless the person or entity is licensed and appointed as a sales representative.<sup>92</sup>

## **III. Effect of Proposed Changes:**

### **Collateral Protection Insurance**

**Section 1** amends s. 215.555, F.S., to require that the Florida Hurricane Catastrophe Fund (FHCF) provide reimbursement for a loss under collateral protection insurance (also known as lender-placed or force-placed insurance) when the coverage amount differs from the coverage amount under the lapsed policy if the homeowner received notice of the collateral protection insurance coverage amount, or the homeowner requested a different coverage amount from the collateral protection insurer.

This section is effective June 1, 2023.

### **Payroll Audits for Construction Classification of Employers**

**Section 2** amends s. 440.381, F.S., governing payroll audits, provides that current requirements under the Workers' Compensation Law for annual, physical onsite payroll audits of employers in the construction class will only apply when the estimated annual premium is \$10,000 or more.

### **Electronic Meetings of Self-Insured Public Entities**

**Section 3** creates s. 624.46227, F.S., to authorize associations, trusts, and pools formed to provide self-insurance for public entities to use communications media technology to establish quorum and conduct public business.

**Section 4** amends s. 626.221, F.S., to authorize Certified All Lines Adjusters from Kaplan to be exempt from the examination requirement for licensure as an insurance agent or adjuster.

---

<sup>90</sup> Section 634.317, F.S., "sales representative" is any person with whom an insurer or home inspection or warranty association has a contract and who is utilized by such insurer or association for the purpose of selling or issuing home warranties. The term includes all employees of an insurer or association engaged directly in the sale or issuance of home warranties. Section 634.301(12), F.S.

<sup>91</sup> Section 634.401(13), F.S.

<sup>92</sup> Section 634.419, F.S. A "sales representative" is any person, retail store, corporation, partnership, or sole proprietorship utilized by an insurer or service warranty association for the purpose of selling or issuing service warranties. However, in the case of service warranty associations selling service warranties from one or more business locations, the person in charge of each location may be considered the sales representative. Section 634.401(12), F.S.

## **Company Employee Adjusters**

**Section 5** amends s. 626.856, F.S., revising the definition of a “company employee adjuster” in the Insurance Adjusters Law, to provide that an all-lines adjuster who is appointed and employed by an insurer’s affiliate may serve as a company employee adjuster for the purpose of ascertaining and determining the amount of an insurance claim, loss, or damage, or settling such claim, loss, or damage.

## **Florida’s Rating Law**

### ***Hurricane Model Averaging and Weighting***

**Section 6** amends s. 627.062, F.S., to provide that a residential property insurer’s rate filing may estimate projected hurricane losses by using a weighted or straight average of two or more methods or models approved by the Commission on Hurricane Loss Projection Methodology.

### ***Residential Property Insurance Mitigation Credits, Discounts, or Other Rate Differentials***

**Section 7** amends s. 627.0629, F.S., to provide that an insurer may file with the Office of Insurance Regulation a personal lines residential rating plan that provides premium discounts, credits, and other rate differentials based on windstorm construction standards developed by an independent, not-for-profit, scientific research organization, if such standards meet statutory requirements.

## **Required Notifications of Automatic Bank Withdrawals**

**Section 8** amends s. 627.0065, F.S., governing automatic bank withdrawal agreements between insurers and policyholders, to limit the requirement that an insurer provide a policyholder 15 days advance written notice of any increase in policy premiums. Instead, notice will only be required for premium increases that will result in an increase of the automatic withdrawal of more than \$10 from the previous withdrawal amount.

## **Citizens Eligibility for Commercial Residential Wind-Only Coverage**

**Section 9** amends s. 627.351, F.S., governing Citizens Property Insurance Corporation (Citizens), to provide that condominium associations where 50 percent or more of the condominium units are rented more than eight times per year for a period of less than 30 days may be eligible for wind-only Citizens policies.

## **Delivery of Policies and Claims Communications**

**Section 10** amends s. 627.421, F.S., to eliminate a requirement that an insurer that provides electronic delivery of the insurance policy to a policyholder (or the person entitled to delivery) must also provide within the electronic transmission notice of the policyholder’s right to receive the policy via United States Mail. The section also deletes a requirement that the insurer provide a paper copy of the policy to the insured upon his or her request. For personal lines policies, an insurer may offer electronic delivery to the policyholder, but electronic delivery may only be used if the policyholder elects to receive electronic delivery of the policy. For commercial lines,

the insurer may use electronic delivery without the consent of the policyholder unless the policyholder communicates to the insurer that he or she does not agree to electronic delivery.

### **Affirmative Exclusions of Property Insurance Deductibles and Coverages**

**Section 11** amends s. 627.701, F.S., governing hurricane deductibles in residential property insurance policies, to allow a policyholder to write *or* type the required statement<sup>93</sup> which the policyholder must complete and sign in order to select a hurricane deductible greater than 10 percent of the policy dwelling limits on a risk valued at less than \$500,000.

**Section 12** amends s. 627.712, F.S., governing windstorm and contents coverage exclusions, to allow a policyholder to affirmatively reject windstorm coverage under a residential property insurance policy by typing the required statement<sup>94</sup> which excludes coverage.

The bill also allows a policyholder, except for a condominium unit owner policy or tenant policy, to affirmatively reject contents coverage under a residential property insurance policy by typing the required statement<sup>95</sup> which excludes coverage.

The bill retains current law in both of these statutory sections that allows the policyholder to write out the required statements required in these sections.

### **Notice of Claims under Assignment Agreements**

**Section 13** amends s. 627.7152, F.S., governing residential property insurance and commercial property insurance assignment agreements. The bill adds the services of inspection and providing a scope of service to the list of services contemplated by the definition of “assignment agreement.”

The bill also specifies the notice of intent to initiate litigation that must be sent by an assignee to an insurer must be sent to the name and mailing address designated by the insurer in the policy forms if notice is sent by certified mail, return receipt requested, or to the email address designated by the insurer in the policy forms if notice is sent by electronic delivery.

This section is effective upon becoming law.

### **Notice of Limited Coverage for Antique Vehicles**

**Section 14** amends s. 627.7276, F.S., to require an automobile policy that does not provide coverage for bodily injury liability and property damage liability include notice accompanying the declarations page that the policy does not provide such coverages and does not comply with any financial responsibility laws. Such policies generally cover antique motor vehicles.

---

<sup>93</sup> “I do not want the insurance on my home to pay for the first (specify dollar value) of damage from hurricanes. I will pay those costs. My insurance will not.”

<sup>94</sup> “I do not want the insurance on my (home/mobile home/condominium unit) to pay for damage from windstorms. I will pay those costs. My insurance will not.”

<sup>95</sup> “I do not want the insurance on my (home/mobile home) to pay for the costs to repair or replace any contents that are damaged. I will pay those costs. My insurance will not.”

## **Agent Licensing**

### ***Motor Vehicle Service Agreements***

**Section 15** amends s. 634.171, F.S., to provide that a licensed personal lines or general lines agent is exempt from salesperson licensing requirements to solicit, negotiate, advertise, or sell motor vehicle service agreements.

### ***Home Warranty Contracts***

**Section 16** amends s. 634.317, F.S., to provide that a licensed personal lines or general lines agent is exempt from salesperson licensing requirements to solicit, negotiate, advertise, or sell home warranty contracts.

### ***Service Warranty Contracts***

**Section 17** amends s. 634.419, F.S., to provide that a licensed personal lines or general lines agent is exempt from salesperson licensing requirements to solicit, negotiate, advertise, or sell service warranty contracts.

## **Reenactments**

**Section 18** reenacts s. 624.424(10), F.S., related to insurer's annual statements, to incorporate amendments made to s. 215.555, F.S., which address collateral protection insurance coverage amounts.

This section is effective June 1, 2023.

**Section 19** reenacts s. 627.351(6)(v), F.S., related to Citizens Property Insurance Corporation, to incorporate amendments made to s. 215.555, F.S., which address collateral protection insurance coverage amounts.

This section is effective June 1, 2023.

**Section 20** reenacts s. 626.8734, F.S., related to public adjuster's qualifications, to incorporate the amendments made to s. 626.221, F.S.

**Section 21** reenacts s. 626.865(1)(e), F.S., related to company employee adjusters, to incorporate amendments made to s. 626.865, F.S., which address insurer affiliates.

**Section 22** reenacts paragraph (1)(d) and subsection (2) of section 627.7153, F.S., which addresses policies restricting assignments of post-loss benefits under a property insurance policy, to incorporate amendments made to s. 627.7152, F.S., which address assignment agreements.

This section is effective upon becoming law.

**Effective Date**

**Section 23** provides that except as otherwise expressly provided in this act, and except for this section, which takes effect upon this act becoming a law, this act is effective July 1, 2022.

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

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, section 10 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

There may be a decrease or increase in costs related to **Section 1** of the bill that requires that the Florida Hurricane Catastrophe Fund (FHCF) to provide reimbursement for a loss under collateral protection insurance (also known as lender-placed or force-placed insurance) in certain circumstances. If there is an increase in costs, the FHCF has an estimated balance well over \$10 billion, so the impact is estimated to be insignificant.

**VI. Technical Deficiencies:**

None.



**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 215.555, 440.381, 626.221, 626.856, 626.8734, 627.062, 627.0629, 627.0665, 627.351, 627.421, 627.701, 627.712, 627.7152, 627.7276, 634.171, 634.317, 634.419, 624.424, 626.865, and 627.7153.

This bill creates section 624.46227 of the Florida Statutes.

**IX. Additional Information:**

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

**CS/CS/CS by Appropriations on January 27, 2022:**  
The CS

**CS/CS by Judiciary on January 10, 2022:**

This CS no longer includes a provision from the prior version of the bill which would have revised the effective date of service of process served on an insurer through service on the Chief Financial Officer.

The CS adds to the various designations or certifications listed in statute which exempt a person from the examination requirement for licensure as an insurance agent or as an adjuster. Under the amendment, a designation as a Certified All Lines Adjuster from Kaplan will qualify a person for the exemption.

**CS by Banking and Insurance on December 1, 2021:**

The committee substitute excludes any instrument by which a licensed public adjuster receives any compensation, payment, commission, fee, or other thing of value for providing public adjuster services from the definition of “assignment agreement.”

- B. **Amendments:**

None.



571360

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/27/2022	.	
	.	
	.	
	.	

---

The Committee on Appropriations (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Before line 73

insert:

Section 1. Effective June 1, 2022, paragraph (e) of subsection (2) of section 215.555, Florida Statutes, is amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

(2) DEFINITIONS.—As used in this section:

(e) "Retention" means the amount of losses below which an



571360

11 insurer is not entitled to reimbursement from the fund. An  
12 insurer's retention shall be calculated as follows:

13       1. The board shall calculate and report to each insurer the  
14 retention multiples for that year. For the contract year  
15 beginning June 1, 2022 ~~2005~~, the retention multiple shall be  
16 equal to \$4.5 billion divided by the total estimated  
17 reimbursement premium for the contract year; for subsequent  
18 years, the retention multiple shall be equal to \$4.5 billion,  
19 adjusted based upon the reported exposure for the contract year  
20 occurring 2 years before the particular contract year to reflect  
21 the percentage growth in exposure to the fund for covered  
22 policies since 2021 ~~2004~~, divided by the total estimated  
23 reimbursement premium for the contract year. Total reimbursement  
24 premium for purposes of the calculation under this subparagraph  
25 shall be estimated using the assumption that all insurers have  
26 selected the 90-percent coverage level.

27       2. The retention multiple as determined under subparagraph  
28 1. shall be adjusted to reflect the coverage level elected by  
29 the insurer. For insurers electing the 90-percent coverage  
30 level, the adjusted retention multiple is 100 percent of the  
31 amount determined under subparagraph 1. For insurers electing  
32 the 75-percent coverage level, the retention multiple is 120  
33 percent of the amount determined under subparagraph 1. For  
34 insurers electing the 45-percent coverage level, the adjusted  
35 retention multiple is 200 percent of the amount determined under  
36 subparagraph 1.

37       3. An insurer shall determine its provisional retention by  
38 multiplying its provisional reimbursement premium by the  
39 applicable adjusted retention multiple and shall determine its



571360

40 actual retention by multiplying its actual reimbursement premium  
41 by the applicable adjusted retention multiple.

42 4. For insurers who experience multiple covered events  
43 causing loss during the contract year, beginning June 1, 2005,  
44 each insurer's full retention shall be applied to each of the  
45 covered events causing the two largest losses for that insurer.  
46 For each other covered event resulting in losses, the insurer's  
47 retention shall be reduced to one-third of the full retention.  
48 The reimbursement contract shall provide for the reimbursement  
49 of losses for each covered event based on the full retention  
50 with adjustments made to reflect the reduced retentions on or  
51 after January 1 of the contract year provided the insurer  
52 reports its losses as specified in the reimbursement contract.

53 Section 2. Paragraph (b) of subsection (5) of section  
54 215.555, Florida Statutes, is amended to read:

55 215.555 Florida Hurricane Catastrophe Fund.—

56 (5) REIMBURSEMENT PREMIUMS.—

57 (b) The State Board of Administration shall select an  
58 independent consultant to develop a formula for determining the  
59 actuarially indicated premium to be paid to the fund. The  
60 formula shall specify, for each zip code or other limited  
61 geographical area, the amount of premium to be paid by an  
62 insurer for each \$1,000 of insured value under covered policies  
63 in that zip code or other area. In establishing premiums, the  
64 board shall consider the coverage elected under paragraph (4) (b)  
65 and any factors that tend to enhance the actuarial  
66 sophistication of ratemaking for the fund, including  
67 deductibles, type of construction, type of coverage provided,  
68 relative concentration of risks, and other such factors deemed



69 by the board to be appropriate. The formula must provide for a  
70 cash build-up factor only in contract years when the fund's cash  
71 balance at the end of the previous calendar year is below \$10  
72 billion and for two subsequent contract years after the year in  
73 which such a cash build-up factor is triggered. ~~For the 2009-~~  
74 ~~2010 contract year, the factor is 5 percent. For the 2010-2011~~  
75 ~~contract year, the factor is 10 percent. For the 2011-2012~~  
76 ~~contract year, the factor is 15 percent. For the 2012-2013~~  
77 ~~contract year, the factor is 20 percent. For the 2013-2014~~  
78 ~~contract year and thereafter,~~ The factor is and may not exceed  
79 25 percent. The formula may provide for a procedure to determine  
80 the premiums to be paid by new insurers that begin writing  
81 covered policies after the beginning of a contract year, taking  
82 into consideration when the insurer starts writing covered  
83 policies, the potential exposure of the insurer, the potential  
84 exposure of the fund, the administrative costs to the insurer  
85 and to the fund, and any other factors deemed appropriate by the  
86 board. The formula must be approved by unanimous vote of the  
87 board. The board may, at any time, revise the formula pursuant  
88 to the procedure provided in this paragraph.

89 Section 3. For the purpose of incorporating the amendments  
90 made by this act to section 215.555, Florida Statutes, in a  
91 reference thereto, paragraph (k) of subsection (2) of section  
92 627.062, Florida Statutes, is reenacted to read:

93 627.062 Rate standards.—

94 (2) As to all such classes of insurance:

95 (k)1. A residential property insurer may make a separate  
96 filing limited solely to an adjustment of its rates for  
97 reinsurance, the cost of financing products used as a



571360

98 replacement for reinsurance, financing costs incurred in the  
99 purchase of reinsurance, and the actual cost paid due to the  
100 application of the cash build-up factor pursuant to s.  
101 215.555(5) (b) if the insurer:

102 a. Elects to purchase financing products such as a  
103 liquidity instrument or line of credit, in which case the cost  
104 included in filing for the liquidity instrument or line of  
105 credit may not result in a premium increase exceeding 3 percent  
106 for any individual policyholder. All costs contained in the  
107 filing may not result in an overall premium increase of more  
108 than 15 percent for any individual policyholder.

109 b. Includes in the filing a copy of all of its reinsurance,  
110 liquidity instrument, or line of credit contracts; proof of the  
111 billing or payment for the contracts; and the calculation upon  
112 which the proposed rate change is based demonstrating that the  
113 costs meet the criteria of this section.

114 2. An insurer that purchases reinsurance or financing  
115 products from an affiliated company may make a separate filing  
116 only if the costs for such reinsurance or financing products are  
117 charged at or below charges made for comparable coverage by  
118 nonaffiliated reinsurers or financial entities making such  
119 coverage or financing products available in this state.

120 3. An insurer may make only one filing per 12-month period  
121 under this paragraph.

122 4. An insurer that elects to implement a rate change under  
123 this paragraph must file its rate filing with the office at  
124 least 45 days before the effective date of the rate change.  
125 After an insurer submits a complete filing that meets all of the  
126 requirements of this paragraph, the office has 45 days after the



127 date of the filing to review the rate filing and determine if  
128 the rate is excessive, inadequate, or unfairly discriminatory.

129  
130 The provisions of this subsection do not apply to workers'  
131 compensation, employer's liability insurance, and motor vehicle  
132 insurance.

133 Section 4. For the purpose of incorporating the amendments  
134 made by this act to section 215.555, Florida Statutes, in a  
135 reference thereto, paragraph (n) of subsection (6) of section  
136 627.351, Florida Statutes, is reenacted to read:

137 627.351 Insurance risk apportionment plans.—

138 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

139 (n)1. Rates for coverage provided by the corporation must  
140 be actuarially sound and subject to s. 627.062, except as  
141 otherwise provided in this paragraph. The corporation shall file  
142 its recommended rates with the office at least annually. The  
143 corporation shall provide any additional information regarding  
144 the rates which the office requires. The office shall consider  
145 the recommendations of the board and issue a final order  
146 establishing the rates for the corporation within 45 days after  
147 the recommended rates are filed. The corporation may not pursue  
148 an administrative challenge or judicial review of the final  
149 order of the office.

150 2. In addition to the rates otherwise determined pursuant  
151 to this paragraph, the corporation shall impose and collect an  
152 amount equal to the premium tax provided in s. 624.509 to  
153 augment the financial resources of the corporation.

154 3. After the public hurricane loss-projection model under  
155 s. 627.06281 has been found to be accurate and reliable by the



571360

156 Florida Commission on Hurricane Loss Projection Methodology, the  
157 model shall be considered when establishing the windstorm  
158 portion of the corporation's rates. The corporation may use the  
159 public model results in combination with the results of private  
160 models to calculate rates for the windstorm portion of the  
161 corporation's rates. This subparagraph does not require or allow  
162 the corporation to adopt rates lower than the rates otherwise  
163 required or allowed by this paragraph.

164 4. The corporation must make a recommended actuarially  
165 sound rate filing for each personal and commercial line of  
166 business it writes.

167 5. Notwithstanding the board's recommended rates and the  
168 office's final order regarding the corporation's filed rates  
169 under subparagraph 1., the corporation shall annually implement  
170 a rate increase which, except for sinkhole coverage, does not  
171 exceed the following for any single policy issued by the  
172 corporation, excluding coverage changes and surcharges:

- 173 a. Eleven percent for 2022.
- 174 b. Twelve percent for 2023.
- 175 c. Thirteen percent for 2024.
- 176 d. Fourteen percent for 2025.
- 177 e. Fifteen percent for 2026 and all subsequent years.

178 6. The corporation may also implement an increase to  
179 reflect the effect on the corporation of the cash buildup factor  
180 pursuant to s. 215.555(5)(b).

181 7. The corporation's implementation of rates as prescribed  
182 in subparagraph 5. shall cease for any line of business written  
183 by the corporation upon the corporation's implementation of  
184 actuarially sound rates. Thereafter, the corporation shall





571360

185 annually make a recommended actuarially sound rate filing for  
186 each commercial and personal line of business the corporation  
187 writes.

188

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

190 And the title is amended as follows:

191 Delete lines 3 - 5

192 and insert:

193 F.S.; revising the retention of losses for which an  
194 insurer is not entitled to reimbursement from the  
195 Florida Hurricane Catastrophe Fund; requiring the  
196 formula for determining actuarially indicated premiums  
197 to include a cash build-up factor only in contract  
198 years under certain circumstances; deleting obsolete  
199 language; limiting the amount of the cash build-up  
200 factor; redefining the term "covered policy" under the  
201 Florida Hurricane Catastrophe Fund in relation to  
202 certain collateral protection insurance policies;  
203 reenacting ss. 627.062(2)(k) and 627.351(6)(n), F.S.,  
204 relating to rate standards and insurance risk  
205 apportionment plans, respectively, to incorporate the  
206 amendments made to s. 215.555, F.S., in references  
207 thereto;

By the Committees on Judiciary; and Banking and Insurance; and  
Senators Perry and Broxson

590-01913-22

2022468c2

1 A bill to be entitled  
2 An act relating to insurance; amending s. 215.555,  
3 F.S.; redefining the term "covered policy" under the  
4 Florida Hurricane Catastrophe Fund in relation to  
5 certain collateral protection insurance policies;  
6 amending s. 440.381, F.S.; revising the annual audit  
7 requirement for construction classes to apply to  
8 policies having estimated annual premiums over a  
9 specified threshold; creating s. 624.46227, F.S.;  
10 authorizing any association, trust, or pool created  
11 for the purpose of forming a risk management mechanism  
12 or providing self-insurance for a public entity to use  
13 communications media technology to establish a quorum  
14 and conduct public business; amending s. 626.221,  
15 F.S.; exempting certain applicants for licensure as an  
16 all-lines adjuster from a required examination;  
17 amending s. 626.856, F.S.; revising the definition of  
18 the term "company employee adjuster"; amending s.  
19 627.062, F.S.; authorizing the use of a certain  
20 modeling indication for residential property insurance  
21 rate filings; amending s. 627.0629, F.S.; authorizing  
22 insurers to file certain insurance rating plans based  
23 on certain windstorm mitigation construction  
24 standards, if certain requirements are met; amending  
25 s. 627.0665, F.S.; revising notification requirements  
26 for insurers who have automatic bank withdrawal  
27 agreements with insureds to include notices when  
28 withdrawal amounts increase above a specified  
29 threshold; amending s. 627.351, F.S.; revising

Page 1 of 27

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

590-01913-22

2022468c2

30 conditions for determining the ineligibility of  
31 condominiums for wind-only coverage; amending s.  
32 627.421, F.S.; deleting a requirement for electronic  
33 transmissions of certain documents to include  
34 specified notices; deleting a requirement that paper  
35 copies of policies be provided upon request; amending  
36 ss. 627.701 and 627.712, F.S.; revising policyholder  
37 acknowledgment statement requirements for property  
38 insurance policies having certain hurricane  
39 deductibles or windstorm or contents coverage  
40 exclusions, respectively; amending s. 627.7152, F.S.;  
41 revising the definition of the term "assignment  
42 agreement"; specifying the addresses to which a notice  
43 of intent must be served; amending s. 627.7276, F.S.;  
44 revising notice requirements for motor vehicle  
45 policies that do not provide coverage for bodily  
46 injury and property damage liability; amending ss.  
47 634.171, 634.317, and 634.419, F.S.; authorizing  
48 licensed personal lines or general lines agents to  
49 solicit, negotiate, advertise, or sell motor vehicle  
50 service agreements, home warranty contracts, and  
51 service warranty contracts, respectively, without a  
52 sales representative license; making technical  
53 changes; reenacting ss. 624.424(10) and 627.351(6)(v),  
54 F.S., relating to annual statements and other  
55 information and Citizens Property Insurance  
56 Corporation, respectively, to incorporate the  
57 amendment made to s. 215.555, F.S., in references  
58 thereto; reenacting s. 626.8734(1)(b), F.S., relating

Page 2 of 27

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

590-01913-22

2022468c2

59 to nonresident all-lines adjuster license  
 60 qualifications, to incorporate the amendment made to  
 61 s. 626.221, F.S., in a reference thereto; reenacting  
 62 s. 626.865(1)(e), F.S., relating to public adjuster's  
 63 qualifications, to incorporate the amendment made to  
 64 s. 626.856, F.S., in a reference thereto; reenacting  
 65 s. 627.7153(1) and (2)(d), F.S., relating to policies  
 66 restricting assignment of post-loss benefits under a  
 67 property insurance policy, to incorporate the  
 68 amendment made to s. 627.7152, F.S., in references  
 69 thereto; providing effective dates.

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

72  
 73 Section 1. Effective June 1, 2023, paragraph (c) of  
 74 subsection (2) of section 215.555, Florida Statutes, is amended  
 75 to read:

76 215.555 Florida Hurricane Catastrophe Fund.—

77 (2) DEFINITIONS.—As used in this section:

78 (c) "Covered policy" means any insurance policy covering  
 79 residential property in this state, including, but not limited  
 80 to, any homeowner, mobile home owner, farm owner, condominium  
 81 association, condominium unit owner, tenant, or apartment  
 82 building policy, or any other policy covering a residential  
 83 structure or its contents issued by any authorized insurer,  
 84 including a commercial self-insurance fund holding a certificate  
 85 of authority issued by the Office of Insurance Regulation under  
 86 s. 624.462, the Citizens Property Insurance Corporation, and any  
 87 joint underwriting association or similar entity created under

Page 3 of 27

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

590-01913-22

2022468c2

88 law. The term ~~"covered policy"~~ includes any collateral  
 89 protection insurance policy covering personal residences which  
 90 protects both the borrower's and the lender's financial  
 91 interests, in an amount at least equal to the coverage amount  
 92 for the dwelling in place under the lapsed homeowner's policy,  
 93 the coverage amount that the homeowner has been notified of by  
 94 the collateral protection insurer, or the coverage amount the  
 95 homeowner requests from the collateral protection insurer, if  
 96 such collateral protection insurance policy can be accurately  
 97 reported as required in subsection (5). Additionally, covered  
 98 policies include policies covering the peril of wind removed  
 99 from the Florida Residential Property and Casualty Joint  
 100 Underwriting Association or from the Citizens Property Insurance  
 101 Corporation, created under s. 627.351(6), or from the Florida  
 102 Windstorm Underwriting Association, created under s. 627.351(2),  
 103 by an authorized insurer under the terms and conditions of an  
 104 executed assumption agreement between the authorized insurer and  
 105 such association or Citizens Property Insurance Corporation.  
 106 Each assumption agreement between the association and such  
 107 authorized insurer or Citizens Property Insurance Corporation  
 108 must be approved by the Office of Insurance Regulation before  
 109 the effective date of the assumption, and the Office of  
 110 Insurance Regulation must provide written notification to the  
 111 board within 15 working days after such approval. "Covered  
 112 policy" does not include any policy that excludes wind coverage  
 113 or hurricane coverage or any reinsurance agreement and does not  
 114 include any policy otherwise meeting this definition which is  
 115 issued by a surplus lines insurer or a reinsurer. All commercial  
 116 residential excess policies and all deductible buy-back policies

Page 4 of 27

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

590-01913-22

2022468c2

117 that, based on sound actuarial principles, require individual  
 118 ratemaking ~~must shall~~ be excluded by rule if the actuarial  
 119 soundness of the fund is not jeopardized. For this purpose, the  
 120 term "excess policy" means a policy that provides insurance  
 121 protection for large commercial property risks and that provides  
 122 a layer of coverage above a primary layer insured by another  
 123 insurer.

124 Section 2. Subsection (3) of section 440.381, Florida  
 125 Statutes, is amended to read:

126 440.381 Application for coverage; reporting payroll;  
 127 payroll audit procedures; penalties.—

128 (3) The Financial Services Commission, in consultation with  
 129 the department, shall establish by rule minimum requirements for  
 130 audits of payroll and classifications ~~in order~~ to ensure that  
 131 the appropriate premium is charged for workers' compensation  
 132 coverage. The rules ~~must shall~~ ensure that audits performed by  
 133 both carriers and employers are adequate to provide that all  
 134 sources of payments to employees, subcontractors, and  
 135 independent contractors ~~are have been~~ reviewed and that the  
 136 accuracy of classification of employees ~~is has been~~ verified.  
 137 The rules ~~must require shall provide~~ that employers in all  
 138 classes other than the construction class be audited at least  
 139 ~~not less frequently than~~ biennially and may provide for more  
 140 frequent audits of employers in specified classifications based  
 141 on factors such as amount of premium, type of business, loss  
 142 ratios, or other relevant factors. ~~In no event shall~~ Employers  
 143 in the construction class, generating more than the amount of  
 144 premium required to be experience rated, must be audited at  
 145 least less than annually. The annual audits required for

Page 5 of 27

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

590-01913-22

2022468c2

146 construction classes ~~must shall~~ consist of physical onsite  
 147 audits for policies only if the estimated annual premium is  
 148 \$10,000 or more. Payroll verification audit rules must include,  
 149 but need not be limited to, the use of state and federal reports  
 150 of employee income, payroll and other accounting records,  
 151 certificates of insurance maintained by subcontractors, and  
 152 duties of employees. At the completion of an audit, the employer  
 153 or officer of the corporation and the auditor must print and  
 154 sign their names on the audit document and attach proof of  
 155 identification to the audit document.

156 Section 3. Section 624.46227, Florida Statutes, is created  
 157 to read:

158 624.46227 Meeting requirements.—Any association, trust, or  
 159 pool authorized by state law and created for the purpose of  
 160 forming a risk management mechanism or providing self-insurance  
 161 for public entities in this state may use communications media  
 162 technology to establish a quorum and conduct public business.

163 Section 4. Paragraph (j) of subsection (2) of section  
 164 626.221, Florida Statutes, is amended to read:

165 626.221 Examination requirement; exemptions.—

166 (2) However, an examination is not necessary for any of the  
 167 following:

168 (j) An applicant for license as an all-lines adjuster who  
 169 has the designation of Accredited Claims Adjuster (ACA) from a  
 170 regionally accredited postsecondary institution in this state,  
 171 Associate in Claims (AIC) from the Insurance Institute of  
 172 America, Professional Claims Adjuster (PCA) from the  
 173 Professional Career Institute, Professional Property Insurance  
 174 Adjuster (PPIA) from the HurriClaim Training Academy, Certified

Page 6 of 27

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

590-01913-22 2022468c2

175 Adjuster (CA) from ALL LINES Training, Certified Claims Adjuster  
 176 (CCA) from AE21 Incorporated, Claims Adjuster Certified  
 177 Professional (CACP) from WebCE, Inc., Accredited Insurance  
 178 Claims Specialist (AICS) from Encore Claim Services, Certified  
 179 All Lines Adjuster (CALA) from Kaplan, or Universal Claims  
 180 Certification (UCC) from Claims and Litigation Management  
 181 Alliance (CLM) whose curriculum has been approved by the  
 182 department and which includes comprehensive analysis of basic  
 183 property and casualty lines of insurance and testing at least  
 184 equal to that of standard department testing for the all-lines  
 185 adjuster license. The department shall adopt rules establishing  
 186 standards for the approval of curriculum.

187 Section 5. Section 626.856, Florida Statutes, is amended to  
 188 read:

189 626.856 "Company employee adjuster" defined.—A "company  
 190 employee adjuster" means a person licensed as an all-lines  
 191 adjuster who is appointed and employed on an insurer's staff of  
 192 adjusters, by an affiliate, or by a wholly owned subsidiary of  
 193 the insurer, and who undertakes on behalf of such insurer or  
 194 other insurers under common control or ownership to ascertain  
 195 and determine the amount of any claim, loss, or damage payable  
 196 under a contract of insurance, or undertakes to effect  
 197 settlement of such claim, loss, or damage.

198 Section 6. Paragraph (j) of subsection (2) of section  
 199 627.062, Florida Statutes, is amended to read:

200 627.062 Rate standards.—

201 (2) As to all such classes of insurance:

202 (j) With respect to residential property insurance rate  
 203 filings, the rate filing:

590-01913-22 2022468c2

204 1. Must account for mitigation measures undertaken by  
 205 policyholders to reduce hurricane losses.  
 206 2. May use a modeling indication that is the weighted or  
 207 straight average of two or more hurricane loss projection models  
 208 found by the commission to be accurate or reliable pursuant to  
 209 s. 627.0628.

210  
 211 The provisions of this subsection do not apply to workers'  
 212 compensation, employer's liability insurance, and motor vehicle  
 213 insurance.

214 Section 7. Subsection (9) is added to section 627.0629,  
 215 Florida Statutes, to read:

216 627.0629 Residential property insurance; rate filings.—

217 (9) An insurer may file with the office a personal lines  
 218 residential property insurance rating plan that provides  
 219 justified premium discounts, credits, or other rate  
 220 differentials based on windstorm mitigation construction  
 221 standards developed by an independent, not-for-profit scientific  
 222 research organization, if such standards meet the requirements  
 223 of this section.

224 Section 8. Section 627.0665, Florida Statutes, is amended  
 225 to read:

226 627.0665 Automatic bank withdrawal agreements; notification  
 227 required.—Any insurer licensed to issue insurance in ~~this the~~  
 228 state who has an automatic bank withdrawal agreement with an  
 229 insured party for the payment of insurance premiums for any type  
 230 of insurance shall give the named insured at least 15 days  
 231 advance written notice of any increase in policy premiums that  
 232 results in the next automatic bank withdrawal being increased by

590-01913-22

2022468c2

233 more than \$10. Such notice must be provided before ~~prior to~~ any  
 234 automatic bank withdrawal containing the ~~of an~~ increased premium  
 235 amount.

236 Section 9. Paragraph (a) of subsection (6) of section  
 237 627.351, Florida Statutes, is amended to read:

238 627.351 Insurance risk apportionment plans.—

239 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

240 (a) The public purpose of this subsection is to ensure that  
 241 there is an orderly market for property insurance for residents  
 242 and businesses of this state.

243 1. The Legislature finds that private insurers are  
 244 unwilling or unable to provide affordable property insurance  
 245 coverage in this state to the extent sought and needed. The  
 246 absence of affordable property insurance threatens the public  
 247 health, safety, and welfare and likewise threatens the economic  
 248 health of the state. The state therefore has a compelling public  
 249 interest and a public purpose to assist in assuring that  
 250 property in this ~~the~~ state is insured and that it is insured at  
 251 affordable rates so as to facilitate the remediation,  
 252 reconstruction, and replacement of damaged or destroyed property  
 253 in order to reduce or avoid the negative effects otherwise  
 254 resulting to the public health, safety, and welfare, to the  
 255 economy of the state, and to the revenues of the state and local  
 256 governments which are needed to provide for the public welfare.  
 257 It is necessary, therefore, to provide affordable property  
 258 insurance to applicants who are in good faith entitled to  
 259 procure insurance through the voluntary market but are unable to  
 260 do so. The Legislature intends, therefore, that affordable  
 261 property insurance be provided and that it continue to be

Page 9 of 27

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

590-01913-22

2022468c2

262 provided, as long as necessary, through Citizens Property  
 263 Insurance Corporation, a government entity that is an integral  
 264 part of the state, and that is not a private insurance company.  
 265 To that end, the corporation shall strive to increase the  
 266 availability of affordable property insurance in this state,  
 267 while achieving efficiencies and economies, and while providing  
 268 service to policyholders, applicants, and agents which is no  
 269 less than the quality generally provided in the voluntary  
 270 market, for the achievement of the foregoing public purposes.  
 271 Because it is essential for this government entity to have the  
 272 maximum financial resources to pay claims following a  
 273 catastrophic hurricane, it is the intent of the Legislature that  
 274 the corporation continue to be an integral part of the state and  
 275 that the income of the corporation be exempt from federal income  
 276 taxation and that interest on the debt obligations issued by the  
 277 corporation be exempt from federal income taxation.

278 2. The Residential Property and Casualty Joint Underwriting  
 279 Association originally created by this statute shall be known as  
 280 the Citizens Property Insurance Corporation. The corporation  
 281 shall provide insurance for residential and commercial property,  
 282 for applicants who are entitled, but, in good faith, are unable  
 283 to procure insurance through the voluntary market. The  
 284 corporation shall operate pursuant to a plan of operation  
 285 approved by order of the Financial Services Commission. The plan  
 286 is subject to continuous review by the commission. The  
 287 commission may, by order, withdraw approval of all or part of a  
 288 plan if the commission determines that conditions have changed  
 289 since approval was granted and that the purposes of the plan  
 290 require changes in the plan. For the purposes of this

Page 10 of 27

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

590-01913-22

2022468c2

291 subsection, residential coverage includes both personal lines  
 292 residential coverage, which consists of the type of coverage  
 293 provided by homeowner, mobile home owner, dwelling, tenant,  
 294 condominium unit owner, and similar policies; and commercial  
 295 lines residential coverage, which consists of the type of  
 296 coverage provided by condominium association, apartment  
 297 building, and similar policies.

298 3. With respect to coverage for personal lines residential  
 299 structures:

300 a. Effective January 1, 2014, a structure that has a  
 301 dwelling replacement cost of \$1 million or more, or a single  
 302 condominium unit that has a combined dwelling and contents  
 303 replacement cost of \$1 million or more, is not eligible for  
 304 coverage by the corporation. Such dwellings insured by the  
 305 corporation on December 31, 2013, may continue to be covered by  
 306 the corporation until the end of the policy term. The office  
 307 shall approve the method used by the corporation for valuing the  
 308 dwelling replacement cost for the purposes of this subparagraph.  
 309 If a policyholder is insured by the corporation before being  
 310 determined to be ineligible pursuant to this subparagraph and  
 311 such policyholder files a lawsuit challenging the determination,  
 312 the policyholder may remain insured by the corporation until the  
 313 conclusion of the litigation.

314 b. Effective January 1, 2015, a structure that has a  
 315 dwelling replacement cost of \$900,000 or more, or a single  
 316 condominium unit that has a combined dwelling and contents  
 317 replacement cost of \$900,000 or more, is not eligible for  
 318 coverage by the corporation. Such dwellings insured by the  
 319 corporation on December 31, 2014, may continue to be covered by

Page 11 of 27

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

590-01913-22

2022468c2

320 the corporation only until the end of the policy term.

321 c. Effective January 1, 2016, a structure that has a  
 322 dwelling replacement cost of \$800,000 or more, or a single  
 323 condominium unit that has a combined dwelling and contents  
 324 replacement cost of \$800,000 or more, is not eligible for  
 325 coverage by the corporation. Such dwellings insured by the  
 326 corporation on December 31, 2015, may continue to be covered by  
 327 the corporation until the end of the policy term.

328 d. Effective January 1, 2017, a structure that has a  
 329 dwelling replacement cost of \$700,000 or more, or a single  
 330 condominium unit that has a combined dwelling and contents  
 331 replacement cost of \$700,000 or more, is not eligible for  
 332 coverage by the corporation. Such dwellings insured by the  
 333 corporation on December 31, 2016, may continue to be covered by  
 334 the corporation until the end of the policy term.

335  
 336 The requirements of sub-subparagraphs b.-d. do not apply in  
 337 counties where the office determines there is not a reasonable  
 338 degree of competition. In such counties a personal lines  
 339 residential structure that has a dwelling replacement cost of  
 340 less than \$1 million, or a single condominium unit that has a  
 341 combined dwelling and contents replacement cost of less than \$1  
 342 million, is eligible for coverage by the corporation.

343 4. It is the intent of the Legislature that policyholders,  
 344 applicants, and agents of the corporation receive service and  
 345 treatment of the highest possible level but never less than that  
 346 generally provided in the voluntary market. It is also intended  
 347 that the corporation be held to service standards no less than  
 348 those applied to insurers in the voluntary market by the office

Page 12 of 27

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

590-01913-22 2022468c2

349 with respect to responsiveness, timeliness, customer courtesy,  
350 and overall dealings with policyholders, applicants, or agents  
351 of the corporation.

352 5.a. Effective January 1, 2009, a personal lines  
353 residential structure that is located in the "wind-borne debris  
354 region," as defined in s. 1609.2, International Building Code  
355 (2006), and that has an insured value on the structure of  
356 \$750,000 or more is not eligible for coverage by the corporation  
357 unless the structure has opening protections as required under  
358 the Florida Building Code for a newly constructed residential  
359 structure in that area. A residential structure is deemed to  
360 comply with this sub-subparagraph if it has shutters or opening  
361 protections on all openings and if such opening protections  
362 complied with the Florida Building Code at the time they were  
363 installed.

364 b. Any major structure, as defined in s. 161.54(6)(a), that  
365 is newly constructed, or rebuilt, repaired, restored, or  
366 remodeled to increase the total square footage of finished area  
367 by more than 25 percent, pursuant to a permit applied for after  
368 July 1, 2015, is not eligible for coverage by the corporation if  
369 the structure is seaward of the coastal construction control  
370 line established pursuant to s. 161.053 or is within the Coastal  
371 Barrier Resources System as designated by 16 U.S.C. ss. 3501-  
372 3510.

373 6. With respect to wind-only coverage for commercial lines  
374 residential condominiums, ~~effective July 1, 2014,~~ a condominium  
375 may shall be deemed ineligible for coverage when if 50 percent  
376 or more of the units are rented more than eight times in a  
377 calendar year for a rental agreement period of less than 30

Page 13 of 27

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

590-01913-22 2022468c2

378 days.

379 Section 10. Subsection (1) of section 627.421, Florida  
380 Statutes, is amended to read:

381 627.421 Delivery of policy.—

382 (1) Subject to the insurer's requirement as to payment of  
383 premium, every policy shall be mailed, delivered, or  
384 electronically transmitted to the insured or to the person  
385 entitled thereto not later than 60 days after the effectuation  
386 of coverage. Notwithstanding any other provision of law, an  
387 insurer may allow a policyholder of personal lines insurance to  
388 affirmatively elect delivery of the policy documents, including,  
389 but not limited to, policies, endorsements, notices, or  
390 documents, by electronic means in lieu of delivery by mail.  
391 Electronic transmission of a policy for commercial risks,  
392 including, but not limited to, workers' compensation and  
393 employers' liability, commercial automobile liability,  
394 commercial automobile physical damage, commercial lines  
395 residential property, commercial nonresidential property,  
396 farmowners insurance, and the types of commercial lines risks  
397 set forth in s. 627.062(3)(d), constitutes delivery to the  
398 insured or to the person entitled to delivery, unless the  
399 insured or the person entitled to delivery communicates to the  
400 insurer in writing or electronically that he or she does not  
401 agree to delivery by electronic means. ~~Electronic transmission~~  
402 ~~shall include a notice to the insured or to the person entitled~~  
403 ~~to delivery of a policy of his or her right to receive the~~  
404 ~~policy via United States mail rather than via electronic~~  
405 ~~transmission. A paper copy of the policy shall be provided to~~  
406 ~~the insured or to the person entitled to delivery at his or her~~

Page 14 of 27

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



590-01913-22

2022468c2

407 ~~request.~~

408 Section 11. Paragraph (d) of subsection (4) of section  
409 627.701, Florida Statutes, is amended to read:

410 627.701 Liability of insureds; coinsurance; deductibles.—  
411 (4)

412 (d)1. A personal lines residential property insurance  
413 policy covering a risk valued at less than \$500,000 may not have  
414 a hurricane deductible in excess of 10 percent of the policy  
415 dwelling limits, unless the following conditions are met:

416 a. The policyholder must personally write or type and  
417 provide to the insurer the following statement ~~in his or her own~~  
418 ~~handwriting~~ and sign his or her name, which must also be signed  
419 by every other named insured on the policy, and dated: "I do not  
420 want the insurance on my home to pay for the first (specify  
421 dollar value) of damage from hurricanes. I will pay those costs.  
422 My insurance will not."

423 b. If the structure insured by the policy is subject to a  
424 mortgage or lien, the policyholder must provide the insurer with  
425 a written statement from the mortgageholder or lienholder  
426 indicating that the mortgageholder or lienholder approves the  
427 policyholder electing to have the specified deductible.

428 2. A deductible subject to the requirements of this  
429 paragraph applies for the term of the policy and for each  
430 renewal thereafter. Changes to the deductible percentage may be  
431 implemented only as of the date of renewal.

432 3. An insurer shall keep the original copy of the signed  
433 statement required by this paragraph, electronically or  
434 otherwise, and provide a copy to the policyholder providing the  
435 signed statement. A signed statement meeting the requirements of

Page 15 of 27

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

590-01913-22

2022468c2

436 this paragraph creates a presumption that there was an informed,  
437 knowing election of coverage.

438 4. The commission shall adopt rules providing appropriate  
439 alternative methods for providing the statements required by  
440 this section for policyholders who have a handicapping or  
441 disabling condition that prevents them from providing a  
442 handwritten statement.

443 Section 12. Paragraph (a) of subsection (2) and subsection  
444 (3) of section 627.712, Florida Statutes, are amended to read:

445 627.712 Residential windstorm coverage required;  
446 availability of exclusions for windstorm or contents.—

447 (2) A property insurer must make available, at the option  
448 of the policyholder, an exclusion of windstorm coverage.

449 (a) The coverage may be excluded only if:

450 1. When the policyholder is a natural person, the  
451 policyholder personally writes or types and provides to the  
452 insurer the following statement ~~in his or her own handwriting~~  
453 and signs his or her name, which must also be signed by every  
454 other named insured on the policy, and dated: "I do not want the  
455 insurance on my (home/mobile home/condominium unit) to pay for  
456 damage from windstorms. I will pay those costs. My insurance  
457 will not."

458 2. When the policyholder is other than a natural person,  
459 the policyholder provides to the insurer on the policyholder's  
460 letterhead the following statement that must be signed by the  
461 policyholder's authorized representative and dated: "... (Name of  
462 entity)... does not want the insurance on its ... (type of  
463 structure)... to pay for damage from windstorms. ... (Name of  
464 entity)... will be responsible for these costs. ... (Name of

Page 16 of 27

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

590-01913-22

2022468c2

465 entity's)... insurance will not."

466 (3) An insurer issuing a residential property insurance  
467 policy, except for a condominium unit owner policy or a tenant  
468 policy, must make available, at the option of the policyholder,  
469 an exclusion of coverage for the contents. The coverage may be  
470 excluded only if the policyholder personally writes or types and  
471 provides to the insurer the following statement ~~in his or her~~  
472 ~~own handwriting~~ and signs his or her signature, which must also  
473 be signed by every other named insured on the policy, and dated:  
474 "I do not want the insurance on my (home/mobile home) to pay for  
475 the costs to repair or replace any contents that are damaged. I  
476 will pay those costs. My insurance will not."

477 Section 13. Effective upon this act becoming a law,  
478 paragraph (b) of subsection (1) and paragraph (a) of subsection  
479 (9) of section 627.7152, Florida Statutes, are amended to read:

480 627.7152 Assignment agreements.—

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

482 (b) "Assignment agreement" means any instrument by which  
483 post-loss benefits under a residential property insurance policy  
484 or commercial property insurance policy, as that term is defined  
485 in s. 627.0625(1), are assigned or transferred, or acquired in  
486 any manner, in whole or in part, to or from a person providing  
487 services, including, but not limited to, services to inspect,  
488 protect, repair, restore, or replace property or to mitigate  
489 against further damage to the property. The term does not  
490 include any instrument by which a licensed public adjuster as  
491 defined in s. 626.854(1) receives any compensation, payment,  
492 commission, fee, or other thing of value for providing services  
493 under such licensure.

Page 17 of 27

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

590-01913-22

2022468c2

494 (9) (a) An assignee must provide the named insured, insurer,  
495 and the assignor, if not the named insured, with a written  
496 notice of intent to initiate litigation before filing suit under  
497 the policy. Such notice must be served at least 10 business days  
498 before filing suit, but not before the insurer has made a  
499 determination of coverage under s. 627.70131, by certified mail,  
500 return receipt requested, to the name and mailing address  
501 designated by the insurer in the policy forms or by electronic  
502 delivery to the e-mail address designated by the insurer in the  
503 policy forms ~~at least 10 business days before filing suit, but~~  
504 ~~may not be served before the insurer has made a determination of~~  
505 ~~coverage under s. 627.70131.~~ The notice must specify the damages  
506 in dispute, the amount claimed, and a presuit settlement demand.  
507 Concurrent with the notice, and as a precondition to filing  
508 suit, the assignee must provide the named insured, insurer, and  
509 the assignor, if not the named insured, a detailed written  
510 invoice or estimate of services, including itemized information  
511 on equipment, materials, and supplies; the number of labor  
512 hours; and, in the case of work performed, proof that the work  
513 has been performed in accordance with accepted industry  
514 standards.

515 Section 14. Section 627.7276, Florida Statutes, is amended  
516 to read:

517 627.7276 Notice of limited coverage.—

518 (1) An automobile policy that does not contain coverage for  
519 bodily injury and property damage must include a notice ~~be~~  
520 ~~clearly stamped or printed to the effect~~ that such coverage is  
521 not included in the policy in the following manner:  
522

Page 18 of 27

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

590-01913-22

2022468c2

523 "THIS POLICY DOES NOT PROVIDE BODILY INJURY AND  
524 PROPERTY DAMAGE LIABILITY INSURANCE OR ANY OTHER  
525 COVERAGE FOR WHICH A SPECIFIC PREMIUM CHARGE IS NOT  
526 MADE, AND DOES NOT COMPLY WITH ANY FINANCIAL  
527 RESPONSIBILITY LAW."

529 (2) This notice legend must accompany ~~appear on~~ the policy  
530 ~~declarations declaration~~ page and ~~on the filing back of the~~  
531 ~~policy and be printed in a contrasting color from that used on~~  
532 ~~the policy and in type size larger than the largest type used in~~  
533 ~~the text at least as large as the type size used on the~~  
534 ~~declarations page thereof, as an overprint or by a rubber stamp~~  
535 ~~impression.~~

536 Section 15. Section 634.171, Florida Statutes, is amended  
537 to read:

538 634.171 Salesperson to be licensed and appointed;  
539 exemptions.—Salespersons for motor vehicle service agreement  
540 companies and insurers must ~~shall~~ be licensed, appointed,  
541 renewed, continued, reinstated, or terminated as prescribed in  
542 chapter 626 for insurance representatives in general. However,  
543 they are ~~shall be~~ exempt from all other provisions of chapter  
544 626, including those relating to fingerprinting, photo  
545 identification, education, and examination ~~provisions.~~  
546 Applicable license, appointment, and other fees are as ~~shall be~~  
547 ~~those~~ prescribed in s. 624.501. A licensed and appointed  
548 salesperson is ~~shall be~~ directly responsible and accountable for  
549 all acts of her or his employees and other representatives. Each  
550 service agreement company or insurer shall, on forms prescribed  
551 by the department, within 30 days after termination of the

Page 19 of 27

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

590-01913-22

2022468c2

552 appointment, notify the department of such termination. An ~~No~~  
553 employee or a salesperson of a motor vehicle service agreement  
554 company or an insurer may not directly or indirectly solicit or  
555 negotiate insurance contracts, or hold herself or himself out in  
556 any manner to be an insurance agent, unless so qualified,  
557 licensed, and appointed therefor under the Florida Insurance  
558 Code. A licensed personal lines or general lines agent is not  
559 required to be licensed as a salesperson under this section to  
560 solicit, negotiate, advertise, or sell motor vehicle service  
561 agreements. A motor vehicle service agreement company is not  
562 required to be licensed as a salesperson to solicit, sell,  
563 issue, or otherwise transact the motor vehicle service  
564 agreements issued by the motor vehicle service agreement  
565 company.

566 Section 16. Section 634.317, Florida Statutes, is amended  
567 to read:

568 634.317 License and appointment required; exemptions.—A ~~No~~  
569 person may not solicit, negotiate, or effectuate home warranty  
570 contracts for remuneration in this state unless such person is  
571 licensed and appointed as a sales representative. A licensed and  
572 appointed sales representative is ~~shall be~~ directly responsible  
573 and accountable for all acts of the licensee's employees. A  
574 licensed personal lines or general lines agent is not required  
575 to be licensed as a sales representative under this section to  
576 solicit, negotiate, advertise, or sell home warranty contracts.

577 Section 17. Section 634.419, Florida Statutes, is amended  
578 to read:

579 634.419 License and appointment required; exemptions.—A ~~No~~  
580 person or an entity may not ~~shall~~ solicit, negotiate, advertise,

Page 20 of 27

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

590-01913-22 2022468c2

581 or effectuate service warranty contracts in this state unless  
 582 such person or entity is licensed and appointed as a sales  
 583 representative. Sales representatives ~~are shall be~~ responsible  
 584 for the actions of persons under their supervision. However, a  
 585 service warranty association licensed as such under this part is  
 586 ~~shall not be~~ required to be licensed and appointed as a sales  
 587 representative to solicit, negotiate, advertise, or effectuate  
 588 its products. A licensed personal lines or general lines agent  
 589 is not required to be licensed as a sales representative under  
 590 this section to solicit, negotiate, advertise, or sell service  
 591 warranty contracts.

592 Section 18. Effective June 1, 2023, for the purpose of  
 593 incorporating the amendment made by this act to section 215.555,  
 594 Florida Statutes, in a reference thereto, subsection (10) of  
 595 section 624.424, Florida Statutes, is reenacted to read:

596 624.424 Annual statement and other information.—

597 (10) Each insurer or insurer group doing business in this  
 598 state shall file on a quarterly basis in conjunction with  
 599 financial reports required by paragraph (1) (a) a supplemental  
 600 report on an individual and group basis on a form prescribed by  
 601 the commission with information on personal lines and commercial  
 602 lines residential property insurance policies in this state. The  
 603 supplemental report shall include separate information for  
 604 personal lines property policies and for commercial lines  
 605 property policies and totals for each item specified, including  
 606 premiums written for each of the property lines of business as  
 607 described in ss. 215.555(2)(c) and 627.351(6)(a). The report  
 608 shall include the following information for each county on a  
 609 monthly basis:

Page 21 of 27

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

590-01913-22 2022468c2

610 (a) Total number of policies in force at the end of each  
 611 month.  
 612 (b) Total number of policies canceled.  
 613 (c) Total number of policies nonrenewed.  
 614 (d) Number of policies canceled due to hurricane risk.  
 615 (e) Number of policies nonrenewed due to hurricane risk.  
 616 (f) Number of new policies written.  
 617 (g) Total dollar value of structure exposure under policies  
 618 that include wind coverage.  
 619 (h) Number of policies that exclude wind coverage.

620 Section 19. Effective June 1, 2023, for the purpose of  
 621 incorporating the amendment made by this act to section 215.555,  
 622 Florida Statutes, in a reference thereto, paragraph (v) of  
 623 subsection (6) of section 627.351, Florida Statutes, is  
 624 reenacted to read:

625 627.351 Insurance risk apportionment plans.—

626 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

627 (v)1. Effective July 1, 2002, policies of the Residential  
 628 Property and Casualty Joint Underwriting Association become  
 629 policies of the corporation. All obligations, rights, assets and  
 630 liabilities of the association, including bonds, note and debt  
 631 obligations, and the financing documents pertaining to them  
 632 become those of the corporation as of July 1, 2002. The  
 633 corporation is not required to issue endorsements or  
 634 certificates of assumption to insureds during the remaining term  
 635 of in-force transferred policies.

636 2. Effective July 1, 2002, policies of the Florida  
 637 Windstorm Underwriting Association are transferred to the  
 638 corporation and become policies of the corporation. All

Page 22 of 27

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

590-01913-22

2022468c2

639 obligations, rights, assets, and liabilities of the association,  
 640 including bonds, note and debt obligations, and the financing  
 641 documents pertaining to them are transferred to and assumed by  
 642 the corporation on July 1, 2002. The corporation is not required  
 643 to issue endorsements or certificates of assumption to insureds  
 644 during the remaining term of in-force transferred policies.

645 3. The Florida Windstorm Underwriting Association and the  
 646 Residential Property and Casualty Joint Underwriting Association  
 647 shall take all actions necessary to further evidence the  
 648 transfers and provide the documents and instruments of further  
 649 assurance as may reasonably be requested by the corporation for  
 650 that purpose. The corporation shall execute assumptions and  
 651 instruments as the trustees or other parties to the financing  
 652 documents of the Florida Windstorm Underwriting Association or  
 653 the Residential Property and Casualty Joint Underwriting  
 654 Association may reasonably request to further evidence the  
 655 transfers and assumptions, which transfers and assumptions,  
 656 however, are effective on the date provided under this paragraph  
 657 whether or not, and regardless of the date on which, the  
 658 assumptions or instruments are executed by the corporation.  
 659 Subject to the relevant financing documents pertaining to their  
 660 outstanding bonds, notes, indebtedness, or other financing  
 661 obligations, the moneys, investments, receivables, choses in  
 662 action, and other intangibles of the Florida Windstorm  
 663 Underwriting Association shall be credited to the coastal  
 664 account of the corporation, and those of the personal lines  
 665 residential coverage account and the commercial lines  
 666 residential coverage account of the Residential Property and  
 667 Casualty Joint Underwriting Association shall be credited to the

Page 23 of 27

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

590-01913-22

2022468c2

668 personal lines account and the commercial lines account,  
 669 respectively, of the corporation.

670 4. Effective July 1, 2002, a new applicant for property  
 671 insurance coverage who would otherwise have been eligible for  
 672 coverage in the Florida Windstorm Underwriting Association is  
 673 eligible for coverage from the corporation as provided in this  
 674 subsection.

675 5. The transfer of all policies, obligations, rights,  
 676 assets, and liabilities from the Florida Windstorm Underwriting  
 677 Association to the corporation and the renaming of the  
 678 Residential Property and Casualty Joint Underwriting Association  
 679 as the corporation does not affect the coverage with respect to  
 680 covered policies as defined in s. 215.555(2)(c) provided to  
 681 these entities by the Florida Hurricane Catastrophe Fund. The  
 682 coverage provided by the fund to the Florida Windstorm  
 683 Underwriting Association based on its exposures as of June 30,  
 684 2002, and each June 30 thereafter shall be redesignated as  
 685 coverage for the coastal account of the corporation.  
 686 Notwithstanding any other provision of law, the coverage  
 687 provided by the fund to the Residential Property and Casualty  
 688 Joint Underwriting Association based on its exposures as of June  
 689 30, 2002, and each June 30 thereafter shall be transferred to  
 690 the personal lines account and the commercial lines account of  
 691 the corporation. Notwithstanding any other provision of law, the  
 692 coastal account shall be treated, for all Florida Hurricane  
 693 Catastrophe Fund purposes, as if it were a separate  
 694 participating insurer with its own exposures, reimbursement  
 695 premium, and loss reimbursement. Likewise, the personal lines  
 696 and commercial lines accounts shall be viewed together, for all

Page 24 of 27

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

590-01913-22 2022468c2

697 fund purposes, as if the two accounts were one and represent a  
 698 single, separate participating insurer with its own exposures,  
 699 reimbursement premium, and loss reimbursement. The coverage  
 700 provided by the fund to the corporation shall constitute and  
 701 operate as a full transfer of coverage from the Florida  
 702 Windstorm Underwriting Association and Residential Property and  
 703 Casualty Joint Underwriting Association to the corporation.

704 Section 20. For the purpose of incorporating the amendment  
 705 made by this act to section 626.221, Florida Statutes, in a  
 706 reference thereto, paragraph (b) of subsection (1) of section  
 707 626.8734, Florida Statutes, is reenacted to read:

708 626.8734 Nonresident all-lines adjuster license  
 709 qualifications.—

710 (1) The department shall issue a license to an applicant  
 711 for a nonresident all-lines adjuster license upon determining  
 712 that the applicant has paid the applicable license fees required  
 713 under s. 624.501 and:

714 (b) Has passed to the satisfaction of the department a  
 715 written Florida all-lines adjuster examination of the scope  
 716 prescribed in s. 626.241(6); however, the requirement for the  
 717 examination does not apply to:

718 1. An applicant who is licensed as an all-lines adjuster in  
 719 his or her home state if that state has entered into a  
 720 reciprocal agreement with the department;

721 2. An applicant who is licensed as a nonresident all-lines  
 722 adjuster in a state other than his or her home state and a  
 723 reciprocal agreement with the appropriate official of the state  
 724 of licensure has been entered into with the department; or

725 3. An applicant who holds a certification set forth in s.

590-01913-22 2022468c2

726 626.221(2)(j).

727 Section 21. For the purpose of incorporating the amendment  
 728 made by this act to section 626.856, Florida Statutes, in a  
 729 reference thereto, paragraph (e) of subsection (1) of section  
 730 626.865, Florida Statutes, is reenacted to read:

731 626.865 Public adjuster's qualifications, bond.—

732 (1) The department shall issue a license to an applicant  
 733 for a public adjuster's license upon determining that the  
 734 applicant has paid the applicable fees specified in s. 624.501  
 735 and possesses the following qualifications:

736 (e) Has been licensed in this state as an all-lines  
 737 adjuster, and has been appointed on a continual basis for the  
 738 previous 6 months as a public adjuster apprentice under s.  
 739 626.8561, as an independent adjuster under s. 626.855, or as a  
 740 company employee adjuster under s. 626.856.

741 Section 22. Effective upon this act becoming a law, for the  
 742 purpose of incorporating the amendment made by this act to  
 743 section 627.7152, Florida Statutes, in references thereto,  
 744 subsection (1) and paragraph (d) of subsection (2) of section  
 745 627.7153, Florida Statutes, are reenacted to read:

746 627.7153 Policies restricting assignment of post-loss  
 747 benefits under a property insurance policy.—

748 (1) As used in this section, the term "assignment  
 749 agreement" has the same meaning as provided in s. 627.7152.

750 (2) An insurer may make available a policy that restricts  
 751 in whole or in part an insured's right to execute an assignment  
 752 agreement only if all of the following conditions are met:

753 (d) Each restricted policy include on its face the  
 754 following notice in 18-point uppercase and boldfaced type:

590-01913-22

2022468c2

755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767

THIS POLICY DOES NOT ALLOW THE UNRESTRICTED ASSIGNMENT OF POST-LOSS INSURANCE BENEFITS. BY SELECTING THIS POLICY, YOU WAIVE YOUR RIGHT TO FREELY ASSIGN OR TRANSFER THE POST-LOSS PROPERTY INSURANCE BENEFITS AVAILABLE UNDER THIS POLICY TO A THIRD PARTY OR TO OTHERWISE FREELY ENTER INTO AN ASSIGNMENT AGREEMENT AS THE TERM IS DEFINED IN SECTION 627.7152 OF THE FLORIDA STATUTES.

Section 23. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2022.



The Florida Senate

## Committee Agenda Request

**To:** Senator Kelli Stargel, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** January 17, 2022

---

I respectfully request that **CS/CS/Senate Bill #468**, relating to Insurance, be placed on the:

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

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

---

Senator Keith Perry  
Florida Senate, District 8



1/27/2022

Meeting Date

# The Florida Senate APPEARANCE RECORD

SB 468

Bill Number or Topic

Appropriations

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name

PAUL HANDESHAN

Phone

561 704 0428

Address

120 South Monroe Street

Email

Street

Tallahassee FL 32301

City

State

Zip

Speaking:

For

Against

Information

**OR**

Waive Speaking:

In Support

Against

### PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without  
compensation or sponsorship.

I am a registered lobbyist,  
representing:

FAIR

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) [flsenate.gov](#)

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

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

1-27-22

Meeting Date

SB 464

Bill Number or Topic

Appropriation

Committee

Amendment Barcode (if applicable)

Name

Richard Reeves

Phone

850-445-0622

Address

Street

Email

rr@r/rconsult.com

City

State

Zip

Speaking:

For

Against

Information

**OR**

Waive Speaking:

In Support

Against

### PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without  
compensation or sponsorship.

I am a registered lobbyist,  
representing:

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

FL Assn. of Insurance Agents

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

The Florida Senate

**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

1/27

Meeting Date

468

Bill Number or Topic

S. Appropriations

Committee

Amendment Barcode (if applicable)

Name Greg Black

Phone 509 8022

Address 1727 Highland Place  
Street

Email Greg@waypointstrat.com

TLH FL 32308  
City State Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

R Street Institute

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

*While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) ([flsenate.gov](#))*

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

S-001 (08/10/2021)

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

1-27  
Meeting Date  
Appropriations  
Committee

468  
Bill Number or Topic  
Amendment Barcode (if applicable)

Name Lamar Taylor Phone 850 413 1187

Address 1801 Hermitage Blvd Email lamar.taylor@state.fl.us  
Street

Tallahassee 32308  
City State Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

- I am appearing without compensation or sponsorship.
- I am a registered lobbyist, representing:  
State Board of Administration
- I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

*While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf](#) (flsenate.gov)*

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

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

1-27-22

Meeting Date

468

Bill Number or Topic

Appropriations

Committee

571360

Amendment Barcode (if applicable)

Name Gina Wilson

Phone 850-413-1340

Address 1801 Hermitage Blvd  
Street

Email gina.wilson@sbafla.com

Tallahassee FL 32308  
City State Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

*While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf](#) (flsenate.gov).*

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

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

1-27-2022

Meeting Date

468

Bill Number or Topic

Appropriations

Committee

571360

Amendment Barcode (if applicable)

Name Richard Reeves

Phone 850-445-0622

Address Street

Email rr@rlrconsult.com

City

State

Zip

Speaking: [ ] For [ ] Against [ ] Information OR Waive Speaking: [x] In Support [ ] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[ ] I am appearing without compensation or sponsorship.

[x] I am a registered lobbyist, representing:

[ ] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

FL Assn. of Insurance Agents

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf flsenate.gov

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

The Florida Senate

**APPEARANCE RECORD**

1/27/22

468

Meeting Date

Bill Number or Topic

**Appropriations**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

**571360**

Committee

Amendment Barcode (if applicable)

Name **Adam Basford**

Phone **850-224-7173**

Address **516 N Adams**

Email **abasford@aif.com**

Street

**Tallahassee**

**FL**

**32301**

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

**Associated Industries of Florida**

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

*While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)*

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

S-001 (08/10/2021)

1/27/2022

# The Florida Senate APPEARANCE RECORD

SB 468

Meeting Date

Appropriations

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Bill Number or Topic

571360

Committee

Amendment Barcode (if applicable)

Name

PAUL HANDERHAN

Phone

561 704 0428

Address

120 South Monroe Street

Email

Paul@ramboconsulting.com

Street

Tallahassee FL 32301

City

State

Zip

Speaking:

For

Against

Information

**OR**

Waive Speaking:

In Support

Against

### PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FAIR

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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



1/27/22

Meeting Date

# The Florida Senate APPEARANCE RECORD

468

Bill Number or Topic

571360

Amendment Barcode (if applicable)

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Appropriations

Committee

Name Carolyn Johnson

Phone 707 913 3400

Address 136 S. Bronough St.

Email cjohnson@flchamber.ca

Street

Tallahassee FL 32301

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

### PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FL Chamber of Commerce

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. 511.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: PCS/CS/SB 494

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Environment and Natural Resources Committee; and Senator Hutson

SUBJECT: Fish and Wildlife Conservation Commission

DATE: January 26, 2022

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Carroll</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2. <u>Reagan</u>	<u>Betta</u>	<u>AEG</u>	<u>Recommend: Fav/CS</u>
3. <u>Reagan</u>	<u>Sadberry</u>	<u>AP</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

PCS/CS/SB 494 revises laws administered by the Fish and Wildlife Conservation Commission (FWC) and other law enforcement entities. The bill:

- Amends the Florida Forever Act to require each lead land managing agency, in consultation with the FWC, to consider in the management plan the feasibility of creating a gopher tortoise recipient site for state lands under its management which are larger than 40 contiguous acres.
- Specifies that a vessel is at risk of becoming derelict if it is tied to an unlawful or unpermitted mooring or other structure.
- Specifies the circumstances in which law enforcement may destroy or dispose of a vessel.
- Reorganizes provisions authorizing the FWC to establish a program to provide grants to local governments for the removal, storage, destruction, and disposal of derelict vessels.
- Allows operation of human-powered vessels in the marked channel of the Florida Intracoastal Waterway for specified reasons.
- Specifies that a certificate of title may not be issued for a public nuisance vessel.
- Specifies that a local government cannot create a public bathing beach or swim area in the marked channel of the Florida Intracoastal Waterway or within 100 feet of the marked channel.
- Adds public nuisance vessels to the definition of abandoned property.

- Places liability for costs of vessel removal, storage, destruction, and disposition on the owner or responsible party after notice is given.
- Authorizes FWC law enforcement officers to use drones to manage and eradicate invasive plants or animals on public lands and to suppress and mitigate wildfire threats.

The bill will have an indeterminate fiscal impact on the FWC as the derelict vessel removal grants to local governments will be subject to appropriation.

## II. Present Situation:

### Florida Forever

As a successor to Preservation 2000, the Legislature created the Florida Forever program in 1999 as the blueprint for conserving Florida's natural resources.<sup>1</sup> The Florida Forever Act reinforced the state's commitment to conserve its natural and cultural heritage, provide urban open space, and better manage the land acquired by the state.<sup>2</sup> Florida Forever encompasses a wide range of goals including: land acquisition; environmental restoration; water resource development and supply; increased public access; public lands management and maintenance; and increased protection of land through the purchase of conservation easements.<sup>3</sup> The state has acquired more than 2.4 million acres since 1991 under the Preservation 2000 and the Florida Forever programs.<sup>4</sup>

### Fish and Wildlife Conservation Commission

The Fish and Wildlife Conservation Commission (FWC) is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources.<sup>5</sup> The FWC is governed by a board of seven members who are appointed by the Governor and confirmed by the Florida Senate to five-year terms.<sup>6</sup> Under Article IV, section 9 of the Florida Constitution, the FWC is granted the authority to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.

Chapters 327 and 328, F.S., concerning vessel safety and vessel title certificates, liens, and registration, are enforced by the FWC's Division of Law Enforcement and its officers, county sheriffs and deputies, municipal police officers, and any other law enforcement officer.<sup>7</sup> The

---

<sup>1</sup> Chapter 99-247, Laws of Fla.

<sup>2</sup> Department of Environmental Protection (DEP), *Florida Forever Five Year Plan* (2021), 17, available at [FLDEP\\_DSL\\_OES\\_FF\\_2021Abstract\\_2.pdf \(floridadep.gov\)](https://www.floridadep.gov/lands/environmental-services/content/faq-florida-forever) (last visited Jan. 10, 2022).

<sup>3</sup> Section 259.105, F.S.

<sup>4</sup> DEP, *Frequently Asked Questions about Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/faq-florida-forever> (last visited Jan. 10, 2022). See Florida Natural Areas Inventory, *Summary of Florida Conservation Lands* (Feb. 2019), available at [https://www.fnai.org/PDFs/Maacres\\_202103\\_FCL\\_plus\\_LTF.pdf](https://www.fnai.org/PDFs/Maacres_202103_FCL_plus_LTF.pdf) (last visited Jan. 10, 2022) for a complete summary of the total amount of conservation lands in Florida.

<sup>5</sup> FLA. CONST. art. IV, s. 9.

<sup>6</sup> *Id.*; see also s. 379.102(1), F.S.

<sup>7</sup> Section 327.70(1), F.S.; see s. 943.10(1), F.S., which defines "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management

Division of Law Enforcement manages the state's waterways to ensure boating safety for residents and visitors.<sup>8</sup> This includes enforcing boating rules and regulations, coordinating boating safety campaigns and education, managing public waters and access to the waters, conducting boating accident investigations, identifying and removing derelict vessels, and investigating vessel theft and title fraud.<sup>9</sup>

### **Boating Safety Regulations**

A vessel operator in Florida must operate the vessel in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of another person outside the vessel or due to vessel overloading or excessive speed.<sup>10</sup> Operating a vessel in excess of a posted speed limit is a noncriminal infraction, for which the penalty is \$50.<sup>11</sup>

Vessel owners and operators must maintain safety equipment in accordance with current Coast Guard safety equipment requirements, unless expressly exempted.<sup>12</sup> Vessel owners and operators are also subject to additional safety requirements relating to appropriate equipment and the use of personal flotation devices.<sup>13</sup>

### **Testing for Alcohol, Chemical Substances, and Controlled Substances**

Anyone who operates a motor vehicle or vessel in the state, by operating such a vehicle or vessel, consents to an approved chemical or physical breath test to determine breath alcoholic content, or a urine test to detect the presence of chemical substances or controlled substances.<sup>14</sup> These tests may be performed if the person is lawfully arrested for any offense allegedly committed while the person was driving or in actual physical control of a motor vehicle, or operating a vessel, while under the influence of alcohol or chemical or controlled substances.<sup>15</sup>

Additionally, anyone who operates a motor vehicle or vessel in the state consents to an approved blood test to determine blood alcoholic content or to detect the presence of chemical substances or controlled substances.<sup>16</sup> These tests may be performed if there is reasonable cause to believe that the person was driving or in actual physical control of a motor vehicle, or operating a vessel, while under the influence of alcohol or chemical or controlled substances and the person appears for treatment at a hospital, clinic, or emergency vehicle, and the administration of a breath or urine test is impractical or impossible.<sup>17</sup>

---

responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

<sup>8</sup> Fish and Wildlife Conservation Commission (FWC), *Boating*, <https://myfwc.com/boating/> (last visited Nov. 5, 2021).

<sup>9</sup> FWC, *Law Enforcement*, <https://myfwc.com/about/inside-fwc/le/> (last visited Nov. 5, 2021). *See* ss. 327.70(1) and (4), F.S.

<sup>10</sup> Section 327.33, F.S.

<sup>11</sup> Section 327.73(h), F.S.

<sup>12</sup> Section 327.50, F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Sections 316.1932(1)(a) and 327.352(1)(a), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Sections 316.1932(1)(c) and 327.352(1)(c), F.S.

<sup>17</sup> *Id.*

A person who operates a motor vehicle and fails to submit to a breath, urine, or blood test will have his or her driver's license suspended for a period of one year for a first refusal, or 18 months for a repeat refusal.<sup>18</sup> A person who operates a motor vehicle who fails to submit to such test who has previously had his or her license suspended for a prior refusal commits a misdemeanor of the first degree and is subject to additional penalties.<sup>19</sup>

A person who operates a vessel and fails to submit to a breath, urine, or blood test is subject to a civil penalty of \$500 for a first refusal.<sup>20</sup> A person who operates a vessel and fails to submit to such test who has been previously fined commits a misdemeanor and is subject to additional penalties.<sup>21</sup>

### **Boating-Restricted Areas**

Boating-restricted areas, which may restrict the speed and operation of vessels, may be established on the waters of the state for any purpose necessary to protect the safety of the public, taking into account boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards, as well as seagrass protection on privately owned submerged lands.<sup>22</sup>

Local governments have authority to establish boating-restricted areas by ordinance within the portion of the Florida Intracoastal Waterway within their jurisdiction.<sup>23</sup> These areas include, but are not limited to:

- Idle-speed, no wake areas;
- Slow speed, minimum wake areas; and
- Vessel-exclusion zones.

Local governments can establish vessel-exclusion zones if the area is:

- Designated as a public bathing beach or swim area;
- Within 300 feet of a dam, spillway, or flood control structure;
- Reserved as a canoe trail or otherwise limited to vessels under oars or sail; or
- Reserved exclusively for a particular activity and user group separation must be imposed to protect the safety of participants.<sup>24</sup>

### **Derelict Vessels**

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or

---

<sup>18</sup> Sections 316.1932(1)(a) and (1)(c), F.S.

<sup>19</sup> *Id.*; s. 316.1939, F.S.

<sup>20</sup> Sections 327.352(1)(a) and (1)(c), F.S.

<sup>21</sup> *Id.*; s. 327.259, F.S.

<sup>22</sup> Section 327.46(1), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

beached upon the property of another without the consent.<sup>25</sup> It is unlawful to store, leave, or abandon any derelict vessel in this state.<sup>26</sup>

### ***At-Risk Vessels***

Neglected or deteriorating vessels may not occupy the waters of this state.<sup>27</sup> A vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater;
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor;
- The vessel is listing due to water intrusion; or
- The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives notice.<sup>28</sup>

### ***Vessels Declared to be a Public Nuisance***

If a vessel is declared at risk of becoming derelict under the same condition three or more times within an 18-month period, and if the determination results in dispositions other than acquittal or dismissal, the vessel is declared to be a public nuisance.<sup>29</sup> A vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater;
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor;
- The vessel is listing due to water intrusion; or
- The vessel does not have effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives notice.<sup>30</sup>

A vessel that is declared to be a public nuisance and threatens navigation, or is a danger to the environment, property, or persons, may be relocated, removed, stored, destroyed, or disposed of by the FWC or other law enforcement.<sup>31</sup> When a derelict vessel or a vessel declared to be a public nuisance through the process described above is located on the waters of the state, a law enforcement officer shall place a notice on the vessel in a form substantially similar to the one provided by statute.<sup>32</sup>

---

<sup>25</sup> Section 823.11(1)(b), F.S.

<sup>26</sup> Section 376.15, F.S.; s. 823.11(2), F.S.

<sup>27</sup> Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.

<sup>28</sup> Section 327.4107, F.S.

<sup>29</sup> Section 327.73(1)(aa), F.S.; s. 327.4107(2), F.S.

<sup>30</sup> Section 327.4107(2), F.S.

<sup>31</sup> Section 327.73(1)(aa), F.S.; s. 823.11(3), F.S.

<sup>32</sup> Section 705.103(1)(b), F.S.

### ***Abandoned Vessels***

“Abandoned property”<sup>33</sup> means all tangible personal property that does not have an identifiable owner and that has been disposed of on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner. The term includes derelict vessels, as defined in state law.

When a derelict vessel or a vessel declared to be a public nuisance is on the waters of the state, a law enforcement officer must place a notice of removal on the vessel. The law enforcement agency must then contact the Department of Highway Safety and Motor Vehicles to determine the name and address of the owner, and must mail a copy of the notice to the owner.<sup>34</sup>

If, after 21 days of posting and mailing the notice, the owner has not removed the vessel from the waters of the state or shown reasonable cause for failure to do so, the law enforcement agency may remove, destroy, or dispose of the vessel.<sup>35</sup>

The owner of a derelict vessel or a vessel declared to be a public nuisance who does not remove the vessel after receiving notice, is liable to the law enforcement agency for all costs of removal, storage, and destruction of the vessel, less any salvage value obtained by its disposal.<sup>36</sup> Upon the final disposition of the vessel, the law enforcement officer must notify the owner of the amount owed. A person who neglects or refuses to pay the amount owed is not entitled to be issued a certificate of registration for the vessel, or any other vessel, until such costs have been paid.<sup>37</sup>

Local governments are authorized to enact and enforce regulations to implement the procedures for abandoned or lost property that allow a local law enforcement agency, after providing written notice, to remove a vessel affixed to a public dock within its jurisdiction that is abandoned or lost property.<sup>38</sup>

### ***Removal of Derelict Vessels***

The FWC’s Division of Law Enforcement and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.<sup>39</sup> Sections 376.15 and 823.11, F.S., both address the treatment of derelict vessels. Much of the language between the two statutes is duplicative.<sup>40</sup>

Both state and local law enforcement are authorized and empowered to relocate, remove, store, destroy, or dispose of a derelict vessel from waters of the state if the derelict vessel threatens navigation or is a danger to the environment, property, or persons.<sup>41</sup> The FWC officers and other law enforcement agency officers or contractors who perform relocation or removal activities at

<sup>33</sup> Section 705.101(3), F.S.

<sup>34</sup> Section 705.103(2), F.S.

<sup>35</sup> *Id.*

<sup>36</sup> Section 705.103(4), F.S.

<sup>37</sup> *Id.*

<sup>38</sup> Section 327.60(5), F.S.

<sup>39</sup> Section 327.70, F.S.

<sup>40</sup> Section 376.15, F.S.; s. 823.11, F.S.

<sup>41</sup> Section 823.11(3), F.S.; s. 376.15(3)(a), F.S.

the FWC's direction are required to be licensed, insured, and properly equipped to perform the services to be provided.<sup>42</sup>

The costs incurred by the FWC or another law enforcement agency for relocating or removing a derelict vessel are recoverable against the vessel owner.<sup>43</sup> A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by its disposal, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.<sup>44</sup>

The FWC has the authority to provide grants, funded from the Marine Resource Conservation Trust Fund or the Florida Coastal Protection Trust Fund, to local governments for the removal of derelict vessels from waters of this state, if funds are appropriated for the grant program.<sup>45</sup> However, each fiscal year, if all program funds are not requested by and granted to local governments for the removal of derelict vessels by the end of the third quarter, the FWC may use the remainder of the funds to remove, or pay private contractors to remove, derelict vessels.<sup>46</sup> Pursuant to this, the FWC established the Derelict Vessel Removal Grant Program in 2019.<sup>47</sup> Grants are awarded based on a set of criteria outlined in FWC rules.<sup>48</sup>

### ***Penalties for Prohibited Acts Relating to Derelict Vessels and Anchoring and Mooring***

It is a first degree misdemeanor to store, leave, or abandon a derelict vessel in Florida.<sup>49</sup> Violations are punishable by imprisonment of no more than one year and a fine of up to \$1,000.<sup>50</sup> Further, such violation is punishable by a civil penalty of up to \$75,000 per violation per day.<sup>51</sup> Each day during any portion of which the violation occurs constitutes a separate offense.<sup>52</sup>

An owner or operator of a vessel at risk of becoming derelict on waters of this state or who allows such vessel to occupy such waters, is subject to a uniform boating citation and civil penalty. The civil penalty provided is:

- \$100 for a first offense;
- \$250 for a second offense occurring 30 days or more after a first offense; and
- \$500 for a third offense occurring 30 days or more after a previous offense.<sup>53</sup>

---

<sup>42</sup> Section 823.11(3)(c), F.S.; s. 376.15(3)(c), F.S.

<sup>43</sup> Section 823.11(3)(a), F.S.; s. 376.15(3)(a), F.S.

<sup>44</sup> Section 705.103(4), F.S.

<sup>45</sup> Section 376.15, F.S.

<sup>46</sup> Section 376.15, F.S.

<sup>47</sup> FWC, *FWC Derelict Vessel Removal Grant Program Guidelines, 2* (2019), available at <https://myfwc.com/media/22317/dv-grant-guidelines.pdf> (last visited Nov. 15, 2021). Incorporated by reference in Fla. Admin. Code R. 68-1.003.

<sup>48</sup> *Id.*

<sup>49</sup> Sections 376.15(2) and 823.11(2) and (5), F.S. A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>50</sup> Sections 775.082(4)(a) and 775.083(1)(d), F.S.

<sup>51</sup> Sections 376.15(2) and 376.16(1), F.S.

<sup>52</sup> Section 376.16(1), F.S.

<sup>53</sup> Section 327.73(1)(aa), F.S.



An owner or operator of a vessel or floating structure who anchors or moors in a prohibited area is subject to a uniform boating citation and penalties. The civil penalty provided is up to a maximum of:

- \$50 for a first offense;
- \$100 for a second offense; and
- \$250 for a third offense.<sup>54</sup>

Any person who fails to appear or otherwise properly respond to a uniform boating citation must, in addition to the charge relating to the violation of the boating laws, be charged with a second degree misdemeanor, which is punishable by a maximum fine of \$500 and no more than 60 days of imprisonment.<sup>55</sup>

**Florida Intracoastal Waterway**

The Florida Intracoastal Waterway consists of the following waterways: the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to Fort Myers; the St. Johns River, Jacksonville to Sanford; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to Anclote open bay section, using the Gulf of Mexico; the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and the Apalachicola, Chattahoochee, and Flint Rivers in Florida.<sup>56</sup> The Florida Intracoastal Waterway is shown in the map below.<sup>57</sup>



<sup>54</sup> Section 327.73(1)(bb), F.S.

<sup>55</sup> Sections 327.73(1), 775.082, and 775.083, F.S.

<sup>56</sup> Section 327.02(15), F.S.

<sup>57</sup> Florida Department of Transportation, *Florida Waterways System Plan*, Figure 1-2 on p. 1-12 (2015), available at [https://www.fdot.gov/docs/default-source/seaport/pdfs/2015-Florida-Waterways-System-Plan\\_Final.pdf](https://www.fdot.gov/docs/default-source/seaport/pdfs/2015-Florida-Waterways-System-Plan_Final.pdf) (last visited Nov. 5, 2021).

## Drones

A drone is a powered, aerial vehicle that does not carry a human operator; uses aerodynamic forces to provide vehicle lift; can fly autonomously or be piloted remotely; can be expendable or recoverable; and can carry a lethal or nonlethal payload.<sup>58</sup> Florida law prohibits the use of drones by a law enforcement agency to gather evidence or other information, and by a person, state agency, or political subdivision to conduct surveillance on privately-owned real property or on the owner, tenant, occupant, invitee, or licensee of the real property.<sup>59</sup> The exceptions to the prohibition allow a non-law enforcement employee of the FWC or the Florida Forest Service to use a drone to manage or eradicate invasive exotic plants or animals on public lands and to suppress wildfire threats.<sup>60</sup>

Remote sensing using drones for the surveillance, detection, and reporting of an invasive species can improve early detection of invading plants and animals, making management more efficient and less expensive.<sup>61</sup> Studies have shown that drones can efficiently and inexpensively cover a large geographic range, reach places that are difficult to access, carry a variety of cameras and sensors, collect biological specimens, and target and eliminate individual organisms through ballistic application of herbicides.<sup>62</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 259.105, F.S., the Florida Forever Act, to require each lead land management agency, in consultation with the Fish and Wildlife Conservation Commission (FWC), to consider in the management plan the feasibility of creating a gopher tortoise recipient site for state lands under its management which are larger than 40 contiguous acres.

If the recipient site management is not in conflict with the primary management objects of the parcel, the management plan must contain an assessment of feasibility of managing the site as a recipient site for gopher tortoises.

Each land management agency must consult with the FWC on feasibility assessments and implementation of gopher tortoise management.

Provides that gopher tortoise recipient sites should be used, where appropriate, to bring environmentally sensitive tracts under an acceptable level of protection.

**Section 2** amends s. 327.352, F.S., to change a driver's license suspension to a driving privilege suspension, as related to a refusal to submit to a lawful breath, urine, or blood test.

---

<sup>58</sup> Section 934.50(1)(a), F.S.

<sup>59</sup> Section 934.50(3), F.S.

<sup>60</sup> Section 934.50(4)(p), F.S.

<sup>61</sup> Barbara Martinez, Alex Dehgan, Brad Zamft, David Baisch, Colin McCormick, Anthony J. Giordano, Rebecca Aicher, Shah Selbe, Cassie Hoffman, *Advancing federal capacities for the early detection of and rapid response to invasive species through technology innovation*, National Invasive Species Council: Contractor's Report, Mar. 2017, available at [federal capacities for edrr through technology innovation prepub 8.7.17.pdf \(doi.gov\)](#) (last visited Nov. 15 2021).

<sup>62</sup> *Id.*

**Section 3** amends s. 327.35215, F.S., to require that the Fish and Wildlife Conservation Commission (FWC) provide the certified statement forms that a law enforcement officer must fill out upon arresting a person for refusing to submit to lawful breath, blood, or urine test.

**Section 4** amends s. 327.371, F.S., to allow a person to operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway when participating in interscholastic, intercollegiate, intramural, or club athletic teams or sports affiliated with an educational institution.

**Section 5** amends s. 327.4107, F.S., to allow an FWC officer or other law enforcement officer to determine that a vessel is at risk of becoming derelict if it is tied to an unlawful or unpermitted structure or mooring.

**Section 6** amends s. 327.46, F.S., to clarify that when municipalities and counties establish public bathing beach or swim areas as vessel-exclusion zones, they may not establish them within the marked channel of the Florida Intracoastal Waterway or within 100 feet of any portion of the marked channel.

**Section 7** repeals s. 376.15, F.S. The repeal has no effect, as the bill merely moves non-duplicative language in s. 376.15, F.S., relating to derelict vessels and their relocation or removal from waters of this state, from that section to s. 823.11, F.S., which also addresses derelict vessels.

**Section 8** amends s. 379.101, F.S., to clarify the definitions of “marine fish” and “saltwater fish” to reflect updates in the scientific classification of certain identifying terminology.

**Section 9** amends s. 705.101, F.S., to add vessels declared a public nuisance to the definition of abandoned property. Vessels that are abandoned property are declared a public nuisance after having been found at risk of dereliction three or more times for the same condition within 18 months.

**Section 10** amends s. 705.103, F.S., relating to procedures for abandoned or lost property. The bill adds vessels declared to be a public nuisance into the notice requirements and liability provisions applicable to owners of, or parties responsible for, derelict vessels. The bill also allows law enforcement officers to dispose of derelict vessels or vessels declared to be a public nuisance. This section also makes technical changes and deletes a cross-reference to s. 376.15, F.S.

**Section 11** amends s. 705.103, F.S., as amended by chapters 2019-76 and 2021-184, Laws of Florida, which will be effective July 1, 2023, to make the changes discussed in Section 9 of the bill.

**Section 12** amends s. 823.11, F.S., to clarify that additional time provided for an owner or responsible party to remove a derelict vessel from the waters of this state, or to repair and remedy the vessel’s derelict condition in the event of an accident or event, does not apply if the vessel was already derelict. The bill removes language allowing law enforcement to destroy or dispose of derelict vessels threatening navigation or endangering environment, property, or

persons. The bill moves language relating to grants for removal and disposal of derelict vessels from s. 376.15, F.S., (deleted by the bill) into s. 823.11, F.S. It also makes technical changes and deletes references to s. 376.15, F.S.

**Section 13** amends s. 934.50, F.S., relating to searches and seizure using a drone. The bill deletes language prohibiting law enforcement employees of the FWC and the Florida Forest Service from using a drone to manage and eradicate invasive exotic plants and animals on public lands and to suppress and mitigate wildfire threats.

**Section 14** amends s. 327.04, F.S., to delete a reference to s. 376.15, F.S.

**Section 15** amends s. 328.09, F.S., to delete and revise a reference to s. 376.15, F.S. The bill also provides that the Department of Highway Safety and Motor Vehicles may not issue a certificate of title for a vessel that has been deemed a public nuisance after having been found at risk of becoming derelict three or more times within an 18-month period. The bill authorizes the department to issue a certificate of title once law enforcement has verified in writing that the vessel is no longer a public nuisance. The bill adds these requirements for public nuisance vessels to the current requirements for derelict vessels.

**Section 16** amends s. 25 of ch. 2021-184, Laws of Florida, to remove a reference to s. 376.15, F.S.

**Section 17** amends s. 328.72, F.S., to delete and revise a reference to s. 376.15, F.S.

**Section 18** amends s. 376.11, F.S., to direct that Florida Coastal Protection Trust Fund moneys may be used to fund grant programs for local governments for the removal of public nuisance vessels, in addition to derelict vessels, from the public waters of the state. The bill also deletes and revises a reference to s. 376.15, F.S.

**Sections 19, 20 and 21** reenacts ss. 327.73(1)(dd), 125.01(4), and 379.2412, F.S., to incorporate the amendments made by this bill to allow human-powered vessels to operate in the Florida Intracoastal Waterway for certain reasons, and to make clarifying revisions to the definition of marine and saltwater fish.

**Section 22** provides that except as otherwise expressly provided, the effective date is July 1, 2022.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate. Local governments may benefit from expanded use of grant programs; expanded use of grant programs may necessitate the need for additional funding from state government.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The amendment in Section 4 revises a section of law authorizing a Fish and Wildlife Conservation Commission or other law enforcement officer to determine if a vessel is at risk of becoming derelict. All existing criteria are related to the condition of the vessel, however the criteria the bill adds is unrelated to the condition of the vessel. A clarification may be appropriate.

**VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 259.105, 327.352, 327.35215, 327.371, 327.4107, 327.46, 379.101, 705.101, 705.103, 823.11, 934.50, 327.04, 328.09, 328.72, and 376.11.

This bill repeals section 376.15 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 327.73(1)(dd), 125.01(4), and 379.2412.

## **IX. Additional Information:**

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

#### **PCS (602302) by Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment and General Government):**

The committee substitute:

- Amends the Florida Forever Act to require each lead land managing agency, in consultation with the Fish and Wildlife Conservation Commission (FWC), to consider in the management plan the feasibility of creating a gopher tortoise recipient site for state lands under its management which are larger than 40 contiguous acres.
  - If the recipient site management is not in conflict with the primary management objects of the parcel, the management plan must contain an assessment of feasibility of managing the site as a recipient site for gopher tortoise.
  - Each land management agency must consult with FWC on feasibility assessments and implementation of gopher tortoise management.
- Provides that gopher tortoise recipient sites should be used, where appropriate, to bring environmentally sensitive tracts under an acceptable level of protection.

#### **CS by Environment and Natural Resources on November 30, 2021:**

- Requires that the Fish and Wildlife Conservation Commission, not the Department of Highway Safety and Motor Vehicles (department), provide the forms that a law enforcement officer must fill out upon arresting a person for refusing to submit to lawful a breath, blood, or urine test.
- Removes the requirement, created by the underlying bill, that the department must have substantial, competent evidence that shows demonstrable harm before establishing springs protection zones.
- Allows a person to operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway when participating in interscholastic, intercollegiate, intramural, or club athletic teams or sports affiliated with an education institution.
- Provides that the department may not issue a certificate of title to an applicant for a vessel that has been deemed a public nuisance after having been found at risk of becoming derelict three or more times within an 18-month period.
- Authorizes the department to issue a certificate of title once law enforcement has verified in writing that a vessel is no longer a public nuisance.
- Allows moneys from the Florida Coastal Protection Trust Fund to be granted to local governments for the removal of public nuisance vessels, in addition to derelict vessels, from the waters of the state.
- Reenacts the noncriminal infraction relating to the regulation of human-powered vessels to incorporate the amendment made by the strike-all.
- Retains all other provisions in the bill except as otherwise described.

B. Amendments:

None.

---

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

---



476130

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/27/2022	.	
	.	
	.	
	.	

---

The Committee on Appropriations (Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 360 - 362  
and insert:  
intramural, or club rowing team practices or competitions, if the adjacent area outside of the marked channel is not suitable for such practice or competition. The teams must use their best efforts to make use of the adjacent area outside of the marked channel.





476130

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

12 And the title is amended as follows:

13       Delete lines 16 - 19

14 and insert:

15       individuals, when participating in certain athletic  
16       team practices or competitions, to operate a human-  
17       powered vessel within the marked channel of the  
18       Florida Intracoastal Waterway under certain  
19       circumstances; amending s. 327.4107,



602302

576-01981-22

Proposed Committee Substitute by the Committee on Appropriations  
(Appropriations Subcommittee on Agriculture, Environment, and  
General Government)

A bill to be entitled

An act relating to the Fish and Wildlife Conservation  
Commission; amending s. 259.105, F.S.; requiring land  
management agencies to consider, in consultation with  
the commission, as part of certain state land  
management plans, the feasibility of using portions of  
such lands as gopher tortoise recipient sites;  
requiring the agencies to consult with the commission  
on required feasibility assessments and the  
implementation of management strategies; amending ss.  
327.352 and 327.35215, F.S.; 327.35215, F.S.; revising  
the notices a person must be given for failure to  
submit to certain tests for alcohol, chemical  
substances, or controlled substances; making technical  
changes; amending s. 327.371, F.S.; authorizing  
certain athletic teams or sports affiliated with  
specified educational institutions to operate a human-  
powered vessel within the marked channel of the  
Florida Intracoastal Waterway; amending s. 327.4107,  
F.S.; revising the vessel conditions that an officer  
of the Fish and Wildlife Conservation Commission or a  
law enforcement agency may use to determine that a  
vessel is at risk of becoming derelict; amending s.  
327.46, F.S.; prohibiting municipalities and counties  
from designating public bathing beach areas or swim  
areas within their jurisdictions which are within the



602302

576-01981-22

marked channel portion of the Florida Intracoastal  
Waterway or within a specified distance from any  
portion of the marked channel; repealing s. 376.15,  
F.S., relating to derelict vessels and the relocation  
and removal of such vessels from the waters of this  
state; amending s. 379.101, F.S.; revising the  
definitions of the terms "marine fish" and "saltwater  
fish"; amending s. 705.101, F.S.; revising the  
definition of the term "abandoned property" to include  
vessels declared to be a public nuisance; amending s.  
705.103, F.S.; clarifying the notice requirements and  
procedures for vessels declared to be public  
nuisances; amending s. 823.11, F.S.; making technical  
changes; authorizing the commission to establish a  
program to provide grants to local governments for  
certain actions regarding derelict vessels and those  
declared to be a public nuisance; specifying sources  
for the funds to be used, subject to an appropriation;  
authorizing the commission to use funds not awarded as  
grants for certain purposes; requiring the commission  
to adopt rules for the grant applications and the  
criteria for allocating the funds; amending s. 934.50,  
F.S.; providing that all employees of the commission  
or the Florida Forest Service may operate drones for  
specified purposes; amending ss. 327.04, 328.09,  
328.72, and 376.11, F.S.; conforming provisions to  
changes made by the act; repealing s. 25, chapter  
2021-184, Laws of Florida, relating to derelict  
vessels; reenacting s. 327.73(1)(dd), F.S., relating



602302

576-01981-22

56 to noncriminal boating infractions, to incorporate the  
57 amendment made to s. 327.371, F.S., in a reference  
58 thereto; reenacting ss. 125.01(4) and 379.2412, F.S.,  
59 relating to powers and duties of legislative and  
60 governing bodies of counties and state preemption of  
61 the regulating of taking or possessing saltwater fish,  
62 respectively, to incorporate the amendment made to s.  
63 379.101, F.S., in a reference thereto; providing  
64 effective dates.

65  
66 Be It Enacted by the Legislature of the State of Florida:

67  
68 Section 1. Paragraphs (a) and (b) of subsection (2) of  
69 section 259.105, Florida Statutes, are amended to read:

70 259.105 The Florida Forever Act.—

71 (2) (a) The Legislature finds and declares that:

72 1. Land acquisition programs have provided tremendous  
73 financial resources for purchasing environmentally significant  
74 lands to protect those lands from imminent development or  
75 alteration, thereby ensuring present and future generations'  
76 access to important waterways, open spaces, and recreation and  
77 conservation lands.

78 2. The continued alteration and development of the state's  
79 natural and rural areas to accommodate the state's growing  
80 population have contributed to the degradation of water  
81 resources, the fragmentation and destruction of wildlife  
82 habitats, the loss of outdoor recreation space, and the  
83 diminishment of wetlands, forests, working landscapes, and  
84 coastal open space.



602302

576-01981-22

85 3. The potential development of the state's remaining  
86 natural areas and escalation of land values require government  
87 efforts to restore, bring under public protection, or acquire  
88 lands and water areas to preserve the state's essential  
89 ecological functions and invaluable quality of life.

90 4. It is essential to protect the state's ecosystems by  
91 promoting a more efficient use of land, to ensure opportunities  
92 for viable agricultural activities on working lands, and to  
93 promote vital rural and urban communities that support and  
94 produce development patterns consistent with natural resource  
95 protection.

96 5. The state's groundwater, surface waters, and springs are  
97 under tremendous pressure due to population growth and economic  
98 expansion and require special protection and restoration  
99 efforts, including the protection of uplands and springsheds  
100 that provide vital recharge to aquifer systems and are critical  
101 to the protection of water quality and water quantity of the  
102 aquifers and springs. To ensure that sufficient quantities of  
103 water are available to meet the current and future needs of the  
104 natural systems and citizens of the state, and assist in  
105 achieving the planning goals of the department and the water  
106 management districts, water resource development projects on  
107 public lands, if compatible with the resource values of and  
108 management objectives for the lands, are appropriate.

109 6. The needs of urban, suburban, and small communities in  
110 the state for high-quality outdoor recreational opportunities,  
111 greenways, trails, and open space have not been fully met by  
112 previous acquisition programs. Through such programs as the  
113 Florida Communities Trust and the Florida Recreation Development



602302

576-01981-22

114 Assistance Program, the state shall place additional emphasis on  
115 acquiring, protecting, preserving, and restoring open space,  
116 ecological greenways, and recreation properties within urban,  
117 suburban, and rural areas where pristine natural communities or  
118 water bodies no longer exist because of the proximity of  
119 developed property.

120 7. Many of the state's unique ecosystems, such as the  
121 Florida Everglades, are facing ecological collapse due to the  
122 state's burgeoning population growth and other economic  
123 activities. To preserve these valuable ecosystems for future  
124 generations, essential parcels of land must be acquired to  
125 facilitate ecosystem restoration.

126 8. Access to public lands to support a broad range of  
127 outdoor recreational opportunities and the development of  
128 necessary infrastructure, if compatible with the resource values  
129 of and management objectives for such lands, promotes an  
130 appreciation for the state's natural assets and improves the  
131 quality of life.

132 9. Acquisition of lands, in fee simple, less than fee  
133 interest, or other techniques ~~must shall~~ be based on a  
134 comprehensive science-based assessment of the state's natural  
135 resources which targets essential conservation lands by  
136 prioritizing all current and future acquisitions based on a  
137 uniform set of data and planned so as to protect the integrity  
138 and function of ecological systems and working landscapes, and  
139 provide multiple benefits, including preservation of fish and  
140 wildlife habitat, recreation space for urban and rural areas,  
141 and the restoration of natural water storage, flow, and  
142 recharge.



602302

576-01981-22

143 10. The state has embraced performance-based program  
144 budgeting as a tool to evaluate the achievements of publicly  
145 funded agencies, build in accountability, and reward those  
146 agencies which are able to consistently achieve quantifiable  
147 goals. While previous and existing state environmental programs  
148 have achieved varying degrees of success, few of these programs  
149 can be evaluated as to the extent of their achievements,  
150 primarily because performance measures, standards, outcomes, and  
151 goals were not established at the outset. Therefore, the Florida  
152 Forever program ~~must shall~~ be developed and implemented in the  
153 context of measurable state goals and objectives.

154 11. The state must play a major role in the recovery and  
155 management of its imperiled species through the acquisition,  
156 restoration, enhancement, and management of ecosystems that can  
157 support the major life functions of such species. It is the  
158 intent of the Legislature to support local, state, and federal  
159 programs that result in net benefit to imperiled species habitat  
160 by providing public and private land owners meaningful  
161 incentives for acquiring, restoring, managing, and repopulating  
162 habitats for imperiled species. It is the further intent of the  
163 Legislature that public lands, both existing and to be acquired,  
164 identified by the lead land managing agency, in consultation  
165 with the Fish and Wildlife Conservation Commission for animals  
166 or the Department of Agriculture and Consumer Services for  
167 plants, as habitat or potentially restorable habitat for  
168 imperiled species, be restored, enhanced, managed, and  
169 repopulated as habitat for such species to advance the goals and  
170 objectives of imperiled species management for conservation,  
171 recreation, or both, consistent with the land management plan



576-01981-22

172 without restricting other uses identified in the management  
173 plan. It is also the intent of the Legislature that of the  
174 proceeds distributed pursuant to subsection (3), additional  
175 consideration be given to acquisitions that achieve a  
176 combination of conservation goals, including the restoration,  
177 enhancement, management, or repopulation of habitat for  
178 imperiled species. The council, in addition to the criteria in  
179 subsection (9), shall give weight to projects that include  
180 acquisition, restoration, management, or repopulation of habitat  
181 for imperiled species. The term "imperiled species" as used in  
182 this chapter and chapter 253, means plants and animals that are  
183 federally listed under the Endangered Species Act, or state-  
184 listed by the Fish and Wildlife Conservation Commission or the  
185 Department of Agriculture and Consumer Services. As part of the  
186 state's role, all state lands that have imperiled species  
187 habitat ~~must shall~~ include as a consideration in management plan  
188 development the restoration, enhancement, management, and  
189 repopulation of such habitats. Each lead land managing agency,  
190 in consultation with the Fish and Wildlife Conservation  
191 Commission, shall consider in the management plan for all state  
192 lands under its management which are greater in size than 40  
193 contiguous acres the feasibility of using a portion of the  
194 property as a gopher tortoise recipient site. If, during  
195 consultation with the Fish and Wildlife Conservation Commission,  
196 the lead land managing agency determines that the recipient site  
197 management is not in conflict with the primary management  
198 objects of the parcel, the management plan must contain a  
199 component or section prepared by a qualified wildlife biologist  
200 which assesses the feasibility of managing the site as a



576-01981-22

201 recipient site for gopher tortoises, consistent with the rules  
202 of the Fish and Wildlife Conservation Commission. Each land  
203 management agency shall consult with the Fish and Wildlife  
204 Conservation Commission on feasibility assessments and  
205 implementation of gopher tortoise management. In addition, the  
206 lead land managing agency of such state lands may use fees  
207 received from public or private entities for projects to offset  
208 adverse impacts to imperiled species or their habitat in order  
209 to restore, enhance, manage, repopulate, or acquire land and to  
210 implement land management plans developed under s. 253.034 or a  
211 land management prospectus developed and implemented under this  
212 chapter. Such fees shall be deposited into a foundation or fund  
213 created by each land management agency under s. 379.223, s.  
214 589.012, or s. 259.032(9)(c), to be used solely to restore,  
215 manage, enhance, repopulate, or acquire imperiled species  
216 habitat.

217 12. There is a need to change the focus and direction of  
218 the state's major land acquisition programs and to extend  
219 funding and bonding capabilities, so that future generations may  
220 enjoy the natural resources of this state.

221 (b) The Legislature recognizes that acquisition of lands in  
222 fee simple is only one way to achieve the aforementioned goals  
223 and encourages the use of less-than-fee interests, other  
224 techniques, and the development of creative partnerships between  
225 governmental agencies and private landowners. Such partnerships  
226 may include those that advance the restoration, enhancement,  
227 management, or repopulation of imperiled species habitat on  
228 state lands as provided for in subparagraph (a)11. Easements  
229 acquired pursuant to s. 570.71(2)(a) and (b), land protection



602302

576-01981-22

230 agreements, and nonstate funded tools such as rural land  
231 stewardship areas, sector planning, gopher tortoise recipient  
232 sites, and mitigation should be used, where appropriate, to  
233 bring environmentally sensitive tracts under an acceptable level  
234 of protection at a lower financial cost to the public, and to  
235 provide private landowners with the opportunity to enjoy and  
236 benefit from their property.

237 Section 2. Paragraphs (a) and (c) of subsection (1) of  
238 section 327.352, Florida Statutes, are amended to read:

239 327.352 Tests for alcohol, chemical substances, or  
240 controlled substances; implied consent; refusal.-

241 (1)(a)1. The Legislature declares that the operation of a  
242 vessel is a privilege that must be exercised in a reasonable  
243 manner. In order to protect the public health and safety, it is  
244 essential that a lawful and effective means of reducing the  
245 incidence of boating while impaired or intoxicated be  
246 established. Therefore, a person who accepts the privilege  
247 extended by the laws of this state of operating a vessel within  
248 this state is, by operating such vessel, deemed to have given  
249 his or her consent to submit to an approved chemical test or  
250 physical test including, but not limited to, an infrared light  
251 test of his or her breath for the purpose of determining the  
252 alcoholic content of his or her blood or breath if the person is  
253 lawfully arrested for any offense allegedly committed while the  
254 person was operating a vessel while under the influence of  
255 alcoholic beverages. The chemical or physical breath test must  
256 be incidental to a lawful arrest and administered at the request  
257 of a law enforcement officer who has reasonable cause to believe  
258 such person was operating the vessel within this state while



602302

576-01981-22

259 under the influence of alcoholic beverages. The administration  
260 of a breath test does not preclude the administration of another  
261 type of test. The person shall be told that his or her failure  
262 to submit to any lawful test of his or her breath under this  
263 chapter will result in a civil penalty of \$500, and ~~shall also~~  
264 ~~be told~~ that if he or she refuses to submit to a lawful test of  
265 his or her breath and he or she has been previously fined under  
266 s. 327.35215 or ~~has previously had his or her~~ driving privilege  
267 has been previously ~~driver license~~ suspended for refusal to  
268 submit to any lawful test of his or her breath, urine, or blood,  
269 he or she commits a misdemeanor of the first degree, punishable  
270 as provided in s. 775.082 or s. 775.083, in addition to any  
271 other penalties provided by law. The refusal to submit to a  
272 chemical or physical breath test upon the request of a law  
273 enforcement officer as provided in this section is admissible  
274 into evidence in any criminal proceeding.

275 2. A person who accepts the privilege extended by the laws  
276 of this state of operating a vessel within this state is, by  
277 operating such vessel, deemed to have given his or her consent  
278 to submit to a urine test for the purpose of detecting the  
279 presence of chemical substances as set forth in s. 877.111 or  
280 controlled substances if the person is lawfully arrested for any  
281 offense allegedly committed while the person was operating a  
282 vessel while under the influence of chemical substances or  
283 controlled substances. The urine test must be incidental to a  
284 lawful arrest and administered at a detention facility or any  
285 other facility, mobile or otherwise, which is equipped to  
286 administer such tests at the request of a law enforcement  
287 officer who has reasonable cause to believe such person was



576-01981-22

288 operating a vessel within this state while under the influence  
 289 of chemical substances or controlled substances. The urine test  
 290 ~~must shall~~ be administered at a detention facility or any other  
 291 facility, mobile or otherwise, which is equipped to administer  
 292 such test in a reasonable manner that will ensure the accuracy  
 293 of the specimen and maintain the privacy of the individual  
 294 involved. The administration of a urine test does not preclude  
 295 the administration of another type of test. The person shall be  
 296 told that his or her failure to submit to any lawful test of his  
 297 or her urine under this chapter will result in a civil penalty  
 298 of \$500, and ~~shall also be told~~ that if he or she refuses to  
 299 submit to a lawful test of his or her urine and he or she has  
 300 been previously fined under s. 327.35215 or ~~has previously had~~  
 301 his or her driving privilege has been previously driver license  
 302 suspended for refusal to submit to any lawful test of his or her  
 303 breath, urine, or blood, he or she commits a misdemeanor of the  
 304 first degree, punishable as provided in s. 775.082 or s.  
 305 775.083, in addition to any other penalties provided by law. The  
 306 refusal to submit to a urine test upon the request of a law  
 307 enforcement officer as provided in this section is admissible  
 308 into evidence in any criminal proceeding.

309 (c) A person who accepts the privilege extended by the laws  
 310 of this state of operating a vessel within this state is, by  
 311 operating such vessel, deemed to have given his or her consent  
 312 to submit to an approved blood test for the purpose of  
 313 determining the alcoholic content of the blood or a blood test  
 314 for the purpose of determining the presence of chemical  
 315 substances or controlled substances as provided in this section  
 316 if there is reasonable cause to believe the person was operating



576-01981-22

317 a vessel while under the influence of alcoholic beverages or  
 318 chemical or controlled substances and the person appears for  
 319 treatment at a hospital, clinic, or other medical facility and  
 320 the administration of a breath or urine test is impractical or  
 321 impossible. As used in this paragraph, the term "other medical  
 322 facility" includes an ambulance or other medical emergency  
 323 vehicle. The blood test ~~must shall~~ be performed in a reasonable  
 324 manner. A person who is incapable of refusal by reason of  
 325 unconsciousness or other mental or physical condition is deemed  
 326 not to have withdrawn his or her consent to such test. A person  
 327 who is capable of refusal shall be told that his or her failure  
 328 to submit to such a blood test will result in a civil penalty of  
 329 \$500. The refusal to submit to a blood test upon the request of  
 330 a law enforcement officer ~~is shall be~~ admissible in evidence in  
 331 any criminal proceeding.

332 Section 3. Subsections (1) and (2) of section 327.35215,  
 333 Florida Statutes, are amended to read:

334 327.35215 Penalty for failure to submit to test.-

335 (1) A person ~~who is~~ lawfully arrested for an alleged  
 336 violation of s. 327.35 ~~and~~ who refuses to submit to a blood  
 337 test, breath test, or urine test pursuant to s. 327.352 is  
 338 subject to a civil penalty of \$500.

339 (2) When a person refuses to submit to a blood test, breath  
 340 test, or urine test pursuant to s. 327.352, a law enforcement  
 341 officer ~~who is~~ authorized to make arrests for violations of this  
 342 chapter shall file with the clerk of the court, on a form  
 343 provided by the commission department, a certified statement  
 344 that probable cause existed to arrest the person for a violation  
 345 of s. 327.35 and that the person refused to submit to a test as



602302

576-01981-22

346 required by s. 327.352. Along with the statement, the officer  
347 ~~shall~~ ~~must~~ also submit a sworn statement on a form provided by  
348 the ~~commission department~~ that the person has been advised of  
349 both the penalties for failure to submit to the blood, breath,  
350 or urine test and the procedure for requesting a hearing.

351 Section 4. Present paragraph (c) of subsection (1) of  
352 section 327.371, Florida Statutes, is redesignated as paragraph  
353 (d), and a new paragraph (c) is added to that subsection, to  
354 read:

355 327.371 Human-powered vessels regulated.—

356 (1) A person may operate a human-powered vessel within the  
357 boundaries of the marked channel of the Florida Intracoastal  
358 Waterway as defined in s. 327.02:

359 (c) When participating in interscholastic, intercollegiate,  
360 intramural, or club athletic teams or sports affiliated with an  
361 educational institution identified in s. 1000.21, s. 1002.01(2),  
362 s. 1003.01(2), s. 1005.02(4), or s. 1005.03(1) (d).

363 Section 5. Paragraph (f) is added to subsection (2) of  
364 section 327.4107, Florida Statutes, to read:

365 327.4107 Vessels at risk of becoming derelict on waters of  
366 this state.—

367 (2) An officer of the commission or of a law enforcement  
368 agency specified in s. 327.70 may determine that a vessel is at  
369 risk of becoming derelict if any of the following conditions  
370 exist:

371 (f) The vessel is tied to an unlawful or unpermitted  
372 structure or mooring.

373 Section 6. Paragraph (b) of subsection (1) of section  
374 327.46, Florida Statutes, is amended to read:



602302

576-01981-22

375 327.46 Boating-restricted areas.—

376 (1) Boating-restricted areas, including, but not limited  
377 to, restrictions of vessel speeds and vessel traffic, may be  
378 established on the waters of this state for any purpose  
379 necessary to protect the safety of the public if such  
380 restrictions are necessary based on boating accidents,  
381 visibility, hazardous currents or water levels, vessel traffic  
382 congestion, or other navigational hazards or to protect  
383 seagrasses on privately owned submerged lands.

384 (b) Municipalities and counties may establish the following  
385 boating-restricted areas by ordinance, including,  
386 notwithstanding the prohibition in s. 327.60(2)(c), within the  
387 portion of the Florida Intracoastal Waterway within their  
388 jurisdiction:

389 1. An ordinance establishing an idle speed, no wake  
390 boating-restricted area, if the area is:

391 a. Within 500 feet of any boat ramp, hoist, marine railway,  
392 or other launching or landing facility available for use by the  
393 general boating public on waterways more than 300 feet in width  
394 or within 300 feet of any boat ramp, hoist, marine railway, or  
395 other launching or landing facility available for use by the  
396 general boating public on waterways not exceeding 300 feet in  
397 width.

398 b. Within 500 feet of fuel pumps or dispensers at any  
399 marine fueling facility that sells motor fuel to the general  
400 boating public on waterways more than 300 feet in width or  
401 within 300 feet of the fuel pumps or dispensers at any licensed  
402 terminal facility that sells motor fuel to the general boating  
403 public on waterways not exceeding 300 feet in width.





576-01981-22

404 c. Inside or within 300 feet of any lock structure.  
405 2. An ordinance establishing a slow speed, minimum wake  
406 boating-restricted area if the area is:  
407 a. Within 300 feet of any bridge fender system.  
408 b. Within 300 feet of any bridge span presenting a vertical  
409 clearance of less than 25 feet or a horizontal clearance of less  
410 than 100 feet.  
411 c. On a creek, stream, canal, or similar linear waterway if  
412 the waterway is less than 75 feet in width from shoreline to  
413 shoreline.  
414 d. On a lake or pond of less than 10 acres in total surface  
415 area.  
416 e. Within the boundaries of a permitted public mooring  
417 field and a buffer around the mooring field of up to 100 feet.  
418 3. An ordinance establishing a vessel-exclusion zone if the  
419 area is:  
420 a. Designated as a public bathing beach or swim area,  
421 except that public bathing beach or swim areas may not be  
422 established in whole or in part within the marked channel of the  
423 Florida Intracoastal Waterway or within 100 feet of any portion  
424 of the marked channel.  
425 b. Within 300 feet of a dam, spillway, or flood control  
426 structure.  
427  
428 Vessel exclusion zones created pursuant to this subparagraph  
429 must be marked with uniform waterway markers permitted by the  
430 commission in accordance with this chapter. Such zones may not  
431 be marked by ropes.  
432 Section 7. Section 376.15, Florida Statutes, is repealed.



576-01981-22

433 Section 8. Subsections (22) and (34) of section 379.101,  
434 Florida Statutes, are amended to read:  
435 379.101 Definitions.—In construing these statutes, where  
436 the context does not clearly indicate otherwise, the word,  
437 phrase, or term:  
438 (22) "Marine fish" means any saltwater species of finfish  
439 of the classes Agnatha, Chondrichthyes, and Osteichthyes, and  
440 marine invertebrates of the ~~the~~ classes Gastropoda and, Bivalvia,  
441 the subphylum ~~and~~ Crustacea, or the phylum Echinodermata;  
442 however, the term ~~but~~ does not include nonliving shells or  
443 echinoderms.  
444 (34) "Saltwater fish" means:  
445 (a) Any saltwater species of finfish of the classes  
446 Agnatha, Chondrichthyes, or Osteichthyes and marine  
447 invertebrates of the classes Gastropoda and, Bivalvia, the  
448 subphylum ~~or~~ Crustacea, or ~~of~~ the phylum Echinodermata; however,  
449 the term ~~but~~ does not include nonliving shells or echinoderms;  
450 and  
451 (b) All classes of pisces, shellfish, sponges, and  
452 crustaceans ~~crustacea~~ native to salt water.  
453 Section 9. Subsection (3) of section 705.101, Florida  
454 Statutes, is amended to read:  
455 705.101 Definitions.—As used in this chapter:  
456 (3) "Abandoned property" means all tangible personal  
457 property that does not have an identifiable owner and that has  
458 been disposed on public property in a wrecked, inoperative, or  
459 partially dismantled condition or has no apparent intrinsic  
460 value to the rightful owner. The term includes derelict vessels  
461 as defined in s. 823.11 and vessels declared a public nuisance



576-01981-22

462 pursuant to s. 327.73(1)(aa).

463 Section 10. Paragraph (a) of subsection (2) and subsection  
464 (4) of section 705.103, Florida Statutes, are amended to read:

465 705.103 Procedure for abandoned or lost property.—

466 (2)(a)1. Whenever a law enforcement officer ascertains  
467 that:

468 a. An article of lost or abandoned property other than a  
469 derelict vessel or a vessel declared a public nuisance pursuant  
470 to s. 327.73(1)(aa) is present on public property and is of such  
471 nature that it cannot be easily removed, the officer shall cause  
472 a notice to be placed upon such article in substantially the  
473 following form:

474  
475 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED  
476 PROPERTY. This property, to wit: ...(setting forth brief  
477 description)... is unlawfully upon public property known as  
478 ...(setting forth brief description of location)... and must be  
479 removed within 5 days; otherwise, it will be removed and  
480 disposed of pursuant to chapter 705, Florida Statutes. The owner  
481 will be liable for the costs of removal, storage, and  
482 publication of notice. Dated this: ...(setting forth the date of  
483 posting of notice)..., signed: ...(setting forth name, title,  
484 address, and telephone number of law enforcement officer)....

485  
486 b. A derelict vessel or a vessel declared a public nuisance  
487 pursuant to s. 327.73(1)(aa) is present on the waters of this  
488 state, the officer shall cause a notice to be placed upon such  
489 vessel in substantially the following form:

490



576-01981-22

491 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED  
492 VESSEL. This vessel, to wit: ...(setting forth brief  
493 description)... has been determined to be ...(derelict or a  
494 public nuisance)... and is unlawfully upon waters of this state  
495 ...(setting forth brief description of location)... and must be  
496 removed within 21 days; otherwise, it will be removed and  
497 disposed of pursuant to chapter 705, Florida Statutes. The owner  
498 and other interested parties have the right to a hearing or  
499 challenge the determination that this vessel is derelict or  
500 otherwise in violation of the law. Please contact ...(contact  
501 information for person who can arrange for a hearing in  
502 accordance with this section)... The owner or the party  
503 determined to be legally responsible for the vessel being upon  
504 the waters of this state in a derelict condition or as a public  
505 nuisance will be liable for the costs of removal, destruction,  
506 and disposal if this vessel is not removed by the owner. Dated  
507 this: ...(setting forth the date of posting of notice)...,  
508 signed: ...(setting forth name, title, address, and telephone  
509 number of law enforcement officer)....

510

511 2. The notices required under subparagraph 1. may not be  
512 less than 8 inches by 10 inches and must ~~shall~~ be sufficiently  
513 weatherproof to withstand normal exposure to the elements. In  
514 addition to posting, the law enforcement officer shall make a  
515 reasonable effort to ascertain the name and address of the  
516 owner. If such is reasonably available to the officer, she or he  
517 shall mail a copy of such notice to the owner on or before the  
518 date of posting. If the property is a motor vehicle as defined  
519 in s. 320.01(1) or a vessel as defined in s. 327.02, the law



602302

576-01981-22

520 enforcement agency shall contact the Department of Highway  
521 Safety and Motor Vehicles in order to determine the name and  
522 address of the owner and any person who has filed a lien on the  
523 vehicle or vessel as provided in s. 319.27(2) or (3) or s.  
524 328.15(1). On receipt of this information, the law enforcement  
525 agency shall mail a copy of the notice by certified mail, return  
526 receipt requested, to the owner and to the lienholder, if any,  
527 except that a law enforcement officer who has issued a citation  
528 for a violation of ~~s. 376.15~~ s. 823.11 to the owner of a  
529 derelict vessel is not required to mail a copy of the notice by  
530 certified mail, return receipt requested, to the owner. For a  
531 derelict vessel or a vessel declared a public nuisance pursuant  
532 to s. 327.73(1)(aa), the mailed notice must inform the owner or  
533 responsible party that he or she has a right to a hearing to  
534 dispute the determination that the vessel is derelict or  
535 otherwise in violation of the law. If a request for a hearing is  
536 made, a state agency shall follow the processes set forth in s.  
537 120.569. Local governmental entities shall follow the processes  
538 set forth in s. 120.569, except that a local judge, magistrate,  
539 or code enforcement officer may be designated to conduct such a  
540 hearing. If, at the end of 5 days after posting the notice in  
541 sub-subparagraph 1.a., or at the end of 21 days after posting  
542 the notice in sub-subparagraph 1.b., and mailing such notice, if  
543 required, the owner or any person interested in the lost or  
544 abandoned article or articles described has not removed the  
545 article or articles from public property or shown reasonable  
546 cause for failure to do so, and, in the case of a derelict  
547 vessel or a vessel declared a public nuisance pursuant to s.  
548 327.73(1)(aa), has not requested a hearing in accordance with



602302

576-01981-22

549 this section, the following shall apply:  
550 a. For abandoned property other than a derelict vessel or a  
551 vessel declared a public nuisance pursuant to s. 327.73(1)(aa),  
552 the law enforcement agency may retain any or all of the property  
553 for its own use or for use by the state or unit of local  
554 government, trade such property to another unit of local  
555 government or state agency, donate the property to a charitable  
556 organization, sell the property, or notify the appropriate  
557 refuse removal service.  
558 b. For a derelict vessel or a vessel declared a public  
559 nuisance pursuant to s. 327.73(1)(aa), the law enforcement  
560 agency or its designee may:  
561 (I) Remove the vessel from the waters of this state and  
562 destroy and dispose of the vessel or authorize another  
563 governmental entity or its designee to do so; or  
564 (II) Authorize the vessel's use as an artificial reef in  
565 accordance with s. 379.249 if all necessary federal, state, and  
566 local authorizations are received.  
567  
568 A law enforcement agency or its designee may also take action as  
569 described in this sub-subparagraph if, following a hearing  
570 pursuant to this section, the judge, magistrate, administrative  
571 law judge, or hearing officer has determined the vessel to be  
572 derelict as provided in s. 823.11 or otherwise in violation of  
573 the law in accordance with s. 327.73(1)(aa) and a final order  
574 has been entered or the case is otherwise closed.  
575 (4) The owner of any abandoned or lost property, or in the  
576 case of a derelict vessel or a vessel declared a public nuisance  
577 pursuant to s. 327.73(1)(aa), the owner or other party



602302

576-01981-22

578 determined to be legally responsible for the vessel being upon  
579 the waters of this state in a derelict condition or as a public  
580 nuisance, who, after notice as provided in this section, does  
581 not remove such property within the specified period ~~is shall be~~  
582 liable to the law enforcement agency, other governmental entity,  
583 or the agency's or entity's designee for all costs of removal,  
584 storage, ~~and~~ destruction, and disposal of such property, less  
585 any salvage value obtained by disposal of the property. Upon  
586 final disposition of the property, the law enforcement officer  
587 or representative of the law enforcement agency or other  
588 governmental entity shall notify the owner or in the case of a  
589 derelict vessel or vessel declared a public nuisance pursuant to  
590 s. 327.73(1)(aa), the owner or other party determined to be  
591 legally responsible, if known, of the amount owed. In the case  
592 of an abandoned vessel or motor vehicle, any person who neglects  
593 or refuses to pay such amount is not entitled to be issued a  
594 certificate of registration for such vessel or motor vehicle, or  
595 any other vessel or motor vehicle, until such costs have been  
596 paid. A person who has neglected or refused to pay all costs of  
597 removal, storage, disposal, and destruction of a vessel or motor  
598 vehicle as provided in this section, after having been provided  
599 written notice via certified mail that such costs are owed, and  
600 who applies for and is issued a registration for a vessel or  
601 motor vehicle before such costs have been paid in full commits a  
602 misdemeanor of the first degree, punishable as provided in s.  
603 775.082 or s. 775.083. The law enforcement officer or  
604 representative of the law enforcement agency or other  
605 governmental entity shall supply the Department of Highway  
606 Safety and Motor Vehicles with a list of persons whose vessel



602302

576-01981-22

607 registration privileges and motor vehicle privileges have been  
608 revoked under this subsection. The department or a person acting  
609 as an agent of the department may not issue a certificate of  
610 registration to a person whose vessel and motor vehicle  
611 registration privileges have been revoked, as provided by this  
612 subsection, until such costs have been paid.  
613 Section 11. Effective July 1, 2023, paragraph (a) of  
614 subsection (2) of section 705.103, Florida Statutes, as amended  
615 by chapters 2019-76 and 2021-184, Laws of Florida, is amended to  
616 read:  
617 705.103 Procedure for abandoned or lost property.—  
618 (2) (a) 1. Whenever a law enforcement officer ascertains  
619 that:  
620 a. An article of lost or abandoned property other than a  
621 derelict vessel or a vessel declared a public nuisance pursuant  
622 to s. 327.73(1)(aa) is present on public property and is of such  
623 nature that it cannot be easily removed, the officer shall cause  
624 a notice to be placed upon such article in substantially the  
625 following form:  
626  
627 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED  
628 PROPERTY. This property, to wit: ...(setting forth brief  
629 description)... is unlawfully upon public property known as  
630 ...(setting forth brief description of location)... and must be  
631 removed within 5 days; otherwise, it will be removed and  
632 disposed of pursuant to chapter 705, Florida Statutes. The owner  
633 will be liable for the costs of removal, storage, and  
634 publication of notice. Dated this: ...(setting forth the date of  
635 posting of notice)..., signed: ...(setting forth name, title,



602302

576-01981-22

636 address, and telephone number of law enforcement officer)....

637

638       b. A derelict vessel or a vessel declared a public nuisance  
639 pursuant to s. 327.73(1)(aa) is present on the waters of this  
640 state, the officer shall cause a notice to be placed upon such  
641 vessel in substantially the following form:

642

643 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED  
644 VESSEL. This vessel, to wit: ...(setting forth brief description  
645 of location)... has been determined to be ...(derelict or a  
646 public nuisance)... and is unlawfully upon the waters of this  
647 state ...(setting forth brief description of location)... and  
648 must be removed within 21 days; otherwise, it will be removed  
649 and disposed of pursuant to chapter 705, Florida Statutes. The  
650 owner and other interested parties have the right to a hearing  
651 to challenge the determination that this vessel is derelict or  
652 otherwise in violation of the law. Please contact ...(contact  
653 information for person who can arrange for a hearing in  
654 accordance with this section)... The owner or the party  
655 determined to be legally responsible for the vessel being upon  
656 the waters of this state in a derelict condition or as a public  
657 nuisance will be liable for the costs of removal, destruction,  
658 and disposal if this vessel is not removed by the owner. Dated  
659 this: ...(setting forth the date of posting of notice)...,  
660 signed: ...(setting forth name, title, address, and telephone  
661 number of law enforcement officer)....

662

663       2. The notices required under subparagraph 1. may not be  
664 less than 8 inches by 10 inches and must shall be sufficiently



602302

576-01981-22

665 weatherproof to withstand normal exposure to the elements. In  
666 addition to posting, the law enforcement officer shall make a  
667 reasonable effort to ascertain the name and address of the  
668 owner. If such is reasonably available to the officer, she or he  
669 shall mail a copy of such notice to the owner on or before the  
670 date of posting. If the property is a motor vehicle as defined  
671 in s. 320.01(1) or a vessel as defined in s. 327.02, the law  
672 enforcement agency shall contact the Department of Highway  
673 Safety and Motor Vehicles in order to determine the name and  
674 address of the owner and any person who has filed a lien on the  
675 vehicle or vessel as provided in s. 319.27(2) or (3) or s.  
676 328.15. On receipt of this information, the law enforcement  
677 agency shall mail a copy of the notice by certified mail, return  
678 receipt requested, to the owner and to the lienholder, if any,  
679 except that a law enforcement officer who has issued a citation  
680 for a violation of ~~s. 376.15~~ or s. 823.11 to the owner of a  
681 derelict vessel is not required to mail a copy of the notice by  
682 certified mail, return receipt requested, to the owner. For a  
683 derelict vessel or a vessel declared a public nuisance pursuant  
684 to s. 327.73(1)(aa), the mailed notice must inform the owner or  
685 responsible party that he or she has a right to a hearing to  
686 dispute the determination that the vessel is derelict or  
687 otherwise in violation of the law. If a request for a hearing is  
688 made, a state agency shall follow the processes as set forth in  
689 s. 120.569. Local governmental entities shall follow the  
690 processes set forth in s. 120.569, except that a local judge,  
691 magistrate, or code enforcement officer may be designated to  
692 conduct such a hearing. If, at the end of 5 days after posting  
693 the notice in sub-subparagraph 1.a., or at the end of 21 days



602302

576-01981-22

694 after posting the notice in sub-subparagraph 1.b., and mailing  
695 such notice, if required, the owner or any person interested in  
696 the lost or abandoned article or articles described has not  
697 removed the article or articles from public property or shown  
698 reasonable cause for failure to do so, and, in the case of a  
699 derelict vessel or a vessel declared a public nuisance pursuant  
700 to s. 327.73(1)(aa), has not requested a hearing in accordance  
701 with this section, the following shall apply:

702 a. For abandoned property other than a derelict vessel or a  
703 vessel declared a public nuisance pursuant to s. 327.73(1)(aa),  
704 the law enforcement agency may retain any or all of the property  
705 for its own use or for use by the state or unit of local  
706 government, trade such property to another unit of local  
707 government or state agency, donate the property to a charitable  
708 organization, sell the property, or notify the appropriate  
709 refuse removal service.

710 b. For a derelict vessel or a vessel declared a public  
711 nuisance pursuant to s. 327.73(1)(aa), the law enforcement  
712 agency or its designee may:

713 (I) Remove the vessel from the waters of this state and  
714 destroy and dispose of the vessel or authorize another  
715 governmental entity or its designee to do so; or

716 (II) Authorize the vessel's use as an artificial reef in  
717 accordance with s. 379.249 if all necessary federal, state, and  
718 local authorizations are received.

719  
720 A law enforcement agency or its designee may also take action as  
721 described in this sub-subparagraph if, following a hearing  
722 pursuant to this section, the judge, magistrate, administrative



602302

576-01981-22

723 law judge, or hearing officer has determined the vessel to be  
724 derelict as provided in s. 823.11 or otherwise in violation of  
725 the law in accordance with s. 327.73(1)(aa) and a final order  
726 has been entered or the case is otherwise closed.

727 Section 12. Present subsections (4), (5), and (6) of  
728 section 823.11, Florida Statutes, are redesignated as  
729 subsections (5), (6), and (7), respectively, a new subsection  
730 (4) is added to that section, and subsection (1), paragraph (c)  
731 of subsection (2), subsection (3), and present subsections (5)  
732 and (6) of that section are amended, to read:

733 823.11 Derelict vessels; relocation or removal; penalty.—

734 (1) As used in this section ~~and s. 376.15~~, the term:

735 (a) "Commission" means the Fish and Wildlife Conservation  
736 Commission.

737 (b) "Derelict vessel" means a vessel, as defined in s.  
738 327.02, that is:

739 1. In a wrecked, junked, or substantially dismantled  
740 condition upon any waters of this state.

741 a. A vessel is wrecked if it is sunken or sinking; aground  
742 without the ability to extricate itself absent mechanical  
743 assistance; or remaining after a marine casualty, including, but  
744 not limited to, a boating accident, extreme weather, or a fire.

745 b. A vessel is junked if it has been substantially stripped  
746 of vessel components, if vessel components have substantially  
747 degraded or been destroyed, or if the vessel has been discarded  
748 by the owner or operator. Attaching an outboard motor to a  
749 vessel that is otherwise junked will not cause the vessel to no  
750 longer be junked if such motor is not an effective means of  
751 propulsion as required by s. 327.4107(2)(e) and associated



576-01981-22

752 rules.

753 c. A vessel is substantially dismantled if at least two of  
754 the three following vessel systems or components are missing,  
755 compromised, incomplete, inoperable, or broken:

- 756 (I) The steering system;  
757 (II) The propulsion system; or  
758 (III) The exterior hull integrity.  
759

760 Attaching an outboard motor to a vessel that is otherwise  
761 substantially dismantled will not cause the vessel to no longer  
762 be substantially dismantled if such motor is not an effective  
763 means of propulsion as required by s. 327.4107(2)(e) and  
764 associated rules.

765 2. At a port in this state without the consent of the  
766 agency having jurisdiction thereof.

767 3. Docked, grounded, or beached upon the property of  
768 another without the consent of the owner of the property.

769 (c) "Gross negligence" means conduct so reckless or wanting  
770 in care that it constitutes a conscious disregard or  
771 indifference to the safety of the property exposed to such  
772 conduct.

773 (d) "Willful misconduct" means conduct evidencing  
774 carelessness or negligence of such a degree or recurrence as to  
775 manifest culpability, wrongful intent, or evil design or to show  
776 an intentional and substantial disregard of the interests of the  
777 vessel owner.

778 (2)

779 (c) The additional time provided in subparagraph (b)2. for  
780 an owner or responsible party to remove a derelict vessel from



576-01981-22

781 the waters of this state or to repair and remedy the vessel's  
782 derelict condition ~~This subsection~~ does not apply to a vessel  
783 that was derelict upon the waters of this state before the  
784 stated accident or event.

785 (3) The commission, an officer of the commission, or a law  
786 enforcement agency or officer specified in s. 327.70 may  
787 relocate, remove, and store, ~~destroy, or dispose of~~ or cause to  
788 be relocated, removed, and stored, ~~destroyed, or disposed of~~ a  
789 derelict vessel from waters of this state as defined in s.  
790 327.02 if the derelict vessel obstructs or threatens to obstruct  
791 navigation or in any way constitutes a danger to the  
792 environment, property, or persons. The commission, an officer of  
793 the commission, or any other law enforcement agency or officer  
794 acting pursuant to this subsection to relocate, remove, and  
795 store, ~~destroy, dispose of~~ or cause to be relocated, removed,  
796 and stored, ~~destroyed, or disposed of~~ a derelict vessel from  
797 waters of this state shall be held harmless for all damages to  
798 the derelict vessel resulting from such action unless the damage  
799 results from gross negligence or willful misconduct.

800 ~~(a) Removal of derelict vessels under this subsection may~~  
801 ~~be funded by grants provided in ss. 206.606 and 376.15. The~~  
802 ~~commission shall implement a plan for the procurement of any~~  
803 ~~available federal disaster funds and use such funds for the~~  
804 ~~removal of derelict vessels.~~

805 ~~(b)~~ All costs, including costs owed to a third party,  
806 incurred by the commission, another law enforcement agency, or a  
807 governmental subdivision, when the governmental subdivision has  
808 received authorization from a law enforcement officer or agency,  
809 in the relocation, removal, storage, destruction, or disposal of



576-01981-22

810 a derelict vessel are recoverable against the vessel owner or  
811 the party determined to be legally responsible for the vessel  
812 being upon the waters of this state in a derelict condition. The  
813 Department of Legal Affairs shall represent the commission in  
814 actions to recover such costs. As provided in s. 705.103(4), a  
815 person who neglects or refuses to pay such costs may not be  
816 issued a certificate of registration for such vessel or for any  
817 other vessel or motor vehicle until such costs have been paid. A  
818 person who has neglected or refused to pay all costs of removal,  
819 storage, destruction, or disposal of a derelict vessel as  
820 provided in this section, after having been provided written  
821 notice via certified mail that such costs are owed, and who  
822 applies for and is issued a registration for a vessel or motor  
823 vehicle before such costs have been paid in full commits a  
824 misdemeanor of the first degree, punishable as provided in s.  
825 775.082 or s. 775.083.

826 (b)(e) A contractor performing such activities at the  
827 direction of the commission, an officer of the commission, a law  
828 enforcement agency or officer, or a governmental subdivision,  
829 when the governmental subdivision has received authorization for  
830 the relocation or removal from a law enforcement officer or  
831 agency, pursuant to this section must be licensed in accordance  
832 with applicable United States Coast Guard regulations where  
833 required; obtain and carry in full force and effect a policy  
834 from a licensed insurance carrier in this state to insure  
835 against any accident, loss, injury, property damage, or other  
836 casualty caused by or resulting from the contractor's actions;  
837 and be properly equipped to perform the services to be provided.

838 (4)(a) Removal of derelict vessels under this subsection



576-01981-22

839 may be funded by grants provided in s. 206.606.

840 (b) The commission may implement a plan for the procurement  
841 of any available federal disaster funds and use such funds for  
842 the removal of derelict vessels.

843 (c) The commission may establish a program to provide  
844 grants to local governments for the removal, storage,  
845 destruction, and disposal of derelict vessels from the waters of  
846 this state. This grant funding may also be used for the removal,  
847 storage, destruction, and disposal of vessels declared a public  
848 nuisance pursuant to s. 327.73(1)(aa). The program must be  
849 funded from the Marine Resources Conservation Trust Fund or the  
850 Florida Coastal Protection Trust Fund. Notwithstanding s.  
851 216.181(11), funds available for these grants may only be  
852 authorized by appropriations acts of the Legislature. In a given  
853 fiscal year, if all funds appropriated pursuant to this  
854 paragraph are not requested by and granted to local governments  
855 for the removal, storage, destruction, and disposal of derelict  
856 vessels or vessels declared a public nuisance pursuant to s.  
857 327.73(1)(aa) by the end of the third quarter, the Fish and  
858 Wildlife Conservation Commission may use the remainder of the  
859 funds to remove, store, destroy, and dispose of, or to pay  
860 private contractors to remove, store, destroy, and dispose of,  
861 derelict vessels or vessels declared a public nuisance pursuant  
862 to s. 327.73(1)(aa). The commission shall adopt by rule  
863 procedures for local governments to submit a grant application  
864 and criteria for allocating available funds. Such criteria must  
865 include, at a minimum, the following:

866 1. The number of derelict vessels within the jurisdiction  
867 of the applicant.





602302

576-01981-22

868 2. The threat posed by such vessels to public health or  
869 safety, the environment, navigation, or the aesthetic condition  
870 of the general vicinity.

871 3. The degree of commitment of the local government to  
872 maintain waters free of abandoned and derelict vessels and to  
873 seek legal action against those who abandon vessels in the  
874 waters of this state as defined in s. 327.02.

875 ~~(6)~~(5) A person, firm, or corporation violating this  
876 section commits a misdemeanor of the first degree and shall be  
877 punished as provided by law. A conviction under this section  
878 does not bar the assessment and collection of a the civil  
879 penalty provided in s. 376.16 for violation of s. 376.15. The  
880 court having jurisdiction over the criminal offense,  
881 notwithstanding any jurisdictional limitations on the amount in  
882 controversy, may order the imposition of such civil penalty in  
883 addition to any sentence imposed for the first criminal offense.

884 ~~(7)~~(6) If an owner or a responsible party of a vessel  
885 determined to be derelict through an administrative or criminal  
886 proceeding has been charged by an officer of the commission or  
887 any law enforcement agency or officer as specified in s. 327.70  
888 under subsection (5) for a violation of subsection (2) ~~or a~~  
889 ~~violation of s. 376.15(2)~~, a person may not reside or dwell on  
890 such vessel until the vessel is removed from the waters of the  
891 state permanently or returned to the waters of the state in a  
892 condition that is no longer derelict.

893 Section 13. Paragraph (p) of subsection (4) of section  
894 934.50, Florida Statutes, is amended to read:

895 934.50 Searches and seizure using a drone.—

896 (4) EXCEPTIONS.—This section does not prohibit the use of a



602302

576-01981-22

897 drone:

898 (p) By ~~an a non-law enforcement~~ employee of the Fish and  
899 Wildlife Conservation Commission or of the Florida Forest  
900 Service for the purposes of managing and eradicating invasive  
901 exotic plants or animals on public lands and suppressing and  
902 mitigating wildfire threats.

903 Section 14. Section 327.04, Florida Statutes, is amended to  
904 read:

905 327.04 Rules.—The commission may adopt rules pursuant to  
906 ss. 120.536(1) and 120.54 to implement this chapter, the  
907 provisions of chapter 705 relating to vessels, and ~~s. 376.15~~  
908 ~~and~~ 823.11 conferring powers or duties upon it.

909 Section 15. Subsection (4) of section 328.09, Florida  
910 Statutes, is amended to read:

911 328.09 Refusal to issue and authority to cancel a  
912 certificate of title or registration.—

913 (4) The department may not issue a certificate of title to  
914 an applicant for a vessel that has been deemed derelict or a  
915 public nuisance by a law enforcement officer under s.  
916 327.73(1)(aa) or s. 376.15 or s. 823.11. A law enforcement  
917 officer must inform the department in writing, which may be  
918 provided by facsimile, ~~e-mail~~ electronic mail, or other  
919 electronic means, of the vessel's derelict or public nuisance  
920 status and supply the department with the vessel title number or  
921 vessel identification number. The department may issue a  
922 certificate of title once a law enforcement officer has verified  
923 in writing, which may be provided by facsimile, ~~e-mail~~  
924 electronic mail, or other electronic means, that the vessel is  
925 no longer a derelict or public nuisance vessel.



602302

576-01981-22

926 Section 16. Section 25 of chapter 2021-184, Laws of  
927 Florida, is repealed.

928 Section 17. Paragraph (c) of subsection (15) of section  
929 328.72, Florida Statutes, is amended to read:

930 328.72 Classification; registration; fees and charges;  
931 surcharge; disposition of fees; fines; marine turtle stickers.—

932 (15) DISTRIBUTION OF FEES.—Except as provided in this  
933 subsection, moneys designated for the use of the counties, as  
934 specified in subsection (1), shall be distributed by the tax  
935 collector to the board of county commissioners for use only as  
936 provided in this section. Such moneys to be returned to the  
937 counties are for the sole purposes of providing, maintaining, or  
938 operating recreational channel marking and other uniform  
939 waterway markers, public boat ramps, lifts, and hoists, marine  
940 railways, boat piers, docks, mooring buoys, and other public  
941 launching facilities; and removing derelict vessels, debris that  
942 specifically impedes boat access, not including the dredging of  
943 channels, and vessels and floating structures deemed a hazard to  
944 public safety and health for failure to comply with s. 327.53.  
945 Counties shall demonstrate through an annual detailed accounting  
946 report of vessel registration revenues that the registration  
947 fees were spent as provided in this subsection. This report  
948 shall be provided to the Fish and Wildlife Conservation  
949 Commission no later than November 1 of each year. If, before  
950 January 1 of each calendar year, the accounting report meeting  
951 the prescribed criteria has still not been provided to the  
952 commission, the tax collector of that county may not distribute  
953 the moneys designated for the use of counties, as specified in  
954 subsection (1), to the board of county commissioners but shall,



602302

576-01981-22

955 for the next calendar year, remit such moneys to the state for  
956 deposit into the Marine Resources Conservation Trust Fund. The  
957 commission shall return those moneys to the county if the county  
958 fully complies with this section within that calendar year. If  
959 the county does not fully comply with this section within that  
960 calendar year, the moneys shall remain within the Marine  
961 Resources Trust Fund and may be appropriated for the purposes  
962 specified in this subsection.

963 (c) From the vessel registration fees designated for use by  
964 the counties in subsection (1), the following amounts shall be  
965 remitted to the state for deposit into the Marine Resources  
966 Conservation Trust Fund to fund derelict vessel removal grants,  
967 as appropriated by the Legislature pursuant to s. 823.11(4)(c)  
968 ~~s. 376.15~~:

- 969 1. Class A-2: \$0.25 for each 12-month period registered.
- 970 2. Class 1: \$2.06 for each 12-month period registered.
- 971 3. Class 2: \$9.26 for each 12-month period registered.
- 972 4. Class 3: \$16.45 for each 12-month period registered.
- 973 5. Class 4: \$20.06 for each 12-month period registered.
- 974 6. Class 5: \$25.46 for each 12-month period registered.

975 Section 18. Paragraph (h) of subsection (6) of section  
976 376.11, Florida Statutes, is amended to read:

977 376.11 Florida Coastal Protection Trust Fund.—

978 (6) Moneys in the Florida Coastal Protection Trust Fund may  
979 be used for the following purposes:

980 (h) The funding of a grant program to local governments,  
981 pursuant to s. 823.11(4)(c) ~~s. 376.15(3)(d) and (e)~~, for the  
982 removal of derelict and public nuisance vessels from the public  
983 waters of the state.



602302

576-01981-22

984 Section 19. For the purpose of incorporating the amendment  
985 made by this act to section 327.371, Florida Statutes, in a  
986 reference thereto, paragraph (dd) of subsection (1) of section  
987 327.73, Florida Statutes, is reenacted to read:

988 327.73 Noncriminal infractions.—

989 (1) Violations of the following provisions of the vessel  
990 laws of this state are noncriminal infractions:

991 (dd) Section 327.371, relating to the regulation of human-  
992 powered vessels.

993  
994 Any person cited for a violation of any provision of this  
995 subsection shall be deemed to be charged with a noncriminal  
996 infraction, shall be cited for such an infraction, and shall be  
997 cited to appear before the county court. The civil penalty for  
998 any such infraction is \$50, except as otherwise provided in this  
999 section. Any person who fails to appear or otherwise properly  
1000 respond to a uniform boating citation shall, in addition to the  
1001 charge relating to the violation of the boating laws of this  
1002 state, be charged with the offense of failing to respond to such  
1003 citation and, upon conviction, be guilty of a misdemeanor of the  
1004 second degree, punishable as provided in s. 775.082 or s.  
1005 775.083. A written warning to this effect shall be provided at  
1006 the time such uniform boating citation is issued.

1007 Section 20. For the purpose of incorporating the amendment  
1008 made by this act to section 379.101, Florida Statutes, in a  
1009 reference thereto, subsection (4) of section 125.01, Florida  
1010 Statutes, is reenacted to read:

1011 125.01 Powers and duties.—

1012 (4) The legislative and governing body of a county shall



602302

576-01981-22

1013 not have the power to regulate the taking or possession of  
1014 saltwater fish, as defined in s. 379.101, with respect to the  
1015 method of taking, size, number, season, or species. However,  
1016 this subsection does not prohibit a county from prohibiting, for  
1017 reasons of protecting the public health, safety, or welfare,  
1018 saltwater fishing from real property owned by that county, nor  
1019 does it prohibit the imposition of excise taxes by county  
1020 ordinance.

1021 Section 21. For the purpose of incorporating the amendment  
1022 made by this act to section 379.101, Florida Statutes, in a  
1023 reference thereto, section 379.2412, Florida Statutes, is  
1024 reenacted to read:

1025 379.2412 State preemption of power to regulate.—The power  
1026 to regulate the taking or possession of saltwater fish, as  
1027 defined in s. 379.101, is expressly reserved to the state. This  
1028 section does not prohibit a local government from prohibiting,  
1029 for reasons of protecting the public health, safety, or welfare,  
1030 saltwater fishing from real property owned by that local  
1031 government.

1032 Section 22. Except as otherwise expressly provided in this  
1033 act, this act shall take effect July 1, 2022.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: CS/CS/SB 494

INTRODUCER: Appropriations Committee; Environment and Natural Resources Committee; and Senator Hutson

SUBJECT: Fish and Wildlife Conservation Commission

DATE: January 31, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carroll</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Reagan</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/CS</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/SB 494 revises laws administered by the Fish and Wildlife Conservation Commission (FWC) and other law enforcement entities. The bill:

- Amends the Florida Forever Act to require each lead land managing agency, in consultation with the FWC, to consider in the management plan the feasibility of creating a gopher tortoise recipient site for state lands under its management which are larger than 40 contiguous acres.
- Specifies that a vessel is at risk of becoming derelict if it is tied to an unlawful or unpermitted mooring or other structure.
- Specifies the circumstances in which law enforcement may destroy or dispose of a vessel.
- Reorganizes provisions authorizing the FWC to establish a program to provide grants to local governments for the removal, storage, destruction, and disposal of derelict vessels.
- Allows operation of human-powered vessels in the marked channel of the Florida Intracoastal Waterway for specified reasons.
- Specifies that a certificate of title may not be issued for a public nuisance vessel.
- Specifies that a local government cannot create a public bathing beach or swim area in the marked channel of the Florida Intracoastal Waterway or within 100 feet of the marked channel.
- Adds public nuisance vessels to the definition of abandoned property.

- Places liability for costs of vessel removal, storage, destruction, and disposition on the owner or responsible party after notice is given.
- Authorizes FWC law enforcement officers to use drones to manage and eradicate invasive plants or animals on public lands and to suppress and mitigate wildfire threats.

The bill will have an indeterminate fiscal impact on the FWC as the derelict vessel removal grants to local governments will be subject to appropriation.

## II. Present Situation:

### Florida Forever

As a successor to Preservation 2000, the Legislature created the Florida Forever program in 1999 as the blueprint for conserving Florida's natural resources.<sup>1</sup> The Florida Forever Act reinforced the state's commitment to conserve its natural and cultural heritage, provide urban open space, and better manage the land acquired by the state.<sup>2</sup> Florida Forever encompasses a wide range of goals including: land acquisition; environmental restoration; water resource development and supply; increased public access; public lands management and maintenance; and increased protection of land through the purchase of conservation easements.<sup>3</sup> The state has acquired more than 2.4 million acres since 1991 under the Preservation 2000 and the Florida Forever programs.<sup>4</sup>

### Fish and Wildlife Conservation Commission

The Fish and Wildlife Conservation Commission (FWC) is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources.<sup>5</sup> The FWC is governed by a board of seven members who are appointed by the Governor and confirmed by the Florida Senate to five-year terms.<sup>6</sup> Under Article IV, section 9 of the Florida Constitution, the FWC is granted the authority to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.

Chapters 327 and 328, F.S., concerning vessel safety and vessel title certificates, liens, and registration, are enforced by the FWC's Division of Law Enforcement and its officers, county sheriffs and deputies, municipal police officers, and any other law enforcement officer.<sup>7</sup> The

---

<sup>1</sup> Chapter 99-247, Laws of Fla.

<sup>2</sup> Department of Environmental Protection (DEP), *Florida Forever Five Year Plan* (2021), 17, available at [FLDEP\\_DSL\\_OES\\_FF\\_2021Abstract\\_2.pdf \(floridadep.gov\)](https://www.floridadep.gov/lands/environmental-services/content/faq-florida-forever) (last visited Jan. 10, 2022).

<sup>3</sup> Section 259.105, F.S.

<sup>4</sup> DEP, *Frequently Asked Questions about Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/faq-florida-forever> (last visited Jan. 10, 2022). See Florida Natural Areas Inventory, *Summary of Florida Conservation Lands* (Feb. 2019), available at [https://www.fnai.org/PDFs/Maacres\\_202103\\_FCL\\_plus\\_LTF.pdf](https://www.fnai.org/PDFs/Maacres_202103_FCL_plus_LTF.pdf) (last visited Jan. 10, 2022) for a complete summary of the total amount of conservation lands in Florida.

<sup>5</sup> FLA. CONST. art. IV, s. 9.

<sup>6</sup> *Id.*; see also s. 379.102(1), F.S.

<sup>7</sup> Section 327.70(1), F.S.; see s. 943.10(1), F.S., which defines "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management

Division of Law Enforcement manages the state's waterways to ensure boating safety for residents and visitors.<sup>8</sup> This includes enforcing boating rules and regulations, coordinating boating safety campaigns and education, managing public waters and access to the waters, conducting boating accident investigations, identifying and removing derelict vessels, and investigating vessel theft and title fraud.<sup>9</sup>

### **Boating Safety Regulations**

A vessel operator in Florida must operate the vessel in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of another person outside the vessel or due to vessel overloading or excessive speed.<sup>10</sup> Operating a vessel in excess of a posted speed limit is a noncriminal infraction, for which the penalty is \$50.<sup>11</sup>

Vessel owners and operators must maintain safety equipment in accordance with current Coast Guard safety equipment requirements, unless expressly exempted.<sup>12</sup> Vessel owners and operators are also subject to additional safety requirements relating to appropriate equipment and the use of personal flotation devices.<sup>13</sup>

### **Testing for Alcohol, Chemical Substances, and Controlled Substances**

Anyone who operates a motor vehicle or vessel in the state, by operating such a vehicle or vessel, consents to an approved chemical or physical breath test to determine breath alcoholic content, or a urine test to detect the presence of chemical substances or controlled substances.<sup>14</sup> These tests may be performed if the person is lawfully arrested for any offense allegedly committed while the person was driving or in actual physical control of a motor vehicle, or operating a vessel, while under the influence of alcohol or chemical or controlled substances.<sup>15</sup>

Additionally, anyone who operates a motor vehicle or vessel in the state consents to an approved blood test to determine blood alcoholic content or to detect the presence of chemical substances or controlled substances.<sup>16</sup> These tests may be performed if there is reasonable cause to believe that the person was driving or in actual physical control of a motor vehicle, or operating a vessel, while under the influence of alcohol or chemical or controlled substances and the person appears for treatment at a hospital, clinic, or emergency vehicle, and the administration of a breath or urine test is impractical or impossible.<sup>17</sup>

---

responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

<sup>8</sup> Fish and Wildlife Conservation Commission (FWC), *Boating*, <https://myfwc.com/boating/> (last visited Nov. 5, 2021).

<sup>9</sup> FWC, *Law Enforcement*, <https://myfwc.com/about/inside-fwc/le/> (last visited Nov. 5, 2021). See ss. 327.70(1) and (4), F.S.

<sup>10</sup> Section 327.33, F.S.

<sup>11</sup> Section 327.73(h), F.S.

<sup>12</sup> Section 327.50, F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Sections 316.1932(1)(a) and 327.352(1)(a), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Sections 316.1932(1)(c) and 327.352(1)(c), F.S.

<sup>17</sup> *Id.*

A person who operates a motor vehicle and fails to submit to a breath, urine, or blood test will have his or her driver's license suspended for a period of one year for a first refusal, or 18 months for a repeat refusal.<sup>18</sup> A person who operates a motor vehicle who fails to submit to such test who has previously had his or her license suspended for a prior refusal commits a misdemeanor of the first degree and is subject to additional penalties.<sup>19</sup>

A person who operates a vessel and fails to submit to a breath, urine, or blood test is subject to a civil penalty of \$500 for a first refusal.<sup>20</sup> A person who operates a vessel and fails to submit to such test who has been previously fined commits a misdemeanor and is subject to additional penalties.<sup>21</sup>

### **Boating-Restricted Areas**

Boating-restricted areas, which may restrict the speed and operation of vessels, may be established on the waters of the state for any purpose necessary to protect the safety of the public, taking into account boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards, as well as seagrass protection on privately owned submerged lands.<sup>22</sup>

Local governments have authority to establish boating-restricted areas by ordinance within the portion of the Florida Intracoastal Waterway within their jurisdiction.<sup>23</sup> These areas include, but are not limited to:

- Idle-speed, no wake areas;
- Slow speed, minimum wake areas; and
- Vessel-exclusion zones.

Local governments can establish vessel-exclusion zones if the area is:

- Designated as a public bathing beach or swim area;
- Within 300 feet of a dam, spillway, or flood control structure;
- Reserved as a canoe trail or otherwise limited to vessels under oars or sail; or
- Reserved exclusively for a particular activity and user group separation must be imposed to protect the safety of participants.<sup>24</sup>

### **Derelict Vessels**

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or

---

<sup>18</sup> Sections 316.1932(1)(a) and (1)(c), F.S.

<sup>19</sup> *Id.*; s. 316.1939, F.S.

<sup>20</sup> Sections 327.352(1)(a) and (1)(c), F.S.

<sup>21</sup> *Id.*; s. 327.259, F.S.

<sup>22</sup> Section 327.46(1), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

beached upon the property of another without the consent.<sup>25</sup> It is unlawful to store, leave, or abandon any derelict vessel in this state.<sup>26</sup>

### ***At-Risk Vessels***

Neglected or deteriorating vessels may not occupy the waters of this state.<sup>27</sup> A vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater;
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor;
- The vessel is listing due to water intrusion; or
- The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives notice.<sup>28</sup>

### ***Vessels Declared to be a Public Nuisance***

If a vessel is declared at risk of becoming derelict under the same condition three or more times within an 18-month period, and if the determination results in dispositions other than acquittal or dismissal, the vessel is declared to be a public nuisance.<sup>29</sup> A vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater;
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor;
- The vessel is listing due to water intrusion; or
- The vessel does not have effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives notice.<sup>30</sup>

A vessel that is declared to be a public nuisance and threatens navigation, or is a danger to the environment, property, or persons, may be relocated, removed, stored, destroyed, or disposed of by the FWC or other law enforcement.<sup>31</sup> When a derelict vessel or a vessel declared to be a public nuisance through the process described above is located on the waters of the state, a law enforcement officer shall place a notice on the vessel in a form substantially similar to the one provided by statute.<sup>32</sup>

---

<sup>25</sup> Section 823.11(1)(b), F.S.

<sup>26</sup> Section 376.15, F.S.; s. 823.11(2), F.S.

<sup>27</sup> Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.

<sup>28</sup> Section 327.4107, F.S.

<sup>29</sup> Section 327.73(1)(aa), F.S.; s. 327.4107(2), F.S.

<sup>30</sup> Section 327.4107(2), F.S.

<sup>31</sup> Section 327.73(1)(aa), F.S.; s. 823.11(3), F.S.

<sup>32</sup> Section 705.103(1)(b), F.S.



### ***Abandoned Vessels***

“Abandoned property”<sup>33</sup> means all tangible personal property that does not have an identifiable owner and that has been disposed of on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner. The term includes derelict vessels, as defined in state law.

When a derelict vessel or a vessel declared to be a public nuisance is on the waters of the state, a law enforcement officer must place a notice of removal on the vessel. The law enforcement agency must then contact the Department of Highway Safety and Motor Vehicles to determine the name and address of the owner, and must mail a copy of the notice to the owner.<sup>34</sup>

If, after 21 days of posting and mailing the notice, the owner has not removed the vessel from the waters of the state or shown reasonable cause for failure to do so, the law enforcement agency may remove, destroy, or dispose of the vessel.<sup>35</sup>

The owner of a derelict vessel or a vessel declared to be a public nuisance who does not remove the vessel after receiving notice, is liable to the law enforcement agency for all costs of removal, storage, and destruction of the vessel, less any salvage value obtained by its disposal.<sup>36</sup> Upon the final disposition of the vessel, the law enforcement officer must notify the owner of the amount owed. A person who neglects or refuses to pay the amount owed is not entitled to be issued a certificate of registration for the vessel, or any other vessel, until such costs have been paid.<sup>37</sup>

Local governments are authorized to enact and enforce regulations to implement the procedures for abandoned or lost property that allow a local law enforcement agency, after providing written notice, to remove a vessel affixed to a public dock within its jurisdiction that is abandoned or lost property.<sup>38</sup>

### ***Removal of Derelict Vessels***

The FWC’s Division of Law Enforcement and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.<sup>39</sup> Sections 376.15 and 823.11, F.S., both address the treatment of derelict vessels. Much of the language between the two statutes is duplicative.<sup>40</sup>

Both state and local law enforcement are authorized and empowered to relocate, remove, store, destroy, or dispose of a derelict vessel from waters of the state if the derelict vessel threatens navigation or is a danger to the environment, property, or persons.<sup>41</sup> The FWC officers and other law enforcement agency officers or contractors who perform relocation or removal activities at

---

<sup>33</sup> Section 705.101(3), F.S.

<sup>34</sup> Section 705.103(2), F.S.

<sup>35</sup> *Id.*

<sup>36</sup> Section 705.103(4), F.S.

<sup>37</sup> *Id.*

<sup>38</sup> Section 327.60(5), F.S.

<sup>39</sup> Section 327.70, F.S.

<sup>40</sup> Section 376.15, F.S.; s. 823.11, F.S.

<sup>41</sup> Section 823.11(3), F.S.; s. 376.15(3)(a), F.S.

the FWC's direction are required to be licensed, insured, and properly equipped to perform the services to be provided.<sup>42</sup>

The costs incurred by the FWC or another law enforcement agency for relocating or removing a derelict vessel are recoverable against the vessel owner.<sup>43</sup> A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by its disposal, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.<sup>44</sup>

The FWC has the authority to provide grants, funded from the Marine Resource Conservation Trust Fund or the Florida Coastal Protection Trust Fund, to local governments for the removal of derelict vessels from waters of this state, if funds are appropriated for the grant program.<sup>45</sup> However, each fiscal year, if all program funds are not requested by and granted to local governments for the removal of derelict vessels by the end of the third quarter, the FWC may use the remainder of the funds to remove, or pay private contractors to remove, derelict vessels.<sup>46</sup> Pursuant to this, the FWC established the Derelict Vessel Removal Grant Program in 2019.<sup>47</sup> Grants are awarded based on a set of criteria outlined in FWC rules.<sup>48</sup>

### ***Penalties for Prohibited Acts Relating to Derelict Vessels and Anchoring and Mooring***

It is a first degree misdemeanor to store, leave, or abandon a derelict vessel in Florida.<sup>49</sup> Violations are punishable by imprisonment of no more than one year and a fine of up to \$1,000.<sup>50</sup> Further, such violation is punishable by a civil penalty of up to \$75,000 per violation per day.<sup>51</sup> Each day during any portion of which the violation occurs constitutes a separate offense.<sup>52</sup>

An owner or operator of a vessel at risk of becoming derelict on waters of this state or who allows such vessel to occupy such waters, is subject to a uniform boating citation and civil penalty. The civil penalty provided is:

- \$100 for a first offense;
- \$250 for a second offense occurring 30 days or more after a first offense; and
- \$500 for a third offense occurring 30 days or more after a previous offense.<sup>53</sup>

<sup>42</sup> Section 823.11(3)(c), F.S.; s. 376.15(3)(c), F.S.

<sup>43</sup> Section 823.11(3)(a), F.S.; s. 376.15(3)(a), F.S.

<sup>44</sup> Section 705.103(4), F.S.

<sup>45</sup> Section 376.15, F.S.

<sup>46</sup> Section 376.15, F.S.

<sup>47</sup> FWC, *FWC Derelict Vessel Removal Grant Program Guidelines, 2* (2019), available at <https://myfwc.com/media/22317/dv-grant-guidelines.pdf> (last visited Nov. 15, 2021). Incorporated by reference in Fla. Admin. Code R. 68-1.003.

<sup>48</sup> *Id.*

<sup>49</sup> Sections 376.15(2) and 823.11(2) and (5), F.S. A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>50</sup> Sections 775.082(4)(a) and 775.083(1)(d), F.S.

<sup>51</sup> Sections 376.15(2) and 376.16(1), F.S.

<sup>52</sup> Section 376.16(1), F.S.

<sup>53</sup> Section 327.73(1)(aa), F.S.

An owner or operator of a vessel or floating structure who anchors or moors in a prohibited area is subject to a uniform boating citation and penalties. The civil penalty provided is up to a maximum of:

- \$50 for a first offense;
- \$100 for a second offense; and
- \$250 for a third offense.<sup>54</sup>

Any person who fails to appear or otherwise properly respond to a uniform boating citation must, in addition to the charge relating to the violation of the boating laws, be charged with a second degree misdemeanor, which is punishable by a maximum fine of \$500 and no more than 60 days of imprisonment.<sup>55</sup>

**Florida Intracoastal Waterway**

The Florida Intracoastal Waterway consists of the following waterways: the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to Fort Myers; the St. Johns River, Jacksonville to Sanford; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to Anclote open bay section, using the Gulf of Mexico; the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and the Apalachicola, Chattahoochee, and Flint Rivers in Florida.<sup>56</sup> The Florida Intracoastal Waterway is shown in the map below.<sup>57</sup>



<sup>54</sup> Section 327.73(1)(bb), F.S.

<sup>55</sup> Sections 327.73(1), 775.082, and 775.083, F.S.

<sup>56</sup> Section 327.02(15), F.S.

<sup>57</sup> Florida Department of Transportation, *Florida Waterways System Plan*, Figure 1-2 on p. 1-12 (2015), available at [https://www.fdot.gov/docs/default-source/seaport/pdfs/2015-Florida-Waterways-System-Plan\\_Final.pdf](https://www.fdot.gov/docs/default-source/seaport/pdfs/2015-Florida-Waterways-System-Plan_Final.pdf) (last visited Nov. 5, 2021).

## Drones

A drone is a powered, aerial vehicle that does not carry a human operator; uses aerodynamic forces to provide vehicle lift; can fly autonomously or be piloted remotely; can be expendable or recoverable; and can carry a lethal or nonlethal payload.<sup>58</sup> Florida law prohibits the use of drones by a law enforcement agency to gather evidence or other information, and by a person, state agency, or political subdivision to conduct surveillance on privately-owned real property or on the owner, tenant, occupant, invitee, or licensee of the real property.<sup>59</sup> The exceptions to the prohibition allow a non-law enforcement employee of the FWC or the Florida Forest Service to use a drone to manage or eradicate invasive exotic plants or animals on public lands and to suppress wildfire threats.<sup>60</sup>

Remote sensing using drones for the surveillance, detection, and reporting of an invasive species can improve early detection of invading plants and animals, making management more efficient and less expensive.<sup>61</sup> Studies have shown that drones can efficiently and inexpensively cover a large geographic range, reach places that are difficult to access, carry a variety of cameras and sensors, collect biological specimens, and target and eliminate individual organisms through ballistic application of herbicides.<sup>62</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 259.105, F.S., the Florida Forever Act, to require each lead land management agency, in consultation with the Fish and Wildlife Conservation Commission (FWC), to consider in the management plan the feasibility of creating a gopher tortoise recipient site for state lands under its management which are larger than 40 contiguous acres.

If the recipient site management is not in conflict with the primary management objects of the parcel, the management plan must contain an assessment of feasibility of managing the site as a recipient site for gopher tortoises.

Each land management agency must consult with the FWC on feasibility assessments and implementation of gopher tortoise management.

Provides that gopher tortoise recipient sites should be used, where appropriate, to bring environmentally sensitive tracts under an acceptable level of protection.

**Section 2** amends s. 327.352, F.S., to change a driver's license suspension to a driving privilege suspension, as related to a refusal to submit to a lawful breath, urine, or blood test.

---

<sup>58</sup> Section 934.50(1)(a), F.S.

<sup>59</sup> Section 934.50(3), F.S.

<sup>60</sup> Section 934.50(4)(p), F.S.

<sup>61</sup> Barbara Martinez, Alex Dehgan, Brad Zamft, David Baisch, Colin McCormick, Anthony J. Giordano, Rebecca Aicher, Shah Selbe, Cassie Hoffman, *Advancing federal capacities for the early detection of and rapid response to invasive species through technology innovation*, National Invasive Species Council: Contractor's Report, Mar. 2017, available at [federal capacities for edrr through technology innovation prepub 8.7.17.pdf \(doi.gov\)](#) (last visited Nov. 15 2021).

<sup>62</sup> *Id.*

**Section 3** amends s. 327.35215, F.S., to require that the Fish and Wildlife Conservation Commission (FWC) provide the certified statement forms that a law enforcement officer must fill out upon arresting a person for refusing to submit to lawful breath, blood, or urine test.

**Section 4** amends s. 327.371, F.S., to allow a person to operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway when participating in interscholastic, intercollegiate, intramural, or club athletic teams or sports affiliated with an educational institution if the adjacent area outside of the marked channel is not suitable. The bill requires that teams use their best efforts to make use of the adjacent area outside of the marked channel.

**Section 5** amends s. 327.4107, F.S., to allow an FWC officer or other law enforcement officer to determine that a vessel is at risk of becoming derelict if it is tied to an unlawful or unpermitted structure or mooring.

**Section 6** amends s. 327.46, F.S., to clarify that when municipalities and counties establish public bathing beach or swim areas as vessel-exclusion zones, they may not establish them within the marked channel of the Florida Intracoastal Waterway or within 100 feet of any portion of the marked channel.

**Section 7** repeals s. 376.15, F.S. The repeal has no effect, as the bill merely moves non-duplicative language in s. 376.15, F.S., relating to derelict vessels and their relocation or removal from waters of this state, from that section to s. 823.11, F.S., which also addresses derelict vessels.

**Section 8** amends s. 379.101, F.S., to clarify the definitions of “marine fish” and “saltwater fish” to reflect updates in the scientific classification of certain identifying terminology.

**Section 9** amends s. 705.101, F.S., to add vessels declared a public nuisance to the definition of abandoned property. Vessels that are abandoned property are declared a public nuisance after having been found at risk of dereliction three or more times for the same condition within 18 months.

**Section 10** amends s. 705.103, F.S., relating to procedures for abandoned or lost property. The bill adds vessels declared to be a public nuisance into the notice requirements and liability provisions applicable to owners of, or parties responsible for, derelict vessels. The bill also allows law enforcement officers to dispose of derelict vessels or vessels declared to be a public nuisance. This section also makes technical changes and deletes a cross-reference to s. 376.15, F.S.

**Section 11** amends s. 705.103, F.S., as amended by chapters 2019-76 and 2021-184, Laws of Florida, which will be effective July 1, 2023, to make the changes discussed in Section 9 of the bill.

**Section 12** amends s. 823.11, F.S., to clarify that additional time provided for an owner or responsible party to remove a derelict vessel from the waters of this state, or to repair and remedy the vessel’s derelict condition in the event of an accident or event, does not apply if the

vessel was already derelict. The bill removes language allowing law enforcement to destroy or dispose of derelict vessels threatening navigation or endangering environment, property, or persons. The bill moves language relating to grants for removal and disposal of derelict vessels from s. 376.15, F.S., (deleted by the bill) into s. 823.11, F.S. It also makes technical changes and deletes references to s. 376.15, F.S.

**Section 13** amends s. 934.50, F.S., relating to searches and seizure using a drone. The bill deletes language prohibiting law enforcement employees of the FWC and the Florida Forest Service from using a drone to manage and eradicate invasive exotic plants and animals on public lands and to suppress and mitigate wildfire threats.

**Section 14** amends s. 327.04, F.S., to delete a reference to s. 376.15, F.S.

**Section 15** amends s. 328.09, F.S., to delete and revise a reference to s. 376.15, F.S. The bill also provides that the Department of Highway Safety and Motor Vehicles may not issue a certificate of title for a vessel that has been deemed a public nuisance after having been found at risk of becoming derelict three or more times within an 18-month period. The bill authorizes the department to issue a certificate of title once law enforcement has verified in writing that the vessel is no longer a public nuisance. The bill adds these requirements for public nuisance vessels to the current requirements for derelict vessels.

**Section 16** amends s. 25 of ch. 2021-184, Laws of Florida, to remove a reference to s. 376.15, F.S.

**Section 17** amends s. 328.72, F.S., to delete and revise a reference to s. 376.15, F.S.

**Section 18** amends s. 376.11, F.S., to direct that Florida Coastal Protection Trust Fund moneys may be used to fund grant programs for local governments for the removal of public nuisance vessels, in addition to derelict vessels, from the public waters of the state. The bill also deletes and revises a reference to s. 376.15, F.S.

**Sections 19, 20 and 21** reenacts ss. 327.73(1)(dd), 125.01(4), and 379.2412, F.S., to incorporate the amendments made by this bill to allow human-powered vessels to operate in the Florida Intracoastal Waterway for certain reasons, and to make clarifying revisions to the definition of marine and saltwater fish.

**Section 22** provides that except as otherwise expressly provided, the effective date is July 1, 2022.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate. Local governments may benefit from expanded use of grant programs; expanded use of grant programs may necessitate the need for additional funding from state government.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The amendment in Section 4 revises a section of law authorizing a Fish and Wildlife Conservation Commission or other law enforcement officer to determine if a vessel is at risk of becoming derelict. All existing criteria are related to the condition of the vessel; however, the criteria the bill adds is unrelated to the condition of the vessel. A clarification may be appropriate.

**VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 259.105, 327.352, 327.35215, 327.371, 327.4107, 327.46, 379.101, 705.101, 705.103, 823.11, 934.50, 327.04, 328.09, 328.72, and 376.11.

This bill repeals section 376.15 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 327.73(1)(dd), 125.01(4), and 379.2412.

## **IX. Additional Information:**

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

#### **CS/CS by Appropriations on January 27, 2022:**

The committee substitute:

- Amends the Florida Forever Act to require each lead land managing agency, in consultation with the Fish and Wildlife Conservation Commission (FWC), to consider in the management plan the feasibility of creating a gopher tortoise recipient site for state lands under its management which are larger than 40 contiguous acres.
  - If the recipient site management is not in conflict with the primary management objects of the parcel, the management plan must contain an assessment of feasibility of managing the site as a recipient site for gopher tortoise.
  - Each land management agency must consult with FWC on feasibility assessments and implementation of gopher tortoise management.
- Provides that gopher tortoise recipient sites should be used, where appropriate, to bring environmentally sensitive tracts under an acceptable level of protection.
- Allows that a person may operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway when participating in interscholastic, intercollegiate, intramural, or club athletic teams or sports affiliated with an education institution when the adjacent area outside of the marked channel is not suitable for use.
- Requires that teams use their best efforts to make use of the adjacent area.

#### **CS by Environment and Natural Resources on November 30, 2021:**

- Requires that the Fish and Wildlife Conservation Commission, not the Department of Highway Safety and Motor Vehicles (department), provide the forms that a law enforcement officer must fill out upon arresting a person for refusing to submit to lawful a breath, blood, or urine test.
- Removes the requirement, created by the underlying bill, that the department must have substantial, competent evidence that shows demonstrable harm before establishing springs protection zones.
- Allows a person to operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway when participating in interscholastic, intercollegiate, intramural, or club athletic teams or sports affiliated with an education institution.
- Provides that the department may not issue a certificate of title to an applicant for a vessel that has been deemed a public nuisance after having been found at risk of becoming derelict three or more times within an 18-month period.
- Authorizes the department to issue a certificate of title once law enforcement has verified in writing that a vessel is no longer a public nuisance.



- Allows moneys from the Florida Coastal Protection Trust Fund to be granted to local governments for the removal of public nuisance vessels, in addition to derelict vessels, from the waters of the state.
- Reenacts the noncriminal infraction relating to the regulation of human-powered vessels to incorporate the amendment made by the strike-all.
- Retains all other provisions in the bill except as otherwise described.

B. Amendments:

None.

By the Committee on Environment and Natural Resources; and  
Senator Hutson

592-01302-22

2022494c1

1 A bill to be entitled  
2 An act relating to the Fish and Wildlife Conservation  
3 Commission; amending ss. 327.352 and 327.35215, F.S.;  
4 revising the notices a person must be given for  
5 failure to submit to certain tests for alcohol,  
6 chemical substances, or controlled substances; making  
7 technical changes; amending s. 327.371, F.S.;  
8 authorizing certain athletic teams or sports  
9 affiliated with specified educational institutions to  
10 operate a human-powered vessel within the marked  
11 channel of the Florida Intracoastal Waterway; amending  
12 s. 327.4107, F.S.; revising the vessel conditions that  
13 an officer of the Fish and Wildlife Conservation  
14 Commission or a law enforcement agency may use to  
15 determine that a vessel is at risk of becoming  
16 derelict; amending s. 327.46, F.S.; prohibiting  
17 municipalities and counties from designating public  
18 bathing beach areas or swim areas within their  
19 jurisdictions which are within the marked channel  
20 portion of the Florida Intracoastal Waterway or within  
21 a specified distance from any portion of the marked  
22 channel; repealing s. 376.15, F.S., relating to  
23 derelict vessels and the relocation and removal of  
24 such vessels from the waters of this state; amending  
25 s. 379.101, F.S.; revising the definitions of the  
26 terms "marine fish" and "saltwater fish"; amending s.  
27 705.101, F.S.; revising the definition of the term  
28 "abandoned property" to include vessels declared to be  
29 a public nuisance; amending s. 705.103, F.S.;

Page 1 of 30

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

592-01302-22

2022494c1

30 clarifying the notice requirements and procedures for  
31 vessels declared to be public nuisances; amending s.  
32 823.11, F.S.; making technical changes; authorizing  
33 the commission to establish a program to provide  
34 grants to local governments for certain actions  
35 regarding derelict vessels and those declared to be a  
36 public nuisance; specifying sources for the funds to  
37 be used, subject to an appropriation; authorizing the  
38 commission to use funds not awarded as grants for  
39 certain purposes; requiring the commission to adopt  
40 rules for the grant applications and the criteria for  
41 allocating the funds; amending s. 934.50, F.S.;  
42 providing that all employees of the commission or the  
43 Florida Forest Service may operate drones for  
44 specified purposes; amending ss. 327.04, 328.09,  
45 328.72, and 376.11, F.S.; conforming provisions to  
46 changes made by the act; repealing s. 25, chapter  
47 2021-184, Laws of Florida, relating to derelict  
48 vessels; reenacting s. 327.73(1)(dd), F.S., relating  
49 to noncriminal boating infractions, to incorporate the  
50 amendment made to s. 327.371, F.S., in a reference  
51 thereto; reenacting ss. 125.01(4) and 379.2412, F.S.,  
52 relating to powers and duties of legislative and  
53 governing bodies of counties and state preemption of  
54 the regulating of taking or possessing saltwater fish,  
55 respectively, to incorporate the amendment made to s.  
56 379.101, F.S., in a reference thereto; providing  
57 effective dates.  
58

Page 2 of 30

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

592-01302-22

2022494c1

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

60  
61 Section 1. Paragraphs (a) and (c) of subsection (1) of  
62 section 327.352, Florida Statutes, are amended to read:

63 327.352 Tests for alcohol, chemical substances, or  
64 controlled substances; implied consent; refusal.-

65 (1)(a)1. The Legislature declares that the operation of a  
66 vessel is a privilege that must be exercised in a reasonable  
67 manner. In order to protect the public health and safety, it is  
68 essential that a lawful and effective means of reducing the  
69 incidence of boating while impaired or intoxicated be  
70 established. Therefore, a person who accepts the privilege  
71 extended by the laws of this state of operating a vessel within  
72 this state is, by operating such vessel, deemed to have given  
73 his or her consent to submit to an approved chemical test or  
74 physical test including, but not limited to, an infrared light  
75 test of his or her breath for the purpose of determining the  
76 alcoholic content of his or her blood or breath if the person is  
77 lawfully arrested for any offense allegedly committed while the  
78 person was operating a vessel while under the influence of  
79 alcoholic beverages. The chemical or physical breath test must  
80 be incidental to a lawful arrest and administered at the request  
81 of a law enforcement officer who has reasonable cause to believe  
82 such person was operating the vessel within this state while  
83 under the influence of alcoholic beverages. The administration  
84 of a breath test does not preclude the administration of another  
85 type of test. The person shall be told that his or her failure  
86 to submit to any lawful test of his or her breath under this  
87 chapter will result in a civil penalty of \$500, and ~~shall also~~

Page 3 of 30

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

592-01302-22

2022494c1

88 ~~be told~~ that if he or she refuses to submit to a lawful test of  
89 his or her breath and he or she has been previously fined under  
90 s. 327.35215 or ~~has previously had his or her driving privilege~~  
91 has been previously driver license suspended for refusal to  
92 submit to any lawful test of his or her breath, urine, or blood,  
93 he or she commits a misdemeanor of the first degree, punishable  
94 as provided in s. 775.082 or s. 775.083, in addition to any  
95 other penalties provided by law. The refusal to submit to a  
96 chemical or physical breath test upon the request of a law  
97 enforcement officer as provided in this section is admissible  
98 into evidence in any criminal proceeding.

99 2. A person who accepts the privilege extended by the laws  
100 of this state of operating a vessel within this state is, by  
101 operating such vessel, deemed to have given his or her consent  
102 to submit to a urine test for the purpose of detecting the  
103 presence of chemical substances as set forth in s. 877.111 or  
104 controlled substances if the person is lawfully arrested for any  
105 offense allegedly committed while the person was operating a  
106 vessel while under the influence of chemical substances or  
107 controlled substances. The urine test must be incidental to a  
108 lawful arrest and administered at a detention facility or any  
109 other facility, mobile or otherwise, which is equipped to  
110 administer such tests at the request of a law enforcement  
111 officer who has reasonable cause to believe such person was  
112 operating a vessel within this state while under the influence  
113 of chemical substances or controlled substances. The urine test  
114 must shall be administered at a detention facility or any other  
115 facility, mobile or otherwise, which is equipped to administer  
116 such test in a reasonable manner that will ensure the accuracy

Page 4 of 30

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

592-01302-22

2022494c1

117 of the specimen and maintain the privacy of the individual  
 118 involved. The administration of a urine test does not preclude  
 119 the administration of another type of test. The person shall be  
 120 told that his or her failure to submit to any lawful test of his  
 121 or her urine under this chapter will result in a civil penalty  
 122 of \$500, and ~~shall also be told~~ that if he or she refuses to  
 123 submit to a lawful test of his or her urine and he or she has  
 124 been previously fined under s. 327.35215 or ~~has previously had~~  
 125 his or her driving privilege has been previously ~~driver license~~  
 126 suspended for refusal to submit to any lawful test of his or her  
 127 breath, urine, or blood, he or she commits a misdemeanor of the  
 128 first degree, punishable as provided in s. 775.082 or s.  
 129 775.083, in addition to any other penalties provided by law. The  
 130 refusal to submit to a urine test upon the request of a law  
 131 enforcement officer as provided in this section is admissible  
 132 into evidence in any criminal proceeding.

133 (c) A person who accepts the privilege extended by the laws  
 134 of this state of operating a vessel within this state is, by  
 135 operating such vessel, deemed to have given his or her consent  
 136 to submit to an approved blood test for the purpose of  
 137 determining the alcoholic content of the blood or a blood test  
 138 for the purpose of determining the presence of chemical  
 139 substances or controlled substances as provided in this section  
 140 if there is reasonable cause to believe the person was operating  
 141 a vessel while under the influence of alcoholic beverages or  
 142 chemical or controlled substances and the person appears for  
 143 treatment at a hospital, clinic, or other medical facility and  
 144 the administration of a breath or urine test is impractical or  
 145 impossible. As used in this paragraph, the term "other medical

Page 5 of 30

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

592-01302-22

2022494c1

146 facility" includes an ambulance or other medical emergency  
 147 vehicle. The blood test must ~~shall~~ be performed in a reasonable  
 148 manner. A person who is incapable of refusal by reason of  
 149 unconsciousness or other mental or physical condition is deemed  
 150 not to have withdrawn his or her consent to such test. A person  
 151 who is capable of refusal shall be told that his or her failure  
 152 to submit to such a blood test will result in a civil penalty of  
 153 \$500. The refusal to submit to a blood test upon the request of  
 154 a law enforcement officer is ~~shall be~~ admissible in evidence in  
 155 any criminal proceeding.

156 Section 2. Subsections (1) and (2) of section 327.35215,  
 157 Florida Statutes, are amended to read:

158 327.35215 Penalty for failure to submit to test.-

159 (1) A person ~~who is~~ lawfully arrested for an alleged  
 160 violation of s. 327.35 ~~and~~ who refuses to submit to a blood  
 161 test, breath test, or urine test pursuant to s. 327.352 is  
 162 subject to a civil penalty of \$500.

163 (2) When a person refuses to submit to a blood test, breath  
 164 test, or urine test pursuant to s. 327.352, a law enforcement  
 165 officer ~~who is~~ authorized to make arrests for violations of this  
 166 chapter shall file with the clerk of the court, on a form  
 167 provided by the commission department, a certified statement  
 168 that probable cause existed to arrest the person for a violation  
 169 of s. 327.35 and that the person refused to submit to a test as  
 170 required by s. 327.352. Along with the statement, the officer  
 171 shall ~~must~~ also submit a sworn statement on a form provided by  
 172 the commission department that the person has been advised of  
 173 both the penalties for failure to submit to the blood, breath,  
 174 or urine test and the procedure for requesting a hearing.

Page 6 of 30

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

592-01302-22

2022494c1

175 Section 3. Present paragraph (c) of subsection (1) of  
 176 section 327.371, Florida Statutes, is redesignated as paragraph  
 177 (d), and a new paragraph (c) is added to that subsection, to  
 178 read:

179 327.371 Human-powered vessels regulated.—

180 (1) A person may operate a human-powered vessel within the  
 181 boundaries of the marked channel of the Florida Intracoastal  
 182 Waterway as defined in s. 327.02:

183 (c) When participating in interscholastic, intercollegiate,  
 184 intramural, or club athletic teams or sports affiliated with an  
 185 educational institution identified in s. 1000.21, s. 1002.01(2),  
 186 s. 1003.01(2), s. 1005.02(4), or s. 1005.03(1)(d).

187 Section 4. Paragraph (f) is added to subsection (2) of  
 188 section 327.4107, Florida Statutes, to read:

189 327.4107 Vessels at risk of becoming derelict on waters of  
 190 this state.—

191 (2) An officer of the commission or of a law enforcement  
 192 agency specified in s. 327.70 may determine that a vessel is at  
 193 risk of becoming derelict if any of the following conditions  
 194 exist:

195 (f) The vessel is tied to an unlawful or unpermitted  
 196 structure or mooring.

197 Section 5. Paragraph (b) of subsection (1) of section  
 198 327.46, Florida Statutes, is amended to read:

199 327.46 Boating-restricted areas.—

200 (1) Boating-restricted areas, including, but not limited  
 201 to, restrictions of vessel speeds and vessel traffic, may be  
 202 established on the waters of this state for any purpose  
 203 necessary to protect the safety of the public if such

592-01302-22

2022494c1

204 restrictions are necessary based on boating accidents,  
 205 visibility, hazardous currents or water levels, vessel traffic  
 206 congestion, or other navigational hazards or to protect  
 207 seagrasses on privately owned submerged lands.

208 (b) Municipalities and counties may establish the following  
 209 boating-restricted areas by ordinance, including,  
 210 notwithstanding the prohibition in s. 327.60(2)(c), within the  
 211 portion of the Florida Intracoastal Waterway within their  
 212 jurisdiction:

213 1. An ordinance establishing an idle speed, no wake  
 214 boating-restricted area, if the area is:

215 a. Within 500 feet of any boat ramp, hoist, marine railway,  
 216 or other launching or landing facility available for use by the  
 217 general boating public on waterways more than 300 feet in width  
 218 or within 300 feet of any boat ramp, hoist, marine railway, or  
 219 other launching or landing facility available for use by the  
 220 general boating public on waterways not exceeding 300 feet in  
 221 width.

222 b. Within 500 feet of fuel pumps or dispensers at any  
 223 marine fueling facility that sells motor fuel to the general  
 224 boating public on waterways more than 300 feet in width or  
 225 within 300 feet of the fuel pumps or dispensers at any licensed  
 226 terminal facility that sells motor fuel to the general boating  
 227 public on waterways not exceeding 300 feet in width.

228 c. Inside or within 300 feet of any lock structure.

229 2. An ordinance establishing a slow speed, minimum wake  
 230 boating-restricted area if the area is:

231 a. Within 300 feet of any bridge fender system.

232 b. Within 300 feet of any bridge span presenting a vertical

592-01302-22 2022494c1

233 clearance of less than 25 feet or a horizontal clearance of less  
234 than 100 feet.

235 c. On a creek, stream, canal, or similar linear waterway if  
236 the waterway is less than 75 feet in width from shoreline to  
237 shoreline.

238 d. On a lake or pond of less than 10 acres in total surface  
239 area.

240 e. Within the boundaries of a permitted public mooring  
241 field and a buffer around the mooring field of up to 100 feet.

242 3. An ordinance establishing a vessel-exclusion zone if the  
243 area is:

244 a. Designated as a public bathing beach or swim area,  
245 except that public bathing beach or swim areas may not be  
246 established in whole or in part within the marked channel of the  
247 Florida Intracoastal Waterway or within 100 feet of any portion  
248 of the marked channel.

249 b. Within 300 feet of a dam, spillway, or flood control  
250 structure.

251

252 Vessel exclusion zones created pursuant to this subparagraph  
253 must be marked with uniform waterway markers permitted by the  
254 commission in accordance with this chapter. Such zones may not  
255 be marked by ropes.

256 Section 6. Section 376.15, Florida Statutes, is repealed.

257 Section 7. Subsections (22) and (34) of section 379.101,  
258 Florida Statutes, are amended to read:

259 379.101 Definitions.—In construing these statutes, where  
260 the context does not clearly indicate otherwise, the word,  
261 phrase, or term:

592-01302-22 2022494c1

262 (22) "Marine fish" means any saltwater species of finfish  
263 of the classes Agnatha, Chondrichthyes, and Osteichthyes, and  
264 marine invertebrates ~~of~~ in the classes Gastropoda ~~and~~, Bivalvia,  
265 the subphylum ~~and~~ Crustacea, or the phylum Echinodermata;  
266 however, the term ~~but~~ does not include nonliving shells or  
267 echinoderms.

268 (34) "Saltwater fish" means:

269 (a) Any saltwater species of finfish of the classes  
270 Agnatha, Chondrichthyes, or Osteichthyes and marine  
271 invertebrates of the classes Gastropoda ~~and~~, Bivalvia, the  
272 subphylum ~~or~~ Crustacea, or ~~of~~ the phylum Echinodermata; however,  
273 the term ~~but~~ does not include nonliving shells or echinoderms;  
274 and

275 (b) All classes of pisces, shellfish, sponges, and  
276 crustaceans ~~crustacea~~ native to salt water.

277 Section 8. Subsection (3) of section 705.101, Florida  
278 Statutes, is amended to read:

279 705.101 Definitions.—As used in this chapter:

280 (3) "Abandoned property" means all tangible personal  
281 property that does not have an identifiable owner and that has  
282 been disposed on public property in a wrecked, inoperative, or  
283 partially dismantled condition or has no apparent intrinsic  
284 value to the rightful owner. The term includes derelict vessels  
285 as defined in s. 823.11 and vessels declared a public nuisance  
286 pursuant to s. 327.73(1)(aa).

287 Section 9. Paragraph (a) of subsection (2) and subsection  
288 (4) of section 705.103, Florida Statutes, are amended to read:

289 705.103 Procedure for abandoned or lost property.—

290 (2)(a)1. Whenever a law enforcement officer ascertains

592-01302-22

2022494c1

291 that:

292 a. An article of lost or abandoned property other than a  
 293 derelict vessel or a vessel declared a public nuisance pursuant  
 294 to s. 327.73(1)(aa) is present on public property and is of such  
 295 nature that it cannot be easily removed, the officer shall cause  
 296 a notice to be placed upon such article in substantially the  
 297 following form:

298  
 299 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED  
 300 PROPERTY. This property, to wit: ...(setting forth brief  
 301 description)... is unlawfully upon public property known as  
 302 ...(setting forth brief description of location)... and must be  
 303 removed within 5 days; otherwise, it will be removed and  
 304 disposed of pursuant to chapter 705, Florida Statutes. The owner  
 305 will be liable for the costs of removal, storage, and  
 306 publication of notice. Dated this: ...(setting forth the date of  
 307 posting of notice)..., signed: ...(setting forth name, title,  
 308 address, and telephone number of law enforcement officer)...

309  
 310 b. A derelict vessel or a vessel declared a public nuisance  
 311 pursuant to s. 327.73(1)(aa) is present on the waters of this  
 312 state, the officer shall cause a notice to be placed upon such  
 313 vessel in substantially the following form:

314  
 315 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED  
 316 VESSEL. This vessel, to wit: ...(setting forth brief  
 317 description)... has been determined to be ...(derelict or a  
 318 public nuisance)... and is unlawfully upon waters of this state  
 319 ...(setting forth brief description of location)... and must be

Page 11 of 30

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

592-01302-22

2022494c1

320 removed within 21 days; otherwise, it will be removed and  
 321 disposed of pursuant to chapter 705, Florida Statutes. The owner  
 322 and other interested parties have the right to a hearing to  
 323 challenge the determination that this vessel is derelict or  
 324 otherwise in violation of the law. Please contact ...(contact  
 325 information for person who can arrange for a hearing in  
 326 accordance with this section)... The owner or the party  
 327 determined to be legally responsible for the vessel being upon  
 328 the waters of this state in a derelict condition or as a public  
 329 nuisance will be liable for the costs of removal, destruction,  
 330 and disposal if this vessel is not removed by the owner. Dated  
 331 this: ...(setting forth the date of posting of notice)...,  
 332 signed: ...(setting forth name, title, address, and telephone  
 333 number of law enforcement officer)...

334  
 335 2. The notices required under subparagraph 1. may not be  
 336 less than 8 inches by 10 inches and must ~~shall~~ be sufficiently  
 337 weatherproof to withstand normal exposure to the elements. In  
 338 addition to posting, the law enforcement officer shall make a  
 339 reasonable effort to ascertain the name and address of the  
 340 owner. If such is reasonably available to the officer, she or he  
 341 shall mail a copy of such notice to the owner on or before the  
 342 date of posting. If the property is a motor vehicle as defined  
 343 in s. 320.01(1) or a vessel as defined in s. 327.02, the law  
 344 enforcement agency shall contact the Department of Highway  
 345 Safety and Motor Vehicles in order to determine the name and  
 346 address of the owner and any person who has filed a lien on the  
 347 vehicle or vessel as provided in s. 319.27(2) or (3) or s.  
 348 328.15(1). On receipt of this information, the law enforcement

Page 12 of 30

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

592-01302-22

2022494c1

349 agency shall mail a copy of the notice by certified mail, return  
 350 receipt requested, to the owner and to the lienholder, if any,  
 351 except that a law enforcement officer who has issued a citation  
 352 for a violation of ~~s. 376.15~~ or s. 823.11 to the owner of a  
 353 derelict vessel is not required to mail a copy of the notice by  
 354 certified mail, return receipt requested, to the owner. For a  
 355 derelict vessel or a vessel declared a public nuisance pursuant  
 356 to s. 327.73(1)(aa), the mailed notice must inform the owner or  
 357 responsible party that he or she has a right to a hearing to  
 358 dispute the determination that the vessel is derelict or  
 359 otherwise in violation of the law. If a request for a hearing is  
 360 made, a state agency shall follow the processes set forth in s.  
 361 120.569. Local governmental entities shall follow the processes  
 362 set forth in s. 120.569, except that a local judge, magistrate,  
 363 or code enforcement officer may be designated to conduct such a  
 364 hearing. If, at the end of 5 days after posting the notice in  
 365 sub-subparagraph 1.a., or at the end of 21 days after posting  
 366 the notice in sub-subparagraph 1.b., and mailing such notice, if  
 367 required, the owner or any person interested in the lost or  
 368 abandoned article or articles described has not removed the  
 369 article or articles from public property or shown reasonable  
 370 cause for failure to do so, and, in the case of a derelict  
 371 vessel or a vessel declared a public nuisance pursuant to s.  
 372 327.73(1)(aa), has not requested a hearing in accordance with  
 373 this section, the following shall apply:

374 a. For abandoned property other than a derelict vessel or a  
 375 vessel declared a public nuisance pursuant to s. 327.73(1)(aa),  
 376 the law enforcement agency may retain any or all of the property  
 377 for its own use or for use by the state or unit of local

Page 13 of 30

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

592-01302-22

2022494c1

378 government, trade such property to another unit of local  
 379 government or state agency, donate the property to a charitable  
 380 organization, sell the property, or notify the appropriate  
 381 refuse removal service.

382 b. For a derelict vessel or a vessel declared a public  
 383 nuisance pursuant to s. 327.73(1)(aa), the law enforcement  
 384 agency or its designee may:

385 (I) Remove the vessel from the waters of this state and  
 386 destroy and dispose of the vessel or authorize another  
 387 governmental entity or its designee to do so; or

388 (II) Authorize the vessel's use as an artificial reef in  
 389 accordance with s. 379.249 if all necessary federal, state, and  
 390 local authorizations are received.

391  
 392 A law enforcement agency or its designee may also take action as  
 393 described in this sub-subparagraph if, following a hearing  
 394 pursuant to this section, the judge, magistrate, administrative  
 395 law judge, or hearing officer has determined the vessel to be  
 396 derelict as provided in s. 823.11 or otherwise in violation of  
 397 the law in accordance with s. 327.73(1)(aa) and a final order  
 398 has been entered or the case is otherwise closed.

399 (4) The owner of any abandoned or lost property, or in the  
 400 case of a derelict vessel or a vessel declared a public nuisance  
 401 pursuant to s. 327.73(1)(aa), the owner or other party  
 402 determined to be legally responsible for the vessel being upon  
 403 the waters of this state in a derelict condition or as a public  
 404 nuisance, who, after notice as provided in this section, does  
 405 not remove such property within the specified period ~~is shall be~~  
 406 liable to the law enforcement agency, other governmental entity,

Page 14 of 30

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



592-01302-22

2022494c1

407 or the agency's or entity's designee for all costs of removal,  
 408 storage, ~~and~~ destruction, and disposal of such property, less  
 409 any salvage value obtained by disposal of the property. Upon  
 410 final disposition of the property, the law enforcement officer  
 411 or representative of the law enforcement agency or other  
 412 governmental entity shall notify the owner or in the case of a  
 413 derelict vessel or vessel declared a public nuisance pursuant to  
 414 s. 327.73(1)(aa), the owner or other party determined to be  
 415 legally responsible, if known, of the amount owed. In the case  
 416 of an abandoned vessel or motor vehicle, any person who neglects  
 417 or refuses to pay such amount is not entitled to be issued a  
 418 certificate of registration for such vessel or motor vehicle, or  
 419 any other vessel or motor vehicle, until such costs have been  
 420 paid. A person who has neglected or refused to pay all costs of  
 421 removal, storage, disposal, and destruction of a vessel or motor  
 422 vehicle as provided in this section, after having been provided  
 423 written notice via certified mail that such costs are owed, and  
 424 who applies for and is issued a registration for a vessel or  
 425 motor vehicle before such costs have been paid in full commits a  
 426 misdemeanor of the first degree, punishable as provided in s.  
 427 775.082 or s. 775.083. The law enforcement officer or  
 428 representative of the law enforcement agency or other  
 429 governmental entity shall supply the Department of Highway  
 430 Safety and Motor Vehicles with a list of persons whose vessel  
 431 registration privileges and motor vehicle privileges have been  
 432 revoked under this subsection. The department or a person acting  
 433 as an agent of the department may not issue a certificate of  
 434 registration to a person whose vessel and motor vehicle  
 435 registration privileges have been revoked, as provided by this

Page 15 of 30

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

592-01302-22

2022494c1

436 subsection, until such costs have been paid.  
 437 Section 10. Effective July 1, 2023, paragraph (a) of  
 438 subsection (2) of section 705.103, Florida Statutes, as amended  
 439 by chapters 2019-76 and 2021-184, Laws of Florida, is amended to  
 440 read:  
 441 705.103 Procedure for abandoned or lost property.—  
 442 (2)(a)1. Whenever a law enforcement officer ascertains  
 443 that:  
 444 a. An article of lost or abandoned property other than a  
 445 derelict vessel or a vessel declared a public nuisance pursuant  
 446 to s. 327.73(1)(aa) is present on public property and is of such  
 447 nature that it cannot be easily removed, the officer shall cause  
 448 a notice to be placed upon such article in substantially the  
 449 following form:  
 450  
 451 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED  
 452 PROPERTY. This property, to wit: ...(setting forth brief  
 453 description)... is unlawfully upon public property known as  
 454 ...(setting forth brief description of location)... and must be  
 455 removed within 5 days; otherwise, it will be removed and  
 456 disposed of pursuant to chapter 705, Florida Statutes. The owner  
 457 will be liable for the costs of removal, storage, and  
 458 publication of notice. Dated this: ...(setting forth the date of  
 459 posting of notice)..., signed: ...(setting forth name, title,  
 460 address, and telephone number of law enforcement officer)....  
 461  
 462 b. A derelict vessel or a vessel declared a public nuisance  
 463 pursuant to s. 327.73(1)(aa) is present on the waters of this  
 464 state, the officer shall cause a notice to be placed upon such

Page 16 of 30

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

592-01302-22

2022494c1

465 vessel in substantially the following form:

466  
 467 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED  
 468 VESSEL. This vessel, to wit: ...(setting forth brief description  
 469 of location)... has been determined to be ...(derelict or a  
 470 public nuisance)... and is unlawfully upon the waters of this  
 471 state ...(setting forth brief description of location)... and  
 472 must be removed within 21 days; otherwise, it will be removed  
 473 and disposed of pursuant to chapter 705, Florida Statutes. The  
 474 owner and other interested parties have the right to a hearing  
 475 to challenge the determination that this vessel is derelict or  
 476 otherwise in violation of the law. Please contact ...(contact  
 477 information for person who can arrange for a hearing in  
 478 accordance with this section)... The owner or the party  
 479 determined to be legally responsible for the vessel being upon  
 480 the waters of this state in a derelict condition or as a public  
 481 nuisance will be liable for the costs of removal, destruction,  
 482 and disposal if this vessel is not removed by the owner. Dated  
 483 this: ...(setting forth the date of posting of notice)...,  
 484 signed: ...(setting forth name, title, address, and telephone  
 485 number of law enforcement officer)....

486  
 487 2. The notices required under subparagraph 1. may not be  
 488 less than 8 inches by 10 inches and must ~~shall~~ be sufficiently  
 489 weatherproof to withstand normal exposure to the elements. In  
 490 addition to posting, the law enforcement officer shall make a  
 491 reasonable effort to ascertain the name and address of the  
 492 owner. If such is reasonably available to the officer, she or he  
 493 shall mail a copy of such notice to the owner on or before the

Page 17 of 30

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

592-01302-22

2022494c1

494 date of posting. If the property is a motor vehicle as defined  
 495 in s. 320.01(1) or a vessel as defined in s. 327.02, the law  
 496 enforcement agency shall contact the Department of Highway  
 497 Safety and Motor Vehicles in order to determine the name and  
 498 address of the owner and any person who has filed a lien on the  
 499 vehicle or vessel as provided in s. 319.27(2) or (3) or s.  
 500 328.15. On receipt of this information, the law enforcement  
 501 agency shall mail a copy of the notice by certified mail, return  
 502 receipt requested, to the owner and to the lienholder, if any,  
 503 except that a law enforcement officer who has issued a citation  
 504 for a violation of ~~s. 376.15~~ s. 823.11 to the owner of a  
 505 derelict vessel is not required to mail a copy of the notice by  
 506 certified mail, return receipt requested, to the owner. For a  
 507 derelict vessel or a vessel declared a public nuisance pursuant  
 508 to s. 327.73(1)(aa), the mailed notice must inform the owner or  
 509 responsible party that he or she has a right to a hearing to  
 510 dispute the determination that the vessel is derelict or  
 511 otherwise in violation of the law. If a request for a hearing is  
 512 made, a state agency shall follow the processes as set forth in  
 513 s. 120.569. Local governmental entities shall follow the  
 514 processes set forth in s. 120.569, except that a local judge,  
 515 magistrate, or code enforcement officer may be designated to  
 516 conduct such a hearing. If, at the end of 5 days after posting  
 517 the notice in sub-subparagraph 1.a., or at the end of 21 days  
 518 after posting the notice in sub-subparagraph 1.b., and mailing  
 519 such notice, if required, the owner or any person interested in  
 520 the lost or abandoned article or articles described has not  
 521 removed the article or articles from public property or shown  
 522 reasonable cause for failure to do so, and, in the case of a

Page 18 of 30

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

592-01302-22

2022494c1

523 derelict vessel or a vessel declared a public nuisance pursuant  
524 to s. 327.73(1)(aa), has not requested a hearing in accordance  
525 with this section, the following shall apply:

526 a. For abandoned property other than a derelict vessel or a  
527 vessel declared a public nuisance pursuant to s. 327.73(1)(aa),  
528 the law enforcement agency may retain any or all of the property  
529 for its own use or for use by the state or unit of local  
530 government, trade such property to another unit of local  
531 government or state agency, donate the property to a charitable  
532 organization, sell the property, or notify the appropriate  
533 refuse removal service.

534 b. For a derelict vessel or a vessel declared a public  
535 nuisance pursuant to s. 327.73(1)(aa), the law enforcement  
536 agency or its designee may:

537 (I) Remove the vessel from the waters of this state and  
538 destroy and dispose of the vessel or authorize another  
539 governmental entity or its designee to do so; or

540 (II) Authorize the vessel's use as an artificial reef in  
541 accordance with s. 379.249 if all necessary federal, state, and  
542 local authorizations are received.

543  
544 A law enforcement agency or its designee may also take action as  
545 described in this sub-subparagraph if, following a hearing  
546 pursuant to this section, the judge, magistrate, administrative  
547 law judge, or hearing officer has determined the vessel to be  
548 derelict as provided in s. 823.11 or otherwise in violation of  
549 the law in accordance with s. 327.73(1)(aa) and a final order  
550 has been entered or the case is otherwise closed.

551 Section 11. Present subsections (4), (5), and (6) of

Page 19 of 30

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

592-01302-22

2022494c1

552 section 823.11, Florida Statutes, are redesignated as  
553 subsections (5), (6), and (7), respectively, a new subsection  
554 (4) is added to that section, and subsection (1), paragraph (c)  
555 of subsection (2), subsection (3), and present subsections (5)  
556 and (6) of that section are amended, to read:

557 823.11 Derelict vessels; relocation or removal; penalty.—

558 (1) As used in this section ~~and s. 376.15~~, the term:

559 (a) "Commission" means the Fish and Wildlife Conservation  
560 Commission.

561 (b) "Derelict vessel" means a vessel, as defined in s.  
562 327.02, that is:

563 1. In a wrecked, junked, or substantially dismantled  
564 condition upon any waters of this state.

565 a. A vessel is wrecked if it is sunken or sinking; aground  
566 without the ability to extricate itself absent mechanical  
567 assistance; or remaining after a marine casualty, including, but  
568 not limited to, a boating accident, extreme weather, or a fire.

569 b. A vessel is junked if it has been substantially stripped  
570 of vessel components, if vessel components have substantially  
571 degraded or been destroyed, or if the vessel has been discarded  
572 by the owner or operator. Attaching an outboard motor to a  
573 vessel that is otherwise junked will not cause the vessel to no  
574 longer be junked if such motor is not an effective means of  
575 propulsion as required by s. 327.4107(2)(e) and associated  
576 rules.

577 c. A vessel is substantially dismantled if at least two of  
578 the three following vessel systems or components are missing,  
579 compromised, incomplete, inoperable, or broken:

580 (I) The steering system;

Page 20 of 30

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

592-01302-22

2022494c1

581 (II) The propulsion system; or  
 582 (III) The exterior hull integrity.

583  
 584 Attaching an outboard motor to a vessel that is otherwise  
 585 substantially dismantled will not cause the vessel to no longer  
 586 be substantially dismantled if such motor is not an effective  
 587 means of propulsion as required by s. 327.4107(2)(e) and  
 588 associated rules.

589 2. At a port in this state without the consent of the  
 590 agency having jurisdiction thereof.

591 3. Docked, grounded, or beached upon the property of  
 592 another without the consent of the owner of the property.

593 (c) "Gross negligence" means conduct so reckless or wanting  
 594 in care that it constitutes a conscious disregard or  
 595 indifference to the safety of the property exposed to such  
 596 conduct.

597 (d) "Willful misconduct" means conduct evidencing  
 598 carelessness or negligence of such a degree or recurrence as to  
 599 manifest culpability, wrongful intent, or evil design or to show  
 600 an intentional and substantial disregard of the interests of the  
 601 vessel owner.

602 (2)

603 (c) The additional time provided in subparagraph (b)2. for  
 604 an owner or responsible party to remove a derelict vessel from  
 605 the waters of this state or to repair and remedy the vessel's  
 606 derelict condition ~~This subsection~~ does not apply to a vessel  
 607 that was derelict upon the waters of this state before the  
 608 stated accident or event.

609 (3) The commission, an officer of the commission, or a law

592-01302-22

2022494c1

610 enforcement agency or officer specified in s. 327.70 may  
 611 relocate, remove, and store, ~~destroy, or dispose of~~ or cause to  
 612 be relocated, removed, and stored, ~~destroyed, or disposed of~~ a  
 613 derelict vessel from waters of this state as defined in s.  
 614 327.02 if the derelict vessel obstructs or threatens to obstruct  
 615 navigation or in any way constitutes a danger to the  
 616 environment, property, or persons. The commission, an officer of  
 617 the commission, or any other law enforcement agency or officer  
 618 acting pursuant to this subsection to relocate, remove, and  
 619 store, ~~destroy, dispose of~~ or cause to be relocated, removed,  
 620 and stored, ~~destroyed, or disposed of~~ a derelict vessel from  
 621 waters of this state shall be held harmless for all damages to  
 622 the derelict vessel resulting from such action unless the damage  
 623 results from gross negligence or willful misconduct.

624 (a) ~~Removal of derelict vessels under this subsection may~~  
 625 ~~be funded by grants provided in ss. 206.606 and 376.15. The~~  
 626 ~~commission shall implement a plan for the procurement of any~~  
 627 ~~available federal disaster funds and use such funds for the~~  
 628 ~~removal of derelict vessels.~~

629 ~~(b)~~ All costs, including costs owed to a third party,  
 630 incurred by the commission, another law enforcement agency, or a  
 631 governmental subdivision, when the governmental subdivision has  
 632 received authorization from a law enforcement officer or agency,  
 633 in the relocation, removal, storage, destruction, or disposal of  
 634 a derelict vessel are recoverable against the vessel owner or  
 635 the party determined to be legally responsible for the vessel  
 636 being upon the waters of this state in a derelict condition. The  
 637 Department of Legal Affairs shall represent the commission in  
 638 actions to recover such costs. As provided in s. 705.103(4), a

592-01302-22 2022494c1  
 639 person who neglects or refuses to pay such costs may not be  
 640 issued a certificate of registration for such vessel or for any  
 641 other vessel or motor vehicle until such costs have been paid. A  
 642 person who has neglected or refused to pay all costs of removal,  
 643 storage, destruction, or disposal of a derelict vessel as  
 644 provided in this section, after having been provided written  
 645 notice via certified mail that such costs are owed, and who  
 646 applies for and is issued a registration for a vessel or motor  
 647 vehicle before such costs have been paid in full commits a  
 648 misdemeanor of the first degree, punishable as provided in s.  
 649 775.082 or s. 775.083.

650 (b)(c) A contractor performing such activities at the  
 651 direction of the commission, an officer of the commission, a law  
 652 enforcement agency or officer, or a governmental subdivision,  
 653 when the governmental subdivision has received authorization for  
 654 the relocation or removal from a law enforcement officer or  
 655 agency, pursuant to this section must be licensed in accordance  
 656 with applicable United States Coast Guard regulations where  
 657 required; obtain and carry in full force and effect a policy  
 658 from a licensed insurance carrier in this state to insure  
 659 against any accident, loss, injury, property damage, or other  
 660 casualty caused by or resulting from the contractor's actions;  
 661 and be properly equipped to perform the services to be provided.

662 (4)(a) Removal of derelict vessels under this subsection  
 663 may be funded by grants provided in s. 206.606.

664 (b) The commission may implement a plan for the procurement  
 665 of any available federal disaster funds and use such funds for  
 666 the removal of derelict vessels.

667 (c) The commission may establish a program to provide

592-01302-22 2022494c1  
 668 grants to local governments for the removal, storage,  
 669 destruction, and disposal of derelict vessels from the waters of  
 670 this state. This grant funding may also be used for the removal,  
 671 storage, destruction, and disposal of vessels declared a public  
 672 nuisance pursuant to s. 327.73(1)(aa). The program must be  
 673 funded from the Marine Resources Conservation Trust Fund or the  
 674 Florida Coastal Protection Trust Fund. Notwithstanding s.  
 675 216.181(11), funds available for these grants may only be  
 676 authorized by appropriations acts of the Legislature. In a given  
 677 fiscal year, if all funds appropriated pursuant to this  
 678 paragraph are not requested by and granted to local governments  
 679 for the removal, storage, destruction, and disposal of derelict  
 680 vessels or vessels declared a public nuisance pursuant to s.  
 681 327.73(1)(aa) by the end of the third quarter, the Fish and  
 682 Wildlife Conservation Commission may use the remainder of the  
 683 funds to remove, store, destroy, and dispose of, or to pay  
 684 private contractors to remove, store, destroy, and dispose of,  
 685 derelict vessels or vessels declared a public nuisance pursuant  
 686 to s. 327.73(1)(aa). The commission shall adopt by rule  
 687 procedures for local governments to submit a grant application  
 688 and criteria for allocating available funds. Such criteria must  
 689 include, at a minimum, the following:

690 1. The number of derelict vessels within the jurisdiction  
 691 of the applicant.

692 2. The threat posed by such vessels to public health or  
 693 safety, the environment, navigation, or the aesthetic condition  
 694 of the general vicinity.

695 3. The degree of commitment of the local government to  
 696 maintain waters free of abandoned and derelict vessels and to

592-01302-22

2022494c1

697 seek legal action against those who abandon vessels in the  
 698 waters of this state as defined in s. 327.02.

699 ~~(6)(5)~~ A person, firm, or corporation violating this  
 700 section commits a misdemeanor of the first degree and shall be  
 701 punished as provided by law. A conviction under this section  
 702 does not bar the assessment and collection of a the civil  
 703 penalty ~~provided in s. 376.16 for violation of s. 376.15~~. The  
 704 court having jurisdiction over the criminal offense,  
 705 notwithstanding any jurisdictional limitations on the amount in  
 706 controversy, may order the imposition of such civil penalty in  
 707 addition to any sentence imposed for the first criminal offense.

708 ~~(7)(6)~~ If an owner or a responsible party of a vessel  
 709 determined to be derelict through an administrative or criminal  
 710 proceeding has been charged by an officer of the commission or  
 711 any law enforcement agency or officer as specified in s. 327.70  
 712 under subsection (5) for a violation of subsection (2) ~~or a~~  
 713 ~~violation of s. 376.15(2)~~, a person may not reside or dwell on  
 714 such vessel until the vessel is removed from the waters of the  
 715 state permanently or returned to the waters of the state in a  
 716 condition that is no longer derelict.

717 Section 12. Paragraph (p) of subsection (4) of section  
 718 934.50, Florida Statutes, is amended to read:

719 934.50 Searches and seizure using a drone.—

720 (4) EXCEPTIONS.—This section does not prohibit the use of a  
 721 drone:

722 (p) By an ~~a non-law enforcement~~ employee of the Fish and  
 723 Wildlife Conservation Commission or of the Florida Forest  
 724 Service for the purposes of managing and eradicating invasive  
 725 exotic plants or animals on public lands and suppressing and

Page 25 of 30

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

592-01302-22

2022494c1

726 mitigating wildfire threats.

727 Section 13. Section 327.04, Florida Statutes, is amended to  
 728 read:

729 327.04 Rules.—The commission may adopt rules pursuant to  
 730 ss. 120.536(1) and 120.54 to implement this chapter, the  
 731 provisions of chapter 705 relating to vessels, and s. 823.11  
 732 ~~and 823.11~~ conferring powers or duties upon it.

733 Section 14. Subsection (4) of section 328.09, Florida  
 734 Statutes, is amended to read:

735 328.09 Refusal to issue and authority to cancel a  
 736 certificate of title or registration.—

737 (4) The department may not issue a certificate of title to  
 738 an applicant for a vessel that has been deemed derelict or a  
 739 public nuisance by a law enforcement officer under s.  
 740 327.73(1)(aa) or s. 823.11 ~~or s. 823.11~~. A law enforcement  
 741 officer must inform the department in writing, which may be  
 742 provided by facsimile, e-mail ~~electronic mail~~, or other  
 743 electronic means, of the vessel's derelict or public nuisance  
 744 status and supply the department with the vessel title number or  
 745 vessel identification number. The department may issue a  
 746 certificate of title once a law enforcement officer has verified  
 747 in writing, which may be provided by facsimile, e-mail  
 748 ~~electronic mail~~, or other electronic means, that the vessel is  
 749 no longer a derelict or public nuisance vessel.

750 Section 15. Section 25 of chapter 2021-184, Laws of  
 751 Florida, is repealed.

752 Section 16. Paragraph (c) of subsection (15) of section  
 753 328.72, Florida Statutes, is amended to read:

754 328.72 Classification; registration; fees and charges;

Page 26 of 30

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

592-01302-22

2022494c1

755 surcharge; disposition of fees; fines; marine turtle stickers.-  
 756 (15) DISTRIBUTION OF FEES.—Except as provided in this  
 757 subsection, moneys designated for the use of the counties, as  
 758 specified in subsection (1), shall be distributed by the tax  
 759 collector to the board of county commissioners for use only as  
 760 provided in this section. Such moneys to be returned to the  
 761 counties are for the sole purposes of providing, maintaining, or  
 762 operating recreational channel marking and other uniform  
 763 waterway markers, public boat ramps, lifts, and hoists, marine  
 764 railways, boat piers, docks, mooring buoys, and other public  
 765 launching facilities; and removing derelict vessels, debris that  
 766 specifically impedes boat access, not including the dredging of  
 767 channels, and vessels and floating structures deemed a hazard to  
 768 public safety and health for failure to comply with s. 327.53.  
 769 Counties shall demonstrate through an annual detailed accounting  
 770 report of vessel registration revenues that the registration  
 771 fees were spent as provided in this subsection. This report  
 772 shall be provided to the Fish and Wildlife Conservation  
 773 Commission no later than November 1 of each year. If, before  
 774 January 1 of each calendar year, the accounting report meeting  
 775 the prescribed criteria has still not been provided to the  
 776 commission, the tax collector of that county may not distribute  
 777 the moneys designated for the use of counties, as specified in  
 778 subsection (1), to the board of county commissioners but shall,  
 779 for the next calendar year, remit such moneys to the state for  
 780 deposit into the Marine Resources Conservation Trust Fund. The  
 781 commission shall return those moneys to the county if the county  
 782 fully complies with this section within that calendar year. If  
 783 the county does not fully comply with this section within that

Page 27 of 30

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

592-01302-22

2022494c1

784 calendar year, the moneys shall remain within the Marine  
 785 Resources Trust Fund and may be appropriated for the purposes  
 786 specified in this subsection.  
 787 (c) From the vessel registration fees designated for use by  
 788 the counties in subsection (1), the following amounts shall be  
 789 remitted to the state for deposit into the Marine Resources  
 790 Conservation Trust Fund to fund derelict vessel removal grants,  
 791 as appropriated by the Legislature pursuant to s. 823.11(4)(c)  
 792 ~~s. 376.15~~:  
 793 1. Class A-2: \$0.25 for each 12-month period registered.  
 794 2. Class 1: \$2.06 for each 12-month period registered.  
 795 3. Class 2: \$9.26 for each 12-month period registered.  
 796 4. Class 3: \$16.45 for each 12-month period registered.  
 797 5. Class 4: \$20.06 for each 12-month period registered.  
 798 6. Class 5: \$25.46 for each 12-month period registered.  
 799 Section 17. Paragraph (h) of subsection (6) of section  
 800 376.11, Florida Statutes, is amended to read:  
 801 376.11 Florida Coastal Protection Trust Fund.—  
 802 (6) Moneys in the Florida Coastal Protection Trust Fund may  
 803 be used for the following purposes:  
 804 (h) The funding of a grant program to local governments,  
 805 pursuant to s. 823.11(4)(c) ~~s. 376.15(3)(d) and (e)~~, for the  
 806 removal of derelict and public nuisance vessels from the public  
 807 waters of the state.  
 808 Section 18. For the purpose of incorporating the amendment  
 809 made by this act to section 327.371, Florida Statutes, in a  
 810 reference thereto, paragraph (dd) of subsection (1) of section  
 811 327.73, Florida Statutes, is reenacted to read:  
 812 327.73 Noncriminal infractions.—

Page 28 of 30

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

592-01302-22

2022494c1

813 (1) Violations of the following provisions of the vessel  
814 laws of this state are noncriminal infractions:

815 (dd) Section 327.371, relating to the regulation of human-  
816 powered vessels.

817  
818 Any person cited for a violation of any provision of this  
819 subsection shall be deemed to be charged with a noncriminal  
820 infraction, shall be cited for such an infraction, and shall be  
821 cited to appear before the county court. The civil penalty for  
822 any such infraction is \$50, except as otherwise provided in this  
823 section. Any person who fails to appear or otherwise properly  
824 respond to a uniform boating citation shall, in addition to the  
825 charge relating to the violation of the boating laws of this  
826 state, be charged with the offense of failing to respond to such  
827 citation and, upon conviction, be guilty of a misdemeanor of the  
828 second degree, punishable as provided in s. 775.082 or s.  
829 775.083. A written warning to this effect shall be provided at  
830 the time such uniform boating citation is issued.

831 Section 19. For the purpose of incorporating the amendment  
832 made by this act to section 379.101, Florida Statutes, in a  
833 reference thereto, subsection (4) of section 125.01, Florida  
834 Statutes, is reenacted to read:

835 125.01 Powers and duties.—

836 (4) The legislative and governing body of a county shall  
837 not have the power to regulate the taking or possession of  
838 saltwater fish, as defined in s. 379.101, with respect to the  
839 method of taking, size, number, season, or species. However,  
840 this subsection does not prohibit a county from prohibiting, for  
841 reasons of protecting the public health, safety, or welfare,

Page 29 of 30

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

592-01302-22

2022494c1

842 saltwater fishing from real property owned by that county, nor  
843 does it prohibit the imposition of excise taxes by county  
844 ordinance.

845 Section 20. For the purpose of incorporating the amendment  
846 made by this act to section 379.101, Florida Statutes, in a  
847 reference thereto, section 379.2412, Florida Statutes, is  
848 reenacted to read:

849 379.2412 State preemption of power to regulate.—The power  
850 to regulate the taking or possession of saltwater fish, as  
851 defined in s. 379.101, is expressly reserved to the state. This  
852 section does not prohibit a local government from prohibiting,  
853 for reasons of protecting the public health, safety, or welfare,  
854 saltwater fishing from real property owned by that local  
855 government.

856 Section 21. Except as otherwise expressly provided in this  
857 act, this act shall take effect July 1, 2022.

Page 30 of 30

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





The Florida Senate

## Committee Agenda Request

**To:** Senator Kelli Stargel, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** January 19, 2022

---

I respectfully request that **Senate Bill #494**, relating to The Florida Fish and Wildlife Conservation Commission, be placed on the:

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

A handwritten signature in black ink that reads "Travis Hutson".

---

Senator Travis Hutson  
Florida Senate, District 7

1/27/2022

Meeting Date

Senate Appropriations

Committee

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

SB 0494C1

Bill Number or Topic

476130

Amendment Barcode (if applicable)

Name **Sarah Sims**

Phone **850-855-0043**

Address **928 North Monroe Street**

Email **sarahsims@lilajaber.com**

Street

**Tallahassee**

**FL**

**32303**

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

### PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

**Stetson University**

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

1/27/22

Meeting Date

# The Florida Senate APPEARANCE RECORD

494

Bill Number or Topic

Approps

Committee

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Jessica Crawford

Phone

880-487-5795

Address

620 S. Meridian St.

Street

Email

Jessica.Crawford@

myfuse.com

Tallahassee

FL

32399

City

State

Zip

Speaking:  For  Against  Information

**OR**

Waive Speaking:  In Support  Against

### PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Fish & Wildlife Conservation Commission

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022-Joint-Rules.pdf)

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

The Florida Senate

# APPEARANCE RECORD

1/27/22

Meeting Date

494

Bill Number or Topic

Sen. Approps

Committee

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name TRAVIS MOORE

Phone 727.421.6902

Address P.O. Box 2020

Email travis@moore-relations.com

Street

St. Petersburg FL

33731

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Defenders of Wildlife

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf flsenate.gov](#)

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

**BILL:** CS/SB 498

**INTRODUCER:** Banking and Insurance Committee and Senator Baxley and others

**SUBJECT:** Coverage for Hearing Aids for Children

**DATE:** January 26, 2022      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<b>Fav/CS</b>
2.	<u>Smith</u>	<u>Brown</u>	<u>HP</u>	<b>Favorable</b>
3.	<u>Sanders</u>	<u>Sadberry</u>	<u>AP</u>	<b>Favorable</b>

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 498 requires an individual health insurance policy or individual health maintenance organization contract that provides major medical coverage or similar coverage for a dependent child of an insured or subscriber, respectively, to provide hearing aid coverage for a covered child from birth through age 18 who has been diagnosed with hearing loss by a licensed physician or a licensed audiologist. The term, "hearing aid," means any wearable instrument or device designed for, offered for the purpose of, or represented as aiding persons with or compensating for impaired hearing. The term does not include cochlear implants.

The bill requires the policies or contracts to provide a minimum coverage limit of \$3,500 per ear within a 24-month period. The insured or subscriber remains responsible for the cost of hearing aids and related services that exceed the coverage limit provided for in the policy or contract. If, however, a child experiences a significant and unexpected change in his or her hearing or experiences a medical condition requiring an unexpected change in the hearing aid before the existing 24-month period expires, and alterations to the existing hearing aid do not, or cannot, meet the needs of the child, the bill requires that a new 24-month period must begin with full benefits and coverage.

The bill's requirements do not apply to the State Group Insurance Program since the bill does not mandate that group or employer coverage provide the benefits. However, in accordance with federal law at 45 Code of Federal Regulations 155.170, Florida may be required to defray the

cost of any new coverage mandate that raises the cost of health insurance subsidies paid by the federal government.

The bill applies to individual health insurance policies or contracts that are issued on or after January 1, 2023, and the bill would take effect on that date.

## II. Present Situation:

One in eight people in the United States (13 percent or 30 million) age 12 years or older has hearing loss in both ears, based on standard hearing examinations.<sup>1</sup> Hearing loss is one of the most common birth defects<sup>2</sup> in the United States. Approximately two or three out of every 1,000 children in the United States are born with a detectable level of hearing loss in one or both ears.<sup>3</sup>

Many people who are deaf or hard-of-hearing have some hearing. In some instances, a hearing aid may help a child with hearing loss to make the most of their residual hearing.<sup>4</sup> Hearing aids make sounds louder and can be worn by people of any age, including infants. Babies with hearing loss may understand sounds better using hearing aids. There are many styles of hearing aids. They can help many types of hearing loss. A young child is usually fitted with behind-the-ear style hearing aids because they are better suited to growing ears.<sup>5</sup>

Hearing loss may be in one ear (unilateral loss) or in both ears (bilateral loss). The degree of hearing loss can range from mild to profound, as described below:<sup>6</sup>

- Mild Hearing Loss (26-40 decibels): may hear some speech sounds, but soft sounds are hard to hear.
- Moderate Hearing Loss (41-70 decibels): may hear almost no speech when another person is talking at a normal level.
- Severe Hearing Loss (71-90 decibels): will hear no speech when a person is talking at a normal level and only hear some loud sounds.
- Profound Hearing Loss (91 decibels or more): will not hear any speech and will hear only very loud sounds.<sup>7</sup>

---

<sup>1</sup> See National Institutes for Health, National Institute on Deafness and Other Communication Disorders, *available at* <https://www.nidcd.nih.gov/health/statistics/quick-statistics-hearing> (last visited Jan. 21, 2022).

<sup>2</sup> Florida Newborn Screening, Early Hearing and Intervention Program, *available at* <https://floridanewbornscreening.com/hearing/early-hearing-and-intervention-programs/> (last visited Jan. 21, 2022).

<sup>3</sup> *Id.*

<sup>4</sup> Centers for Disease Control and Prevention, National Center on Birth Defects and Developmental Disorders (June 8, 2020), *available at* <https://www.cdc.gov/ncbddd/hearingloss/treatment.html> (last visited Jan. 21, 2021). The amount of hearing a deaf or hard-of-hearing person has is referred to as “residual hearing.”

<sup>5</sup> *Id.* A plastic ear mold is connected to a behind-the-ear hearing aid and is fitted for the child’s ear. It directs sound from the hearing aid into the ear canal. Each individual’s ear is shaped differently, and a child’s ear will change as he or she grows. An audiologist uses a soft material to make a copy of the child’s outer ear canal. This is used to make an ear mold that will fit the child. As the child grows, new ear molds can be made and attached to the same hearing aid.

<sup>6</sup> Florida Department of Health and Children’s Medical Services, *A Florida Parent’s Guide to Hearing* (Apr. 2020 Edition), *available at* <http://floridanewbornscreening.com/wp-content/uploads/Hearing-Guide-English-FINAL-1.pdf> (last visited Jan. 21, 2022).

<sup>7</sup> See Centers for Disease Control and Prevention, National Center on Birth Defects and Developmental Disorders (June 8, 2020), *available at* <https://www.cdc.gov/ncbddd/hearingloss/types.html> (last visited Jan. 21, 2022).

Hearing loss can affect a child's ability to develop communication, language, and social skills. Early detection of hearing loss can help infants and children with learning and reaching developmental milestones, according to recent research. In the United States, researchers have reported children have more favorable language outcomes, such as greater vocabulary and reading abilities, when hearing loss is identified sooner and the child receives hearing aids and interventions at an earlier age.<sup>8</sup> A second study similarly found children who received hearing aids and cochlear implants earlier had better language outcomes, comparing language skills with the provision of a hearing aid at three months compared to 24 months.<sup>9</sup> The authors' state:

The younger the child received intervention, the better the language outcome. In addition, more substantial benefits of earlier access to useful HAs (hearing aids) and CI (cochlear implants) were obtained by those with worse hearing. Earlier intervening, rather than access to UNHS (universal newborn hearing screening), improved outcomes.<sup>10</sup>

### **Florida Newborn Hearing Screening Program**

Florida has a universal newborn hearing-screening program<sup>11</sup> requiring all Florida-licensed facilities that provide maternity and newborn care to screen, or refer for screening, all newborns prior to discharge for hearing loss, unless a parent objects to the screening.<sup>12</sup> All test results, including recommendations for any referrals or follow-up evaluations by a licensed audiologist, a physician licensed under chs. 458 or 459, F.S., or other newborn hearing screening providers in the hospital facility, must be placed in the newborn's medical records within 24 hours after the completion of the screening procedure.<sup>13</sup> For babies born in a facility other than a hospital, the parents are to be instructed on the importance of having a screening conducted, information must be provided, and assistance must be given to make an appointment within three months.<sup>14</sup>

The initial newborn screening and any necessary follow-up and evaluation are covered benefits reimbursable by Medicaid, health insurers, and health maintenance organizations, with some limited exceptions.<sup>15</sup> For those newborns and children found to have a permanent hearing loss, the law also provides for referral to the state's Part C program of the federal Individuals with

---

<sup>8</sup> Christine Yoshinaga-Itano, Ph.D., et al, *Early Hearing Detection and Vocabulary of Children with Hearing Loss*, PEDIATRICS, (Aug. 2017, Vol. 140, No. 2), available at <https://pediatrics.aappublications.org/content/140/2/e20162964> (last visited Jan. 21, 2022).

<sup>9</sup> Teresa Y.C. Ching, Ph.D., *Age at Intervention for Permanent Hearing Loss and 5-Year Language Outcomes*, Pediatrics, (Sept. 2017, Vol. 140, Issue 3), available at <https://pediatrics.aappublications.org/content/140/3/e20164274> (last visited Jan. 21, 2022).

<sup>10</sup> *Id.*

<sup>11</sup> Florida's Early Hearing Detection and Intervention Program (EHDI) is Florida's newborn hearing-screening program, available at <https://floridanewbornscreening.com/hearing/early-hearing-and-intervention-programs/> (last visited Jan. 21, 2022).

<sup>12</sup> See s. 383.145, F.S.

<sup>13</sup> Section 383.145(3)(e), F.S.

<sup>14</sup> Section 383.145(3)(i), F.S.

<sup>15</sup> Section 383.145(3)(j), F.S.

Disabilities Education Act<sup>16</sup> and Children’s Medical Services’ Early Intervention Program, Early Steps.<sup>17</sup>

## **Hearing Aid Coverage in Public Insurance Programs**

### ***Medicaid***

Florida Medicaid provides hearing services for eligible recipients under the age of 21, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. This coverage includes diagnostic services, treatment, equipment, supplies, and other measures described in 42 U.S.C. 1396d(a).<sup>18</sup> Medicaid recipients under the age of 21 have coverage for the following hearing related services:

- Recipients who have documented, profound, severe hearing loss in one or both ears have coverage for:
  - An implanted device for recipients age five years and older; or
  - A non-implanted (softband) device for recipients under age five.
- Cochlear implants for recipients age 12 months and older who have documented, profound to severe, bilateral sensorineural hearing loss.
- For recipients who have moderate hearing loss or greater, the coverage is:
  - One new, complete, (not refurbished) hearing aid device per ear, every three years, per recipient;
  - Up to three pairs of ear molds per year, per recipient; and
  - One fitting and dispensing service per ear, every three years, per recipient.
- A recipient under the age of 12 months may receive up to two newborn screenings. A second screening may be conducted only if the recipient did not pass the test in one or both ears.
- An eligible recipient may receive one hearing assessment every three years for the purposes of determining hearing aid candidacy and the most appropriate hearing aid.<sup>19</sup>

Medicaid also covers repairs and replacement of both Medicaid and non-Medicaid provided hearing aids, up to two hearing aid repairs every 366 days, after the one-year warranty period has expired.<sup>20</sup>

### ***State Children’s Health Insurance Program<sup>21</sup>***

The Children’s Health Insurance Program (CHIP) was enacted as part of the Balanced Budget Act of 1997, and it created Title XXI of the federal Social Security Act as a joint state-federal funding partnership to provide health insurance to children in low to moderate income

<sup>16</sup> See Pub. L. No. 108-446. The Part C program provides benefits and services for infants and toddlers from birth to age 36 months. Children’s Medical Services, within the Department of Health, administers Florida’s Part C program, which is known as Early Steps.

<sup>17</sup> The Early Steps program services children with disabilities, developmental delays, or children with a physical or mental condition known to create a risk of a developmental delay. See [http://www.cms-kids.com/families/early\\_steps/early\\_steps.html](http://www.cms-kids.com/families/early_steps/early_steps.html) (last visited Jan. 21, 2022).

<sup>18</sup> See Fla. Admin. Code R. 54G-4.110 (2021). The hearing services coverage policy from the Agency for Health Care Administration, available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-06744> (last visited Jan. 21, 2022).

<sup>19</sup> See Agency for Health Care Administration, *Hearing Services Coverage Policy* (June 2016), available at [http://ahca.myflorida.com/medicaid/review/specific\\_policy.shtml](http://ahca.myflorida.com/medicaid/review/specific_policy.shtml) (last visited Jan. 21, 2022).

<sup>20</sup> *Id.*

<sup>21</sup> 42 U.S.C. s. 1397aa-1397mm.



households.<sup>22</sup> The Florida Healthy Kids Corporation<sup>23</sup> is one component of Florida's Title XXI program, known as Florida KidCare, and is the only program component utilizing a non-Medicaid benefit package.<sup>24</sup> The other program components, Medicaid for children, Medikids, and Children's Medical Services Network, follow the Medicaid benefit package.<sup>25</sup>

In order for health benefits coverage to qualify for premium assistance payments, KidCare enrollees must receive hearing screenings as a covered, preventative health service.<sup>26</sup> Additionally, s. 409.815(2)(h), F.S., provides the benefits for durable medical equipment include within covered services equipment and devices that are medically indicated to assist in the treatment of a medical condition, and specifically prescribed as medically necessary. Hearing aids are covered only when medically indicated to assist in the treatment of a medical condition. There are no out of pocket costs for the well-child hearing screening for subsidized Title XXI eligible children.<sup>27</sup>

### **Hearing Aid Coverage in the Private Health Insurance Market**

The Office of Insurance Regulation (OIR) is responsible for the regulation of all activities of insurers and other risk-bearing entities that do business in Florida.<sup>28</sup> Florida law does not require health insurance policies or health maintenance organizations contracts to provide coverage for hearing aids. According to the OIR, some of the plans offered by UnitedHealthcare (All Savers, Neighborhood Health, etc.) cover hearing aids if recommended by a physician, and bone-anchored hearing aids are covered with some restrictions. Molina and Health First cover implant type hearing aids, if medically necessary.<sup>29</sup>

Currently, 24 states appear to mandate health benefit plans to provide coverage for hearing aids for children.<sup>30</sup> Coverage requirements range from authorizing coverage of a hearing aid every 24 months to every five years. Many states include caps on the amount the insurer must pay. These caps range from \$1,000 to \$4,000.<sup>31</sup>

### **State Mandated Health Insurance Coverage**

Prior to 2012, the OIR identified 18 state mandated benefits.<sup>32</sup> Subsequently, Florida has not enacted any mandated benefits. Examples of benefits mandated under Florida law include:

<sup>22</sup> Pub. L. No. 105-33, 111 Stat. 251 (1997).

<sup>23</sup> See ss. 624.91-624.915, F.S.

<sup>24</sup> See ss. 409.810-409.821, F.S.

<sup>25</sup> See s. 409.815(2)(a), F.S., and s. 391.0315, F.S.

<sup>26</sup> Section 409.815(2)(a), F.S.

<sup>27</sup> Florida Healthy Kids Corporation, *Medical Benefits*, available at <https://www.healthykids.org/benefits/medical/> (last visited Jan. 21, 2022).

<sup>28</sup> The Office of Insurance Regulation (OIR) is under the Financial Services Commission, which is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, which serves as the agency head of the commission. Section 20.121(3), F.S.

<sup>29</sup> Office of Insurance Regulation correspondence (Dec. 8, 2020) (on file with Senate Committee on Banking and Insurance).

<sup>30</sup> See information gathered by the American Speech-Language-Hearing Association, available at [https://www.asha.org/advocacy/state/issues/ha\\_reimbursement/](https://www.asha.org/advocacy/state/issues/ha_reimbursement/) (last visited Jan. 21, 2022).

<sup>31</sup> *Id.*

<sup>32</sup> Centers for Medicare & Medicaid Services, *Florida – State Required Benefits*, available at [https://downloads.cms.gov/ccio/State%20Required%20Benefits\\_FL.pdf](https://downloads.cms.gov/ccio/State%20Required%20Benefits_FL.pdf) (last visited Jan. 21, 2022).

- Treatment for temporomandibular joint disorders;
- Coverage for bone marrow transplants;
- Coverage for certain cancer drugs;
- Diabetes treatment services;
- Osteoporosis;
- Certain coverage for newborn children;
- Child health supervision services; and
- Treatment of cleft lip and cleft palate in children.<sup>33</sup>

Section 624.215, F.S., requires every person or organization seeking consideration of a legislative proposal, which would mandate a health coverage or the offering of a health coverage by an insurer, to submit to the Agency for Health Care Administration and the legislative committees having jurisdiction, a report that assesses the social and financial impacts of the proposed coverage. Proponents submitted a report to Senate Banking and Insurance Committee staff in 2021 indicating there are less than 7,200 children under the age of 18 in Florida who are deaf.<sup>34</sup> Hearing aids and the services necessary to prescribe, evaluate, fit, and manage children with hearing loss generally cost an average of \$3,500 per ear depending on the technology and enhancements selected by the audiologist based on the individual needs of the child.<sup>35</sup> (*See* Section V, Fiscal Impact Statement, Private Sector Impact of the Bill Analysis.)

Advocates of the bill note that untreated hearing loss may lead to tremendous expense for the taxpayer, as described below:

- Untreated pediatric hearing loss costs \$420,000 in special education costs per child and one million dollars over the lifetime of the individual;
- Longitudinal, peer-reviewed studies have shown that healthcare costs are significantly higher for individuals with untreated vs treated hearing loss;
- Increased costs are not confined to the medical bills in the studies. Medical providers must absorb (and pass on via increased overall costs) costs incurred from longer visit times due to communication difficulties, increased risk of malpractice lawsuits from communication difficulties, and necessary accommodations like interpreter services;
- Communication difficulties in deaf and hard of hearing patients, which would be mitigated by appropriate access to sound, result in more physician visits and overuse of emergency rooms and urgent care centers; and
- Patients with untreated hearing loss are more likely to be misdiagnosed when visiting providers for unrelated health issues and are more difficult to treat due to communication difficulties;<sup>36</sup>

---

<sup>33</sup> *Id.*

<sup>34</sup> Florida Coalition for Spoken Language Options, *2021 Florida Legislature, SB 1268 Mandate Report* (on file with Senate Committee on Banking and Insurance).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

## Federal Patient Protection and Affordable Care Act

The Patient Protection and Affordable Care Act (PPACA)<sup>37</sup> does not require health insurance policies to cover hearing aids for adults or for children. Under the PPACA, individuals and small businesses can obtain health insurance coverage on or off the federal marketplace exchanges.<sup>38</sup> All non-grandfathered health plans<sup>39</sup> must offer qualified health plans meeting certain federal mandates, including the provisions of the following 10 essential health benefits (EHB):

- Ambulatory services (outpatient care);
- Emergency services;
- Hospitalization (inpatient care);
- Maternity and newborn care;
- Mental health and substance abuse disorder services;
- Prescription drugs;
- Rehabilitative services and rehabilitative services and devices;
- Laboratory services;
- Preventive care and chronic disease management; and
- Pediatric services, including oral and vision care.<sup>40</sup>

States may modify the EHB offered in their states by mandating additional coverage. However, states must defray the associated costs such benefits imposed on qualified health plans coverage, and those costs should not be included in the percentage of premium attributable to the coverage of EHB for calculating the premium tax credit for eligible enrollees<sup>41</sup> on the exchange.<sup>42</sup> The State of Florida may be required to defray the costs of any additional benefits beyond the required EHB put in place after 2011.<sup>43</sup>

<sup>37</sup> The Patient Protection and Affordable Care Act (PPACA) (Pub. Law No. 111-148) was enacted on March 23, 2010. On March 30, 2010, PPACA was amended by Pub. Law No. 111-152, the Health Care and Education Reconciliation Act of 2010. The two laws are collectively referred to as the “Patient Protection and Affordable Care Act” or “PPACA.”

<sup>38</sup> Exchanges are entities established under PPACA through which qualified individuals and qualified employers can purchase health insurance coverage in qualified health plans (QHPs). Many individuals who enroll in QHPs through individual market exchanges are eligible to receive a premium tax credit (PTC) to reduce their costs for health insurance premiums and to receive reductions in required cost-sharing payments to reduce out-of-pocket expenses for health care services. 42 U.S.C. s. 18031.

<sup>39</sup> A “grandfathered health plan” is a plan that maintains coverage that was in place prior to the passage of the PPACA or in which the enrollee was enrolled on March 23, 2010, while complying with the consumer protection components of the PPACA. If a group health plan enters a new policy, certificate, or contract of insurance, the group must provide the new issuer the documentation from the prior plan so it can be determined whether there has been a change sufficient to lose grandfather status. *See* s. 627.402, F.S.

<sup>40</sup> 42 U.S.C. s. 18022(b)(1)(A)-(J).

<sup>41</sup> In Florida, 1,705,902 or 95 percent of the total marketplace exchange enrollees receive premium tax credits. KFF, Marketplace Effectuated Enrollment and Financial Assistance (2020), available at <https://www.kff.org/other/state-indicator/effectuated-marketplace-enrollment-and-financial-assistance/?currentTimeframe=0&selectedRows=%7B%22wrapups%22:%7B%22united-states%22:%7B%7D%7D,%22states%22:%7B%22florida%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited Jan. 21, 2022).

<sup>42</sup> HealthCare.gov, Subsidized Coverage, available at <https://www.healthcare.gov/glossary/subsidized-coverage/> (last visited Jan. 21, 2022). Household income must be between 100 percent and 400 percent of the federal poverty level to qualify for a premium tax credit.

<sup>43</sup> *See* 42 U.S.C. s. 18031(d)(3)(B)(ii).

### ***Reporting of Additional State-Required Benefits and Cost Analysis***

For plan years beginning on or after January 1, 2020, each state must identify and report to the federal Department of Health and Human Services (HHS) benefits mandated by state law and identify which of those benefits are in addition to EHB. The first annual submission deadline for states to notify the HHS of their state-mandated benefits was July 1, 2021.<sup>44</sup> Each qualified health plan issuer in the state must quantify cost attributable to each additional required benefit and then report this to the state.<sup>45</sup> In May 2020, HHS clarified existing rules to provide that it would also be permissible for issuers to choose to rely on another entity, such as the state, to produce the cost analysis, provided the issuer remains responsible for ensuring that the quantification complies with existing rules.<sup>46</sup> Further, the HHS noted that this calculation should be done prospectively to allow for the offset of an enrollee's share of premium and for purposes of calculating the PTC and reduced cost sharing.<sup>47</sup>

### **Audiologist Scope of Practice and Licensure Requirements**

An audiologist is licensed under part I of ch. 468, F.S., to practice audiology.<sup>48</sup> The practice of audiology includes the application of principles, methods, and procedures for the prevention, identification, evaluation, consultation, habilitation, rehabilitation, instruction, treatment, and research, relative to hearing and the disorders of hearing, and to related language and speech disorders.<sup>49</sup> A licensed audiologist may:

- Offer, render, plan, direct, conduct, consult, or supervise services to individuals or groups of individuals who have or are suspected of having disorders of hearing, including prevention, identification, evaluation, treatment, consultation, habilitation, rehabilitation, instruction, and research;
- Participate in hearing conservation, evaluation of noise environment, and noise control;
- Conduct and interpret tests of vestibular function and nystagmus, electrophysiologic auditory-evoked potentials, central auditory function, and calibration of measurement equipment used for such purposes;
- Habilitate and rehabilitate, including, but not limited to, hearing aid evaluation, prescription, preparation, fitting and dispensing, assistive listening device selection and orientation, auditory training, aural habilitation, aural rehabilitation, speech conservation, and speechreading;
- Fabricate ear molds;
- Evaluate tinnitus;
- Include speech and language screening, limited to a pass/fail determination for identifying individuals with disorders of communication; and<sup>50</sup>
- To become licensed as an audiologist, an applicant must:

---

<sup>44</sup> CFR 156.111.

<sup>45</sup> CFR 155.170(c).

<sup>46</sup> 85 Fed. Reg. 29218 (May 14, 2020).

<sup>47</sup> *Id.*

<sup>48</sup> Section 468.1125(1), F.S.

<sup>49</sup> Section 468.1125(6)(a), F.S.

<sup>50</sup> Section 468.1125(6)(b), F.S.

- Have earned a doctoral degree in audiology or have completed the academic requirements of a doctoral degree program with a major emphasis on audiology at an institution that meets specified requirements;<sup>51</sup>
- Receive a passing score on a national examination;<sup>52</sup> and
- Demonstrate a minimum of 11 months of full-time professional employment or practice with a provisional license.<sup>53</sup>

An audiologist is required to perform a final fitting for a client to ensure the physical and operational comfort of the hearing aid “when indicated.”<sup>54</sup>

### **Hearing Aid Specialist Scope of Practice and Licensure Requirements**

A hearing aid specialist is licensed under part II of ch. 484, F.S., to practice the dispensing of hearing aids.<sup>55</sup> To become a hearing aid specialist, an applicant must:

- Be a graduate from an accredited high school or its equivalent;
- Have completed a training program as established by the Board of Hearing Aid Specialists that is a minimum of six months in length, or be licensed or certified and have been actively practicing for at least 12 months as a licensed in another state; and
- Pass an examination as established by the Board of Hearing Aid Specialists.<sup>56</sup>

A hearing aid specialist is required to perform a final fitting for all clients to ensure the physical and operational comfort of the hearing aid.<sup>57</sup>

### **III. Effect of Proposed Changes:**

**Sections 1 and 2** create ss. 627.6413 and 641.31(48), F.S., respectively, to require an individual health insurance policy or individual health maintenance organization contract that provides major medical or similar coverage for a dependent child, age 18 or younger, of the insured or subscriber to provide coverage for a hearing aid prescribed, fitted, and dispensed by a physician licensed under ch. 458 or 459, F.S., or an audiologist licensed under part I of ch. 468, F.S. Such policies are required to provide a minimum coverage of \$3,500 per ear within a 24-month period.

The term, “hearing aid,” is defined as “any wearable instrument or device designed for, offered for the purpose of, or represented as aiding persons with or compensating for, impaired hearing.” The term does not include cochlear implants.

The bill provides the insured or subscriber remains responsible for the cost of hearing aids and related services that exceed the coverage limit provided for in the policy or contract. However, if a child experiences a significant and unexpected change in his or her hearing or experiences a medical condition requiring an unexpected change in the hearing aid before the existing

<sup>51</sup> Section 468.1155(3)(b), F.S.

<sup>52</sup> Section 468.1155(1)(a), F.S.

<sup>53</sup> *Id.*

<sup>54</sup> Section 468.1225(3), F.S.

<sup>55</sup> Section 484.041, F.S.

<sup>56</sup> Section 484.045, F.S.

<sup>57</sup> Section 484.0501(3), F.S.

24-month period expires, and alterations to the existing hearing aid do not or cannot meet the needs of the child, the bill requires a new 24-month period must begin with full benefits and coverage.

The bill applies to policies or contracts that are issued or renewed on or after January 1, 2023.

**Section 3.** The bill provides an effective date of January 1, 2023.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

In 2021, advocates of the Florida Coalition for Spoken Language Options provided the following analysis of the fiscal impact of SB 1268 on individual policies or contracts.<sup>58</sup> Like SB 1268, CS/SB 498 provides coverage up to age 18. According to the Florida Coalition for Spoken Language Options, approximately 461 children will benefit from the mandated coverage, and the resulting increases in costs are estimated to be \$0.74 annually or \$.06 monthly per covered life, as described below:

<b>Florida Population/Demographics</b>	<b>21,477,737</b>
<b>Florida Population Under 0-18 (19.7%)</b>	4,231,114
<b>All Floridians with individual major medical plans<sup>59</sup></b>	1,765,807
<b>19.7% of all covered lives on individual major medical plans are under 18</b>	347,864
<b>0.17% of children have hearing loss</b>	7,193
<b>0.17% of the children who have individual major medical plans</b>	591
<b>2% of .17% slight loss/no hearing aid needed</b>	-12
<b>30% of .17% severe to profound sensorineural or mixed loss/ cochlear implant candidate</b>	-177
<b>.17% of 16,170 Children Receiving Early Steps</b>	-11
<b><i>Impacted Hearing Aid Candidates</i></b>	<b>461</b>
<b>39% unilateral</b>	180
<b>61% bilateral</b>	281
<b>Total Cost per Unilateral (\$3500 per ear over 24 months)</b>	\$630,000
<b>Total Cost Per Bilateral (\$3500 per ear over 24 months)</b>	\$1,967,000
<b>Total Cost Over 24 Months</b>	\$2,597,000
<b><i>Cost per Year</i></b>	<b>\$1,298,500</b>
<b>Annual Cost per Plan (\$1,298,500 spread over 1,765,807 covered lives)</b>	<b>\$0.74</b>
<b>Cost Per Month Per Covered Life</b>	<b>\$0.06</b>

**C. Government Sector Impact:**

The bill’s requirements do not apply to the State Group Insurance Program since the bill does not mandate that group or employer coverage provide the benefits. However, in accordance with federal law at 45 C.F.R. 155.170, Florida may be required to defray the

<sup>58</sup> Florida Coalition for Spoken Language Options, *SB 1268 Mandate Report* (on file with Senate Committee on Banking and Insurance).

<sup>59</sup> Office of Insurance Regulation correspondence (Dec. 8, 2020) (on file with Senate Committee on Banking and Insurance).

cost of any new coverage mandate that raises the cost of health insurance subsidies paid by the federal government.<sup>60</sup>

## VI. Technical Deficiencies:

The bill does not define “significant and unexpected change” in hearing requiring an unexpected change in the prescription or what criteria will be used to make that determination. Defining this term in the bill or through rulemaking should reduce disputes over whether a change in hearing is “significant and unexpected.”<sup>61</sup>

## VII. Related Issues:

Generally, insurance policies and health maintenance organization contracts are issued with a one-year duration. It may be difficult to implement a coverage requirement that lasts for 24 months as proposed in the bill.<sup>62</sup>

## VIII. Statutes Affected:

This bill substantially amends section 641.31 of the Florida Statutes.

This bill creates section 627.6413 of the Florida Statutes.

## IX. Additional Information:

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

#### **CS by Banking and Insurance on January 12, 2022:**

The committee substitute:

- Requires individual market health insurance policies and health maintenance organizations contracts providing major medical or similar comprehensive coverage to provide coverage for hearing aids for children through age 18 rather than age 21.
- Revises the definition of the term “hearing aid” to exclude cochlear implants.
- Clarifies that a physician licensed under ch. 458 or 459, F.S., or an audiologist licensed under ch. 468, F.S., must make the diagnosis of a hearing loss.

### B. Amendments:

None.

---

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

---

<sup>60</sup> Office of Insurance Regulation, *2022 Legislative Session, Senate Bill 498 Fiscal Analysis* (Dec. 21, 2021) (on file with Senate Appropriations Committee).

<sup>61</sup> Office of Insurance Regulation, *2021 Legislative Session, Senate Bill 1268 Fiscal Analysis* (Feb. 18, 2021) (on file with Senate Committee on Banking and Insurance).

<sup>62</sup> *Id.*



By the Committee on Banking and Insurance; and Senators Baxley,  
Perry, and Taddeo

597-01975-22

2022498c1

1 A bill to be entitled  
2 An act relating to coverage for hearing aids for  
3 children; creating s. 627.6413, F.S.; defining the  
4 term "hearing aid"; requiring certain individual  
5 health insurance policies to provide coverage for  
6 hearing aids for certain children 18 years of age or  
7 younger under certain circumstances; specifying  
8 certain coverage requirements; providing an exception;  
9 providing that an insured is responsible for certain  
10 costs that exceed the policy limit; providing  
11 applicability; amending s. 641.31, F.S.; requiring  
12 certain individual health maintenance organization  
13 contracts to provide coverage for hearing aids for  
14 certain children 18 years of age or younger under  
15 certain circumstances; specifying certain coverage  
16 requirements; providing an exception; providing that a  
17 subscriber is responsible for certain costs that  
18 exceed the contract limit; defining the term "hearing  
19 aid"; providing applicability; providing an effective  
20 date.

21  
22 Be It Enacted by the Legislature of the State of Florida:

23  
24 Section 1. Section 627.6413, Florida Statutes, is created  
25 to read:

26 627.6413 Coverage for hearing aids for children.—

27 (1) As used in this section, the term "hearing aid" means  
28 any wearable instrument or device designed for, offered for the  
29 purpose of, or represented as aiding persons with or

Page 1 of 4

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

597-01975-22

2022498c1

30 compensating for impaired hearing, and includes ear molds. The  
31 term does not include a cochlear implant.

32 (2) A health insurer issuing an individual policy that  
33 provides major medical or similar comprehensive coverage for a  
34 dependent child of the insured must provide coverage for a  
35 hearing aid for any such child 18 years of age or younger  
36 diagnosed with hearing loss by a physician licensed under  
37 chapter 458 or chapter 459 or by an audiologist licensed under  
38 part I of chapter 468, and for whom the hearing aid is  
39 prescribed as medically necessary. Coverage for a hearing aid  
40 prescribed to a child 18 years of age or younger must require  
41 the hearing aid to be prescribed, fitted, and dispensed by a  
42 physician licensed under chapter 458 or chapter 459 or an  
43 audiologist licensed under part I of chapter 468.

44 (3) The policy must provide benefits in any 24-month period  
45 of at least \$3,500 per ear. The policy may limit coverage for  
46 ear molds to six ear molds in any 24-month period. However, if a  
47 child experiences a significant and unexpected change in his or  
48 her hearing or a medical condition requiring an unexpected  
49 change in the prescription for the hearing aid before the  
50 existing 24-month period expires, and alterations to the  
51 existing hearing aid do not or cannot meet the needs of the  
52 child, a new 24-month period must begin with full benefits and  
53 coverage.

54 (4) An insured is responsible for the cost of hearing aids  
55 and related services which exceeds the coverage limit provided  
56 by his or her policy.

57 (5) This section applies to a policy issued or renewed on  
58 or after January 1, 2023.

Page 2 of 4

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

597-01975-22

2022498c1

59 Section 2. Subsection (48) is added to section 641.31,  
 60 Florida Statutes, to read:  
 61 641.31 Health maintenance contracts.—  
 62 (48) (a) A health maintenance organization issuing an  
 63 individual contract that provides major medical or similar  
 64 comprehensive coverage for a dependent child of the subscriber  
 65 must provide coverage for a hearing aid for any such child 18  
 66 years of age or younger diagnosed with hearing loss by a  
 67 physician licensed under chapter 458 or chapter 459 or by an  
 68 audiologist licensed under part I of chapter 468, and for whom  
 69 the hearing aid is prescribed as medically necessary. Coverage  
 70 for a hearing aid prescribed to a child 18 years of age or  
 71 younger must require the hearing aid to be prescribed, fitted,  
 72 and dispensed by a physician licensed under chapter 458 or  
 73 chapter 459 or an audiologist licensed under part I of chapter  
 74 468.  
 75 (b) The contract must provide benefits in any 24-month  
 76 period of at least \$3,500 per ear. The contract may limit  
 77 coverage for ear molds to six ear molds in any 24-month period.  
 78 However, if a child experiences a significant and unexpected  
 79 change in his or her hearing or a medical condition requiring an  
 80 unexpected change in the prescription for the hearing aid before  
 81 the existing 24-month period expires, and alterations to the  
 82 existing hearing aid do not or cannot meet the needs of the  
 83 child, a new 24-month period must begin with full benefits and  
 84 coverage.  
 85 (c) A subscriber is responsible for the cost of hearing  
 86 aids and related services which exceeds the coverage limit  
 87 provided by his or her contract.

Page 3 of 4

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

597-01975-22

2022498c1

88 (d) As used in this section, the term "hearing aid" means  
 89 any wearable instrument or device designed for, offered for the  
 90 purpose of, or represented as aiding persons with or  
 91 compensating for impaired hearing, and includes ear molds. The  
 92 term does not include a cochlear implant.  
 93 (e) This subsection applies to a contract issued or renewed  
 94 on or after January 1, 2023.  
 95 Section 3. This act shall take effect January 1, 2023.

Page 4 of 4

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



# 2022 LEGISLATIVE SESSION

## AGENCY: Office of Insurance Regulation

### BILL INFORMATION

<b>BILL NUMBER:</b>	SB 498
<b>BILL TITLE:</b>	Insurance Coverage for Hearing Aids for Children
<b>BILL SPONSOR(S):</b>	Sen. Keith Perry
<b>EFFECTIVE DATE:</b>	01/01/2023

### COMMITTEES OF REFERENCE

#	COMMITTEE
1	Banking & Insurance
2	Health Policy
3	Appropriations

### CURRENT COMMITTEE

Banking & Insurance

### PREVIOUS LEGISLATION

BILL NUMBER	BILL NUMBER	SPONSOR	SPONSOR	YEAR	YEAR	LAST ACTION	LAST ACTION
N/A							

### SIMILAR BILLS

BILL NUMBER	SPONSOR
N/A	

### IDENTICAL BILLS

BILL NUMBER	SPONSOR
N/A	

### BILL ANALYSIS INFORMATION

<b>DATE OF ANALYSIS:</b>	9/15/2021
<b>LEAD AGENCY ANALYST:</b>	Christopher Struk
<b>ADDITIONAL ANALYSTS:</b>	Susan Lincoln
<b>LEGAL ANALYST:</b>	Tyler Parks

**FISCAL ANALYST:**

Richard Fox

**POLICY ANALYSIS****1. EXECUTIVE SUMMARY**

This bill creates section 627.6413, Florida Statutes (F.S.), and modifies section 641.31, F.S., to require individual health insurance policies and health maintenance organization ("HMO") contracts to provide coverage for hearing aids for children 21 years of age and younger. The minimum coverage is \$3,500 per ear within any 24-month period.

**2. SUBSTANTIVE BILL ANALYSIS****1. PRESENT SITUATION:**

Florida Statutes do not require health insurance policies to provide coverage for hearing aids

**2. EFFECT OF THE BILL:**

This bill creates section 627.6413, F.S., and modifies section 641.31, F.S., to define the term "hearing aid" and to require individual health insurance policies and HMO contracts to provide coverage for hearing aids for any child 21 years or younger who is diagnosed with hearing loss by a licensed physician or a licensed audiologist and for whom a hearing aid is prescribed as medically necessary. Coverage for a hearing aid prescribed to a child younger than 18 requires the hearing aid to be prescribed, fitted, and dispensed by a licensed physician or a licensed audiologist. Coverage for a hearing aid prescribed to a child between 18 and 21 years of age, inclusive, must require the hearing aid to be fitted and dispensed by a licensed physician, a licensed audiologist, or a licensed hearing aid specialist. The policy or contract must provide a minimum coverage limit of \$3,500 per ear within a 24-month period. However, if a child experiences a significant and unexpected change in his or her hearing or a medical condition requiring an unexpected change in the hearing aid before the existing 24-month period expires, and if alterations to the existing hearing aid do not or cannot meet the needs of the child, a new 24-month period shall begin with full benefits and coverage. The bill specifies that the insured or subscriber is responsible for the cost of hearing aids and related services that exceed the coverage limit in their policy or contract.

This coverage requirement applies to policies and contracts issued or renewed after January 1, 2023.

**3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Yes**

If yes, explain:	The Office of Insurance Regulation will need to amend its form review procedures to incorporate this new requirement.
Is the change consistent with the agency's core mission?	N/A
Rule(s) impacted (provide references to F.A.C., etc.):	

**4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

Proponents and summary of position:	
Opponents and summary of position:	

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? No**

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? No**

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

**FISCAL ANALYSIS**

**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? No**

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

**2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Yes**

Revenues:	
Expenditures:	In accordance with federal law at 45 C.F.R. 155.170, Florida may be required to defray the cost of any new coverage mandate that raises the cost of health insurance subsidies paid by the federal government.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Yes**

Revenues:	
-----------	--

Expenditures:	Adding an additional mandated benefit will likely result in an increase in premium costs.
Other:	

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? No**

If yes, explain impact.	
Bill Section Number:	

**TECHNOLOGY IMPACT**

**1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? No**

If yes, describe the anticipated impact to the agency including any fiscal impact.	
--	--

**FEDERAL IMPACT**

**1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Yes**

If yes, describe the anticipated impact including any fiscal impact.	In accordance with federal law at 45 C.F.R. 155.170, Florida may be required to defray the cost of any new coverage mandate that raises the cost of health insurance subsidies paid by the federal government.
--	--

**ADDITIONAL COMMENTS**

Health insurance policies and HMO contracts are typically for one year. Therefore, it may be difficult to implement a coverage requirement that lasts two years.

The bill does not provide a definition for "significant and unexpected change" in hearing. It also does not specify who may determine whether the existing hearing aid meets the child's needs, what criteria will be used to make that determination, or whether the determination is subject to appeal. It may be necessary to provide clarification in the bill or to provide the Office of Insurance Regulation with rulemaking authority to provide these details.

---

---

**LEGAL - GENERAL COUNSEL'S OFFICE REVIEW**

---

Issues/concerns/comments:

Issues/concerns/comments:	
---------------------------	--

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Ethics and Elections, *Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Community Affairs  
Criminal Justice  
Health Policy  
Judiciary  
Rules

## JOINT COMMITTEE:

Joint Legislative Auditing Committee,  
*Alternating Chair*

## SENATOR DENNIS BAXLEY

12th District

January 19, 2022

The Honorable Senator Kelli Stargel  
420 Senate Office Building  
Tallahassee, Florida 32399

Dear Chair Stargel,

I would like to request that CS/SB 498 Insurance Coverage for Children with Hearing Aids be heard in the next Appropriations Committee meeting.

This would require a private health insurance policy that provides coverage on an expense-incurred basis for a member of the family of the insured must provide health insurance benefits that include coverage for children diagnosed with hearing loss from birth through 18 years of age for hearing aids prescribed, fitted, and dispensed by a licensed audiologist.

An insurer must provide a minimum coverage amount of \$3,500 per ear within a 24-month period. However, if a child experiences a significant and unexpected change in his or her hearing or a medical condition requiring an unexpected change in the hearing aid before the existing 24-month period has expired, and alterations to the existing hearing aid do not or cannot meet the needs of the child, a new 24-month period shall begin with full benefits and coverage. Also, the insured is responsible for the cost of hearing aids and related services that exceed the coverage provided by his or her policy.

Thank you for your favorable consideration.

Onward & Upward,



Senator Dennis K. Baxley  
Senate District 12

DKB/dd

cc: Tim Sadberry, Staff Director

## REPLY TO:

- 206 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
- 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
- 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore



1/27/22

The Florida Senate

498

APPEARANCE RECORD

Meeting Date

Deliver both copies of this form to Senate professional staff conducting the meeting

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Theresa Bulger (pronounced BOL JER)

Phone

904 880 9063

Address

253 Hayden

Email

tb@deafkidscan.org

Street

City

State

Zip

Tallahassee, FL

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

1.) Florida Academy of Audiologists  
2.) Coalition for Spoken Languages  
3.) FLAG B  
4.) Clarke School  
5.) Sertoma Foundation

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

SB 498

Bill Number or Topic

1/27/22

Meeting Date

Appropriations

Committee

Amendment Barcode (if applicable)

Name Brita "Breeta" LINCOLN

Phone 813 541-6256

Address 1747 Orlando Central Pkwy

Email legislation@florida

Street

pta.org

Orlando

FL

32809

City

State

Zip

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Florida PTA (parent teacher assoc)

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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

5-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

1/27/22

Meeting Date

498

Bill Number or Topic

A P P O V E S

Committee

Amendment Barcode (if applicable)

Name

Ronald Woods Moseler

Phone

904 626 5035

Address

5335 Summit Lake Drive

Email

woodsronaldg@comcast.net

Street

Jacksonville

32258

City

State

Zip

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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

S-001 (08/10/2021)

1/27/22

Meeting Date

The Florida Senate  
**APPEARANCE RECORD**

498

Bill Number or Topic

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name Mary-Lynn Collier

Phone 941 928-0278

Address 1674 University Pkwy  
Street

Email a1children@aol.com

Sarasota FL 34243  
City State Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Advocacy Institute  
For Children

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf](#) ([flsenate.gov](#))

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

S-001 (08/10/2021)

The Florida Senate  
**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

498

Bill Number or Topic

Amendment Barcode (if applicable)

1/27/22  
Meeting Date

APPROPS  
Committee

Name ROWAN WOODS MOSELEY Phone

Address 4335 Summit Lake Dr Email TCOTTYFL@GMAIL.COM  
Street

Jax FL 32268  
City State Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

498

Bill Number or Topic

1/27/22

Meeting Date

Approps

Committee

Deliver both copies of this form to Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

KINA WOODS MOSELEY

Phone

(904) 418-3240

Address

4335 Summit Lake Dr

Email

twmoseley@fla.gov

Street

MA

FL

32258

City

State

Zip

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: SB 534

INTRODUCER: Senator Harrell

SUBJECT: Prescription Drugs Used in the Treatment of Schizophrenia for Medicaid Recipients

DATE: January 26, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Smith</u>	<u>Brown</u>	<u>HP</u>	<b>Favorable</b>
2.	<u>McKnight</u>	<u>Money</u>	<u>AHS</u>	<b>Recommend: Favorable</b>
3.	<u>McKnight</u>	<u>Sadberry</u>	<u>AP</u>	<b>Favorable</b>

---

**I. Summary:**

SB 534 creates an exception from step-therapy prior authorization requirements within the Florida Medicaid program for a drug product that is prescribed for the treatment of schizophrenia or schizotypal or delusional disorders or a medication of a similar drug class if prior authorization was previously granted for the prescribed drug and the medication was dispensed to the patient during the previous 12 months.

The bill has an indeterminate fiscal impact on the Florida Medicaid program. *See* Section V of this analysis.

The bill takes effect on July 1, 2022.

**II. Present Situation:**

**Florida Medicaid Program**

Florida Medicaid is the health care safety net for low-income Floridians. The national Medicaid program is a partnership of federal and state governments established to provide coverage for health services for eligible persons. Florida's program is administered by the Agency for Health Care Administration (AHCA) and financed through state and federal funds.<sup>1</sup>

A Medicaid state plan is an agreement between a state and the federal government describing how the state administers its Medicaid programs. The state plan establishes groups of individuals covered under the Medicaid program, services that are provided, payment methodologies, and other administrative and organizational requirements.

---

<sup>1</sup> Section 20.42, F.S.

In order to participate in Medicaid, federal law requires states to cover certain population groups (mandatory eligibility groups) and gives states the flexibility to cover other population groups (optional eligibility groups). States set individual eligibility criteria within federal minimum standards. The AHCA may seek an amendment to the state plan as necessary to comply with federal or state laws or to implement program changes.

In Florida, the majority of Medicaid recipients receive their services through a managed care plan contracted with the AHCA under the Statewide Medicaid Managed Care (SMMC) program.<sup>2</sup> The SMMC program has three components, the Managed Medical Assistance (MMA) program, the Long-term Care program, and dental plans. Florida's SMMC offers a health care package covering acute, preventive, behavioral health, prescribed drugs, long-term care, and dental services.<sup>3</sup> The SMMC benefits are authorized by federal authority and are specifically required in ss. 409.973 and 409.98, F.S.

The AHCA contracts with managed care plans on a regional basis to provide services to eligible recipients. The MMA program, which covers most medical and acute care services for managed care plan enrollees, was fully implemented in 2014 and was re-procured for a period beginning December 2018 and ending in 2023.<sup>4</sup>

### ***Coverage of Prescribed Drugs***

Section 409.91195, F.S., establishes the Pharmaceutical and Therapeutics Committee within the AHCA and tasks it with developing a Florida Medicaid Preferred Drug List (PDL). The Governor appoints the eleven committee members, including five pharmacists, five physicians, and one consumer representative.<sup>5</sup> The committee must meet quarterly and must review all drug classes included in the PDL at least every 12 months.<sup>6</sup> The committee may recommend additions to and deletions from the PDL, such that the PDL provides for medically appropriate drug therapies for Medicaid patients which achieve cost savings contained in the General Appropriations Act.<sup>7</sup>

The committee considers the amount of rebates drug manufacturers are offering if their drug is placed on the PDL.<sup>8</sup> These state-negotiated supplemental rebates, along with federally negotiated rebates, can reduce the per-prescription cost of a brand name drug to below the cost of its generic equivalent.<sup>9</sup> Florida currently collects over \$2 billion per year in federal and supplemental rebates for drugs dispensed to Medicaid recipients.<sup>10</sup> These funds are used to offset the cost of Medicaid services.<sup>11</sup>

---

<sup>2</sup> Agency for Health Care Administration, *Senate Bill 534 Analysis* (Nov. 11, 2021) (on file with Senate Committee on Health Policy).

<sup>3</sup> *Id.*

<sup>4</sup> Agency for Health Care Administration, *Statewide Medicaid Managed Care: Overview*, available at [https://ahca.myflorida.com/medicaid/statewide\\_mc/pdf/mma/SMMC\\_Overview\\_12042018.pdf](https://ahca.myflorida.com/medicaid/statewide_mc/pdf/mma/SMMC_Overview_12042018.pdf) (last visited Nov. 30, 2021).

<sup>5</sup> Section 409.91195(1), F.S.

<sup>6</sup> Section 409.91195(3), F.S.

<sup>7</sup> Section 409.91195(4), F.S.

<sup>8</sup> Section 409.91195(7), F.S.

<sup>9</sup> *Supra* note 2.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*



Medicaid managed care plans are required to provide all prescription drugs listed on the AHCA's PDL.<sup>12</sup> Because of this, the managed care plans have not implemented their own plan-specific formularies or PDLs. Medicaid managed care plans are required to provide a link to the AHCA's PDL on their websites.<sup>13</sup> Florida Medicaid covers all Food and Drug Administration (FDA) approved prescription medications.<sup>14</sup> Those not included on the PDL must receive prior approval by Medicaid or the health plans.<sup>15</sup>

The AHCA also manages the federally required Florida Medicaid Drug Utilization Review Board, which meets quarterly and develops and reviews clinical prior authorization criteria, including step-therapy protocols, for certain drugs that are not on the AHCA's Medicaid PDL.<sup>16</sup>

### ***Medical Necessity***

Federal law specifies that state Medicaid programs may not cover services that are not reasonable and (medically) necessary.<sup>17</sup> Each state has adopted its own definition of "medical necessity."<sup>18</sup> Section 409.913(1)(d), F.S., specifies that the AHCA is the final arbiter of medical necessity for purposes of medical reimbursement. Further, that paragraph requires determinations of medical necessity to be made by a licensed physician employed by or under contract with the AHCA (except for behavior analysis services, which may be determined by either a licensed physician or a doctoral-level board-certified behavior analyst), based upon information available at the time the goods or services are requested.

Pursuant to Rule 59G-1.010 of the Florida Administrative Code, care, goods, and services are medically necessary if they are:

- Necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;
- Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
- Consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational;
- Reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
- Furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

---

<sup>12</sup> Agency for Health Care Administration, *Senate Bill 534 Analysis* (Nov. 11, 2021) (on file with Senate Committee on Health Policy).

<sup>13</sup> Section 409.967(2)(c)2, F.S.

<sup>14</sup> *Supra* note 12.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> 42 U.S.C. s. 1395y.

<sup>18</sup> Dickey, Elizabeth, NOLO, Getting Approval for Medicaid Services: Medical Necessity *available at* <https://www.nolo.com/legal-encyclopedia/getting-approval-medicaid-services-medical-necessity.html> (last visited Nov. 30, 2021).

### ***Prescribed Drug Prior Authorization Requirements, Step-Therapy Protocols***

Prior authorization means a process by which a health care provider must qualify for payment coverage by obtaining advance approval from an insurer before a specific service is delivered to the patient.<sup>19</sup> Within the Florida Medicaid program, only care, goods, and services that are medically necessary will obtain prior authorization. The AHCA must respond to prior authorization requests for prescribed drugs within 24 hours of receipt of the request.<sup>20</sup> Medicaid managed care plans are contractually required to respond to prior authorization requests for prescribed drugs within 24 hours of receipt of the request.

Section 409.912(5)(a)14., F.S. requires the AHCA to implement a step-therapy<sup>21</sup> prior authorization process for prescribed drugs excluded from the PDL. The recipient must try the prescribed drug on the PDL within the 12 months before a non-PDL drug is approved. However, a non-PDL drug may be approved without meeting the step-therapy prior authorization criteria if the prescribing physician provides additional written medical documentation that the non-PDL product is medically necessary because:

- There is not a drug on the PDL to treat the disease or medical condition which is an acceptable clinical alternative;
- The alternative drugs have been ineffective in the treatment of the recipient's disease; or
- Based on historic evidence and known characteristics of the patient and the drug, the drug is likely to be ineffective, or the number of doses has been ineffective.

The AHCA must work with the physician to determine the best alternative for the recipient.<sup>22</sup>

Regardless of whether a drug is listed on the PDL, a Medicaid managed care plan's prior authorization criteria and protocols related to prescribed drugs cannot be more restrictive than the criteria established by the AHCA for Fee-for-Service Delivery System prior authorizations.<sup>23</sup> Medicaid managed care plans must ensure that the prior authorization process for prescribed drugs is readily accessible to health care providers and must provide timely responses to providers.<sup>24</sup>

### ***Coverage of Prescription Drugs for Schizophrenia, Schizotypal, and Delusion Disorders***

The PDL can be found on the AHCA's website.<sup>25</sup> The AHCA reports that the list includes numerous generic and brand name drugs for the treatment of schizophrenia, schizotypal or delusional disorders.<sup>26</sup> If the drug is not on the PDL, the prescriber must obtain prior

---

<sup>19</sup> Riley, Hannah, Gistia Healthcare, *Making Sense of Prior Authorization, What is it?* (Apr. 21, 2020) available at <https://www.gistia.com/insights/what-is-prior-authorization> (last visited Nov. 30, 2021).

<sup>20</sup> Section 409.912(5)(a)1.a., F.S.

<sup>21</sup> Step therapy means trying less expensive options before "stepping up" to drugs that cost more. Blue Cross Blue Shield Blue Care Network of Michigan, *How does step therapy work?*, available at <https://www.bcbsm.com/index/health-insurance-help/faqs/plan-types/pharmacy/what-is-step-therapy.html> (last visited Nov. 30, 2021).

<sup>22</sup> Section 409.912(5)(a)14., F.S.

<sup>23</sup> Agency for Health Care Administration, *Senate Bill 534 Analysis* (Nov. 11, 2021) (on file with Senate Committee on Health Policy).

<sup>24</sup> Section 409.967(2)(c)2, F.S.

<sup>25</sup> Agency for Health Care Administration, Florida Medicaid Preferred Drug List (PDL) available at [https://ahca.myflorida.com/medicaid/prescribed\\_drug/pharm\\_thera/fmpdl.shtml](https://ahca.myflorida.com/medicaid/prescribed_drug/pharm_thera/fmpdl.shtml) (last visited Nov. 30, 2021).

<sup>26</sup> *Supra* note 23.

authorization before dispensing the medication. Prior authorization requests are reviewed using the guidelines established by the University of South Florida for mental health medications.<sup>27</sup> Prior authorization criteria and automated edits can be found on the AHCA's website.<sup>28</sup>

### **Schizophrenia, Schizotypal, and Delusional Disorders**

It was estimated that in 2017, approximately 184,607 adults residing in Florida had schizophrenia. Of that number, approximately 73,843 went untreated.<sup>29</sup>

Schizophrenia is a serious mental disorder that causes people to interpret reality abnormally. Schizophrenia may result in some combination of hallucinations, delusions, and extremely disordered thinking and behavior that impairs daily functioning, and can be disabling.<sup>30</sup> People with schizophrenia require lifelong treatment. Treatments may include: biofeedback and stress management, electroconvulsive therapy, psychotherapy, psychopharmacology (the use of medications), and repetitive transcranial magnetic stimulation.<sup>31</sup> Common medications include one, or a combination of, antidepressants, mood stabilizers, anti-psychotic drugs, anti-anxiety medicines, and stimulants.<sup>32</sup> These treatments are also used for patients with schizotypal personality disorders and delusional disorders.

Schizotypal Personality Disorder can easily be confused with schizophrenia. While people with schizotypal personality disorder may experience brief psychotic episodes with delusions or hallucinations, the episodes are not as frequent, prolonged, or intense as in schizophrenia.<sup>33</sup> Furthermore, people with schizotypal personality disorder usually can be made aware of the difference between their distorted ideas and reality. Those with schizophrenia generally cannot be swayed from their delusions.<sup>34</sup>

Similarly, Delusional Disorder is distinguished from schizophrenia by the presence of a delusion or delusions persisting for at least a month without any of the other symptoms of psychosis (for example, hallucinations, disorganized speech, or disorganized behavior).<sup>35</sup>

---

<sup>27</sup> Agency for Health Care Administration, *Senate Bill 534 Analysis* (Nov. 11, 2021) (on file with Senate Committee on Health Policy). The guidelines can be found at <https://floridabhcenter.org/> (last visited Nov. 30, 2021). These guidelines are included on the criteria for antipsychotic medications.

<sup>28</sup> Agency for Health Care Administration, *Drug Criteria*, available at [https://ahca.myflorida.com/medicaid/prescribed\\_drug/drug\\_criteria.shtml](https://ahca.myflorida.com/medicaid/prescribed_drug/drug_criteria.shtml) (last visited Nov. 30, 2021).

<sup>29</sup> Treatment Advocacy Center, Florida, available at <https://www.treatmentadvocacycenter.org/browse-by-state/florida> (last visited Nov. 30, 2021).

<sup>30</sup> Mayo Clinic, *Schizophrenia*, available at <https://www.mayoclinic.org/diseases-conditions/schizophrenia/symptoms-causes/syc-20354443> (last visited Nov. 30, 2021).

<sup>31</sup> University of Miami Health System, *Schizophrenia*, available at <https://umiamihealth.org/en/treatments-and-services/psychiatry/schizophrenia> (last visited Nov. 30, 2021).

<sup>32</sup> *Id.*

<sup>33</sup> Mayo Clinic, *Schizotypal Personality Disorder*, available at <https://www.mayoclinic.org/diseases-conditions/schizotypal-personality-disorder/symptoms-causes/syc-20353919> (last visited Nov. 30, 2021).

<sup>34</sup> *Id.*

<sup>35</sup> Carol Tamminga, MD, *Delusional Disorder*, *Merk Manual* (May 2020), available at <https://www.merckmanuals.com/home/mental-health-disorders/schizophrenia-and-related-disorders/delusional-disorder> (last visited Nov. 30, 2021).

**III. Effect of Proposed Changes:**

**Section 1** amends s. 409.912(5)(a)14., F.S., to create an exception from step-therapy prior authorization requirements within the Florida Medicaid program for a drug product that is prescribed for the treatment of schizophrenia or schizotypal or delusional disorders or a medication of a similar drug class if prior authorization was previously granted for the prescribed drug and the medication was dispensed to the patient during the previous 12 months.

In practice, the pharmacy benefit manager for the Florida Medicaid Fee-for-Service delivery system would review the exception request on behalf of the Agency for Health Care Administration. Managed care plans would process their own exceptions. Providers may transmit written medical or clinical documentation by facsimile or submit their requests through the electronic prior authorization system (ePA).<sup>36</sup>

**Section 2** provides an effective date of July 1, 2022.

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

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

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

None.

---

<sup>36</sup> Agency for Health Care Administration, *Senate Bill 534 Analysis* (Nov. 11, 2021) (on file with Senate Committee on Health Policy).

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

SB 534 has an indeterminate fiscal impact on the Florida Medicaid program. The bill will have a minimal operational effect on both the Medicaid fee-for-service delivery system and the Statewide Medicaid Managed Care program. For the medications prescribed for schizophrenia, schizotypal or delusional disorders, reviewers would only look for the product in the patient's history or a trial of one similar drug class trial rather than multiple drug trials of similar preferred medications.<sup>37</sup>

The Florida Medicaid Preferred Drug List (PDL) includes many generic medications with robust federal rebates and often additional supplemental rebates offered by drug manufacturers, resulting in a reduced cost to Medicaid. If numerous prescribing physicians prescribe higher cost, non-PDL drugs through the exception created in this bill, it may lead to a cost increase in therapeutic classes related to schizophrenia treatment.<sup>38</sup>

However, if the bill results in more expeditious and effective pharmaceutical care provided to Medicaid patients with the targeted disorders, Medicaid could experience savings due to reductions in the need for other types of expenses, such as, for example, expenses associated with inpatient hospital care. Such potential effect is indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the section 409.912 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.

---

<sup>37</sup> Agency for Health Care Administration, *Senate Bill 534 Analysis* (Nov. 11, 2021) (on file with Senate Committee on Health Policy).

<sup>38</sup> *Supra* note 37.

B. Amendments:

None.

---

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

---

By Senator Harrell

25-00651A-22

2022534\_\_

A bill to be entitled

An act relating to prescription drugs used in the treatment of schizophrenia for Medicaid recipients; amending s. 409.912, F.S.; authorizing the approval of drug products or certain medication prescribed for the treatment of schizophrenia or schizotypal or delusional disorders for Medicaid recipients who have not met the step-therapy prior authorization criteria, when the drug product or certain medication meets specified criteria; providing an effective date.

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

Section 1. Paragraph (a) of subsection (5) of section 409.912, Florida Statutes, is amended to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. To ensure that medical services are effectively utilized, the agency may, in any case, require a confirmation or second physician's opinion of the correct diagnosis for purposes of authorizing future services under the Medicaid program. This section does not restrict access to emergency services or poststabilization care services as defined in 42 C.F.R. s. 438.114. Such confirmation or second opinion shall be rendered in a manner approved by the agency. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies,

Page 1 of 13

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

25-00651A-22

2022534\_\_

including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services. The agency shall contract with a vendor to monitor and evaluate the clinical practice patterns of providers in order to identify trends that are outside the normal practice patterns of a provider's professional peers or the national guidelines of a provider's professional association. The vendor must be able to provide information and counseling to a provider whose practice patterns are outside the norms, in consultation with the agency, to improve patient care and reduce inappropriate utilization. The agency may mandate prior authorization, drug therapy management, or disease management participation for certain populations of Medicaid beneficiaries, certain drug classes, or particular drugs to prevent fraud, abuse, overuse, and possible dangerous drug interactions. The Pharmaceutical and Therapeutics Committee shall make recommendations to the agency on drugs for which prior authorization is required. The agency shall inform the Pharmaceutical and Therapeutics Committee of its decisions regarding drugs subject to prior authorization. The agency is authorized to limit the entities it contracts with or enrolls as Medicaid providers by developing a provider network through provider credentialing. The agency may competitively bid single-source-provider contracts if procurement of goods or services results in demonstrated cost savings to the state without limiting access to care. The agency may limit its network based

Page 2 of 13

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

25-00651A-22

2022534\_\_

59 on the assessment of beneficiary access to care, provider  
 60 availability, provider quality standards, time and distance  
 61 standards for access to care, the cultural competence of the  
 62 provider network, demographic characteristics of Medicaid  
 63 beneficiaries, practice and provider-to-beneficiary standards,  
 64 appointment wait times, beneficiary use of services, provider  
 65 turnover, provider profiling, provider licensure history,  
 66 previous program integrity investigations and findings, peer  
 67 review, provider Medicaid policy and billing compliance records,  
 68 clinical and medical record audits, and other factors. Providers  
 69 are not entitled to enrollment in the Medicaid provider network.  
 70 The agency shall determine instances in which allowing Medicaid  
 71 beneficiaries to purchase durable medical equipment and other  
 72 goods is less expensive to the Medicaid program than long-term  
 73 rental of the equipment or goods. The agency may establish rules  
 74 to facilitate purchases in lieu of long-term rentals in order to  
 75 protect against fraud and abuse in the Medicaid program as  
 76 defined in s. 409.913. The agency may seek federal waivers  
 77 necessary to administer these policies.

78 (5) (a) The agency shall implement a Medicaid prescribed-  
 79 drug spending-control program that includes the following  
 80 components:

81 1. A Medicaid preferred drug list, which shall be a listing  
 82 of cost-effective therapeutic options recommended by the  
 83 Medicaid Pharmacy and Therapeutics Committee established  
 84 pursuant to s. 409.91195 and adopted by the agency for each  
 85 therapeutic class on the preferred drug list. At the discretion  
 86 of the committee, and when feasible, the preferred drug list  
 87 should include at least two products in a therapeutic class. The

Page 3 of 13

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

25-00651A-22

2022534\_\_

88 agency may post the preferred drug list and updates to the list  
 89 on an Internet website without following the rulemaking  
 90 procedures of chapter 120. Antiretroviral agents are excluded  
 91 from the preferred drug list. The agency shall also limit the  
 92 amount of a prescribed drug dispensed to no more than a 34-day  
 93 supply unless the drug products' smallest marketed package is  
 94 greater than a 34-day supply, or the drug is determined by the  
 95 agency to be a maintenance drug in which case a 100-day maximum  
 96 supply may be authorized. The agency may seek any federal  
 97 waivers necessary to implement these cost-control programs and  
 98 to continue participation in the federal Medicaid rebate  
 99 program, or alternatively to negotiate state-only manufacturer  
 100 rebates. The agency may adopt rules to administer this  
 101 subparagraph. The agency shall continue to provide unlimited  
 102 contraceptive drugs and items. The agency must establish  
 103 procedures to ensure that:

104 a. There is a response to a request for prior authorization  
 105 by telephone or other telecommunication device within 24 hours  
 106 after receipt of a request for prior authorization; and

107 b. A 72-hour supply of the drug prescribed is provided in  
 108 an emergency or when the agency does not provide a response  
 109 within 24 hours as required by sub-subparagraph a.

110 2. A provider of prescribed drugs is reimbursed in an  
 111 amount not to exceed the lesser of the actual acquisition cost  
 112 based on the Centers for Medicare and Medicaid Services National  
 113 Average Drug Acquisition Cost pricing files plus a professional  
 114 dispensing fee, the wholesale acquisition cost plus a  
 115 professional dispensing fee, the state maximum allowable cost  
 116 plus a professional dispensing fee, or the usual and customary

Page 4 of 13

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



25-00651A-22

2022534\_\_

117 charge billed by the provider.

118 3. The agency shall develop and implement a process for  
 119 managing the drug therapies of Medicaid recipients who are using  
 120 significant numbers of prescribed drugs each month. The  
 121 management process may include, but is not limited to,  
 122 comprehensive, physician-directed medical-record reviews, claims  
 123 analyses, and case evaluations to determine the medical  
 124 necessity and appropriateness of a patient's treatment plan and  
 125 drug therapies. The agency may contract with a private  
 126 organization to provide drug-program-management services. The  
 127 Medicaid drug benefit management program shall include  
 128 initiatives to manage drug therapies for HIV/AIDS patients,  
 129 patients using 20 or more unique prescriptions in a 180-day  
 130 period, and the top 1,000 patients in annual spending. The  
 131 agency shall enroll any Medicaid recipient in the drug benefit  
 132 management program if he or she meets the specifications of this  
 133 provision and is not enrolled in a Medicaid health maintenance  
 134 organization.

135 4. The agency may limit the size of its pharmacy network  
 136 based on need, competitive bidding, price negotiations,  
 137 credentialing, or similar criteria. The agency shall give  
 138 special consideration to rural areas in determining the size and  
 139 location of pharmacies included in the Medicaid pharmacy  
 140 network. A pharmacy credentialing process may include criteria  
 141 such as a pharmacy's full-service status, location, size,  
 142 patient educational programs, patient consultation, disease  
 143 management services, and other characteristics. The agency may  
 144 impose a moratorium on Medicaid pharmacy enrollment if it is  
 145 determined that it has a sufficient number of Medicaid-

Page 5 of 13

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

25-00651A-22

2022534\_\_

146 participating providers. The agency must allow dispensing  
 147 practitioners to participate as a part of the Medicaid pharmacy  
 148 network regardless of the practitioner's proximity to any other  
 149 entity that is dispensing prescription drugs under the Medicaid  
 150 program. A dispensing practitioner must meet all credentialing  
 151 requirements applicable to his or her practice, as determined by  
 152 the agency.

153 5. The agency shall develop and implement a program that  
 154 requires Medicaid practitioners who issue written prescriptions  
 155 for medicinal drugs to use a counterfeit-proof prescription pad  
 156 for Medicaid prescriptions. The agency shall require the use of  
 157 standardized counterfeit-proof prescription pads by prescribers  
 158 who issue written prescriptions for Medicaid recipients. The  
 159 agency may implement the program in targeted geographic areas or  
 160 statewide.

161 6. The agency may enter into arrangements that require  
 162 manufacturers of generic drugs prescribed to Medicaid recipients  
 163 to provide rebates of at least 15.1 percent of the average  
 164 manufacturer price for the manufacturer's generic products.  
 165 These arrangements shall require that if a generic-drug  
 166 manufacturer pays federal rebates for Medicaid-reimbursed drugs  
 167 at a level below 15.1 percent, the manufacturer must provide a  
 168 supplemental rebate to the state in an amount necessary to  
 169 achieve a 15.1-percent rebate level.

170 7. The agency may establish a preferred drug list as  
 171 described in this subsection, and, pursuant to the establishment  
 172 of such preferred drug list, negotiate supplemental rebates from  
 173 manufacturers that are in addition to those required by Title  
 174 XIX of the Social Security Act and at no less than 14 percent of

Page 6 of 13

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

25-00651A-22

2022534

175 the average manufacturer price as defined in 42 U.S.C. s. 1936  
 176 on the last day of a quarter unless the federal or supplemental  
 177 rebate, or both, equals or exceeds 29 percent. There is no upper  
 178 limit on the supplemental rebates the agency may negotiate. The  
 179 agency may determine that specific products, brand-name or  
 180 generic, are competitive at lower rebate percentages. Agreement  
 181 to pay the minimum supplemental rebate percentage guarantees a  
 182 manufacturer that the Medicaid Pharmaceutical and Therapeutics  
 183 Committee will consider a product for inclusion on the preferred  
 184 drug list. However, a pharmaceutical manufacturer is not  
 185 guaranteed placement on the preferred drug list by simply paying  
 186 the minimum supplemental rebate. Agency decisions will be made  
 187 on the clinical efficacy of a drug and recommendations of the  
 188 Medicaid Pharmaceutical and Therapeutics Committee, as well as  
 189 the price of competing products minus federal and state rebates.  
 190 The agency may contract with an outside agency or contractor to  
 191 conduct negotiations for supplemental rebates. For the purposes  
 192 of this section, the term "supplemental rebates" means cash  
 193 rebates. Value-added programs as a substitution for supplemental  
 194 rebates are prohibited. The agency may seek any federal waivers  
 195 to implement this initiative.

196 8.a. The agency may implement a Medicaid behavioral drug  
 197 management system. The agency may contract with a vendor that  
 198 has experience in operating behavioral drug management systems  
 199 to implement this program. The agency may seek federal waivers  
 200 to implement this program.

201 b. The agency, in conjunction with the Department of  
 202 Children and Families, may implement the Medicaid behavioral  
 203 drug management system that is designed to improve the quality

Page 7 of 13

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

25-00651A-22

2022534

204 of care and behavioral health prescribing practices based on  
 205 best practice guidelines, improve patient adherence to  
 206 medication plans, reduce clinical risk, and lower prescribed  
 207 drug costs and the rate of inappropriate spending on Medicaid  
 208 behavioral drugs. The program may include the following  
 209 elements:

210 (I) Provide for the development and adoption of best  
 211 practice guidelines for behavioral health-related drugs such as  
 212 antipsychotics, antidepressants, and medications for treating  
 213 bipolar disorders and other behavioral conditions; translate  
 214 them into practice; review behavioral health prescribers and  
 215 compare their prescribing patterns to a number of indicators  
 216 that are based on national standards; and determine deviations  
 217 from best practice guidelines.

218 (II) Implement processes for providing feedback to and  
 219 educating prescribers using best practice educational materials  
 220 and peer-to-peer consultation.

221 (III) Assess Medicaid beneficiaries who are outliers in  
 222 their use of behavioral health drugs with regard to the numbers  
 223 and types of drugs taken, drug dosages, combination drug  
 224 therapies, and other indicators of improper use of behavioral  
 225 health drugs.

226 (IV) Alert prescribers to patients who fail to refill  
 227 prescriptions in a timely fashion, are prescribed multiple same-  
 228 class behavioral health drugs, and may have other potential  
 229 medication problems.

230 (V) Track spending trends for behavioral health drugs and  
 231 deviation from best practice guidelines.

232 (VI) Use educational and technological approaches to

Page 8 of 13

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

25-00651A-22

2022534

233 promote best practices, educate consumers, and train prescribers  
234 in the use of practice guidelines.

235 (VII) Disseminate electronic and published materials.

236 (VIII) Hold statewide and regional conferences.

237 (IX) Implement a disease management program with a model  
238 quality-based medication component for severely mentally ill  
239 individuals and emotionally disturbed children who are high  
240 users of care.

241 9. The agency shall implement a Medicaid prescription drug  
242 management system.

243 a. The agency may contract with a vendor that has  
244 experience in operating prescription drug management systems in  
245 order to implement this system. Any management system that is  
246 implemented in accordance with this subparagraph must rely on  
247 cooperation between physicians and pharmacists to determine  
248 appropriate practice patterns and clinical guidelines to improve  
249 the prescribing, dispensing, and use of drugs in the Medicaid  
250 program. The agency may seek federal waivers to implement this  
251 program.

252 b. The drug management system must be designed to improve  
253 the quality of care and prescribing practices based on best  
254 practice guidelines, improve patient adherence to medication  
255 plans, reduce clinical risk, and lower prescribed drug costs and  
256 the rate of inappropriate spending on Medicaid prescription  
257 drugs. The program must:

258 (I) Provide for the adoption of best practice guidelines  
259 for the prescribing and use of drugs in the Medicaid program,  
260 including translating best practice guidelines into practice;  
261 reviewing prescriber patterns and comparing them to indicators

25-00651A-22

2022534

262 that are based on national standards and practice patterns of  
263 clinical peers in their community, statewide, and nationally;  
264 and determine deviations from best practice guidelines.

265 (II) Implement processes for providing feedback to and  
266 educating prescribers using best practice educational materials  
267 and peer-to-peer consultation.

268 (III) Assess Medicaid recipients who are outliers in their  
269 use of a single or multiple prescription drugs with regard to  
270 the numbers and types of drugs taken, drug dosages, combination  
271 drug therapies, and other indicators of improper use of  
272 prescription drugs.

273 (IV) Alert prescribers to recipients who fail to refill  
274 prescriptions in a timely fashion, are prescribed multiple drugs  
275 that may be redundant or contraindicated, or may have other  
276 potential medication problems.

277 10. The agency may contract for drug rebate administration,  
278 including, but not limited to, calculating rebate amounts,  
279 invoicing manufacturers, negotiating disputes with  
280 manufacturers, and maintaining a database of rebate collections.

281 11. The agency may specify the preferred daily dosing form  
282 or strength for the purpose of promoting best practices with  
283 regard to the prescribing of certain drugs as specified in the  
284 General Appropriations Act and ensuring cost-effective  
285 prescribing practices.

286 12. The agency may require prior authorization for  
287 Medicaid-covered prescribed drugs. The agency may prior-  
288 authorize the use of a product:

289 a. For an indication not approved in labeling;

290 b. To comply with certain clinical guidelines; or

25-00651A-22

2022534\_\_

291 c. If the product has the potential for overuse, misuse, or  
292 abuse.

293  
294 The agency may require the prescribing professional to provide  
295 information about the rationale and supporting medical evidence  
296 for the use of a drug. The agency shall post prior  
297 authorization, step-edit criteria and protocol, and updates to  
298 the list of drugs that are subject to prior authorization on the  
299 agency's Internet website within 21 days after the prior  
300 authorization and step-edit criteria and protocol and updates  
301 are approved by the agency. For purposes of this subparagraph,  
302 the term "step-edit" means an automatic electronic review of  
303 certain medications subject to prior authorization.

304 13. The agency, in conjunction with the Pharmaceutical and  
305 Therapeutics Committee, may require age-related prior  
306 authorizations for certain prescribed drugs. The agency may  
307 preauthorize the use of a drug for a recipient who may not meet  
308 the age requirement or may exceed the length of therapy for use  
309 of this product as recommended by the manufacturer and approved  
310 by the Food and Drug Administration. Prior authorization may  
311 require the prescribing professional to provide information  
312 about the rationale and supporting medical evidence for the use  
313 of a drug.

314 14. The agency shall implement a step-therapy prior  
315 authorization approval process for medications excluded from the  
316 preferred drug list. Medications listed on the preferred drug  
317 list must be used within the previous 12 months before the  
318 alternative medications that are not listed. The step-therapy  
319 prior authorization may require the prescriber to use the

Page 11 of 13

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

25-00651A-22

2022534\_\_

320 medications of a similar drug class or for a similar medical  
321 indication unless contraindicated in the Food and Drug  
322 Administration labeling. The trial period between the specified  
323 steps may vary according to the medical indication. The step-  
324 therapy approval process shall be developed in accordance with  
325 the committee as stated in s. 409.91195(7) and (8). A drug  
326 product may be approved without meeting the step-therapy prior  
327 authorization criteria if the prescribing physician provides the  
328 agency with additional written medical or clinical documentation  
329 that the product is medically necessary because:

330 a. There is not a drug on the preferred drug list to treat  
331 the disease or medical condition which is an acceptable clinical  
332 alternative;

333 b. The alternatives have been ineffective in the treatment  
334 of the beneficiary's disease; ~~or~~

335 c. The drug product or medication of a similar drug class  
336 is prescribed for the treatment of schizophrenia or schizotypal  
337 or delusional disorders; prior authorization has been granted  
338 previously for the prescribed drug; and the medication was  
339 dispensed to the patient during the previous 12 months; or

340 d. Based on historic evidence and known characteristics of  
341 the patient and the drug, the drug is likely to be ineffective,  
342 or the number of doses have been ineffective.

343  
344 The agency shall work with the physician to determine the best  
345 alternative for the patient. The agency may adopt rules waiving  
346 the requirements for written clinical documentation for specific  
347 drugs in limited clinical situations.

348 15. The agency shall implement a return and reuse program

Page 12 of 13

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

25-00651A-22

2022534

349 for drugs dispensed by pharmacies to institutional recipients,  
350 which includes payment of a \$5 restocking fee for the  
351 implementation and operation of the program. The return and  
352 reuse program shall be implemented electronically and in a  
353 manner that promotes efficiency. The program must permit a  
354 pharmacy to exclude drugs from the program if it is not  
355 practical or cost-effective for the drug to be included and must  
356 provide for the return to inventory of drugs that cannot be  
357 credited or returned in a cost-effective manner. The agency  
358 shall determine if the program has reduced the amount of  
359 Medicaid prescription drugs which are destroyed on an annual  
360 basis and if there are additional ways to ensure more  
361 prescription drugs are not destroyed which could safely be  
362 reused.

363 Section 2. This act shall take effect July 1, 2022.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR GAYLE HARRELL**

25th District

January 19, 2022

Senator Kelli Stargel  
420 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399

Chair Stargel,

I respectfully request that **SB 534 – Prescription Drugs used in the treatment of Schizophrenia for Medicaid** recipients be placed on the next available agenda for the Appropriations Committee Meeting.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

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

Senator Gayle Harrell  
Senate District 25

Cc: Tim Sadberry, Staff Director  
Alicia Weiss, Committee Administrative Assistant

**COMMITTEES:**

Transportation, *Chair*  
Military and Veterans Affairs, Space,  
and Domestic Security, *Vice Chair*  
Appropriations Subcommittee on Health and  
Human Services  
Children, Families, and Elder Affairs  
Finance and Tax  
Reapportionment

**SELECT SUBCOMMITTEE:**

Select Subcommittee on Congressional  
Reapportionment

REPLY TO:

- 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019 FAX: (888) 263-7895
- 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

1/27/2022

Meeting Date

SB 534

Bill Number or Topic

Appropriations

Committee

Amendment Barcode (if applicable)

Name Paul Lowell

Phone 850-728-0861

Address 3250 NE 1st Ave Ste 203

Email paul@convergepublic.com

Street

Miami

City

FL

State

33137

Zip

Speaking: [ ] For [ ] Against [ ] Information OR Waive Speaking: [x] In Support [ ] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[ ] I am appearing without compensation or sponsorship.

[x] I am a registered lobbyist, representing:

Sunovion

[ ] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. 511.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: PCS/SB 544 (455298)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); and Senator Boyd

SUBJECT: Drug-related Overdose Prevention

DATE: January 26, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	<u>Favorable</u>
2.	<u>Howard</u>	<u>Money</u>	<u>AHS</u>	<u>Recommend: Fav/CS</u>
3.	<u>Howard</u>	<u>Sadberry</u>	<u>AP</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

PCS/SB 544 amends section 381.887, Florida Statutes, to expand access to emergency opioid antagonists by:

- Allowing pharmacists to order, as well as dispense, emergency opioid antagonists with an autoinjection delivery system or intranasal delivery system;
- Providing that specified persons who are authorized to possess, store, and administer emergency opioid antagonists are immune from any civil or criminal liability resulting from the administration of such emergency opioid antagonists; and
- Adding specified personnel of a law enforcement agency or other agencies to the list of persons who are authorized to possess, store, and administer emergency opioid antagonists.

The bill also amends section 395.1041, Florida Statutes, to require hospital emergency departments, urgent care centers, and basic (BLS) and advanced life support (ALS) providers to report the treatment of actual or suspected overdose victims under certain circumstances.

The bill amends section 381.981, Florida Statutes, requiring the Florida Public Health Institute, Inc., to include emergency opioid antagonists as part of substance abuses in their statutorily required health awareness campaigns.

The Department of Health (department) will incur costs for ongoing maintenance, additional storage and software licensing for their reporting systems for hospital emergency departments,



urgent care centers and life support services to report data which can be absorbed within existing resources.

The bill provides an effective date of July 1, 2022.

## II. Present Situation:

### History of the Opioid Crisis in Florida

According to the National Institute on Drug Abuse:<sup>1</sup>

- “In the late 1990s, pharmaceutical companies reassured the medical community that patients would not become addicted to prescription opioid pain relievers, and health care providers began to prescribe them at greater rates” and
- “This subsequently led to widespread diversion and misuse of these medications before it became clear that these medications could indeed be highly addictive.”

Between the early 2000s and the early 2010s, Florida was infamous as the “pill mill capital” of the country. At the peak of the pill mill crisis, doctors in Florida bought 89 percent of all the oxycodone sold in the country.<sup>2</sup>

Between 2009 and 2011, the Legislature enacted a series of reforms to combat prescription drug abuse. These reforms included strict regulation of pain management clinics; creating the Prescription Drug Monitoring Program (PDMP); and stricter regulation on selling, distributing, and dispensing controlled substances.<sup>3</sup> “In 2016, the opioid prescription rate was 75 per 100 persons in Florida. This rate was down from a high of 83 per 100.”<sup>4</sup>

As reported at the time by the Florida Attorney General’s Opioid Working Group:

Drug overdose is now the leading cause of non-injury related death in the United States. Since 2000, drug overdose death rates increased by 137 percent, including a 200 percent increase in the rate of overdose deaths involving opioids. In 2015, over 52,000 deaths in the U.S. were attributed to drug poisoning, and over 33,000 (63 percent) involved an opioid. In 2015, 3,535 deaths occurred in Florida where at least one drug was identified as the cause of death. More specifically, 2,535 deaths were caused by at least one opioid in 2015. Stated differently, seven lives per day were lost to opioids in Florida in 2015. Overall, the state had a rate of opioid-caused deaths of 13 per 100,000. The three counties with the

---

<sup>1</sup> National Institute on Drug Abuse, *Opioid Overdose Crisis* (Rev. Jan. 2019), available at <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis> (last visited Nov. 29, 2021).

<sup>2</sup> Lizette Alvarez, *Florida Shutting ‘Pill Mill’ Clinics*, *The New York Times* (Aug. 31, 2011), available at <http://www.nytimes.com/2011/09/01/us/01drugs.html> (last visited Nov. 29, 2021).

<sup>3</sup> See Chapters 2009-198, 2010-211, and 2011-141, Laws of Fla.

<sup>4</sup> Attorney General’s Opioid Working Group, *Florida’s Opioid Epidemic: Recommendations and Best Practices*, 7 (Mar. 1, 2019), available at [https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/\\$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf](https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf) (last visited Nov. 29, 2021).

highest opioid death rate were Manatee County (37 per 100,000), Dixie County (30 per 100,000), and Palm Beach County (22 per 100,000).<sup>5</sup>

Early in 2017, the federal Centers for Disease Control and Prevention (CDC) declared the opioid crisis an epidemic.<sup>6</sup> Shortly thereafter, on May 3, 2017, Governor Rick Scott signed Executive Order 17-146 declaring the opioid epidemic a public health emergency in Florida.<sup>7</sup>

### ***House Bill 21 (2018)***

In 2018, the Florida Legislature passed CS/CS/HB 21 (Chapter 2018-13, Laws of Florida) to combat the opioid crisis. CS/CS/HB 21:

- Required additional training for practitioners on the safe and effective prescribing of controlled substances;
- Restricted the duration of prescriptions for Schedule II opioid medications to three days or up to seven days if medically necessary;
- Reworked the PDMP statute to require that prescribing practitioners check the PDMP prior to prescribing a controlled substance and to allow the integration of PDMP data with electronic health records and the sharing of PDMP data between Florida and other states; and
- Provided for additional funding for treatment and other issues related to opioid abuse.

### ***Status of the Opioid Crisis after HB 21***

There is some evidence that the passage of HB 21 reduced opioid use in Florida. For example, one study that reviewed pharmacy prescriptions claims for a health plan serving more than 45,000 Floridians found that on average, the number of enrollees per month that began opioid use between April of 2019 and August of 2019 dropped from 5.5 per 1,000 patients to 4.6 per 1,000 patients.<sup>8</sup>

Unfortunately, with the onset of the COVID-19 pandemic, the incidence of opioid use disorder and resulting overdose deaths has once again risen. A report from Project Opioid details provisional data from the department showing that deaths from drug overdoses have increased by 43 percent between 2019 and 2020, from 56 deaths per 100,000 in 2019 to 94 deaths per 100,000 in 2020. Additionally, fentanyl, an extremely potent opioid drug, is the leading cause of overdose deaths in Florida, and the incidence of fentanyl overdose deaths increased by 38 percent, from 2,348 in 2019 to 3,244 in 2020.<sup>9</sup>

---

<sup>5</sup> *Id.*

<sup>6</sup> See Exec. Order No. 17-146, available at <https://www.flgov.com/wp-content/uploads/2017/05/17146.pdf>. (last visited Mar. 12, 2021).

<sup>7</sup> *Id.*

<sup>8</sup> Juan M. Hincapie-Castillo, et al., Changes in Opioid Use After Florida's Restriction Law for Acute Pain Prescriptions, *JAMA Netw Open*. 2020 Feb; 3(2): e200234, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7049083/>. (last visited Nov. 29, 2021).

<sup>9</sup> Project Opioid, A Pandemic Fueling an Epidemic in Florida in 2020, available at [https://projectopioid.org/wp-content/uploads/2020/12/PO-2020-Data-Study-Final\\_New-Section.pdf](https://projectopioid.org/wp-content/uploads/2020/12/PO-2020-Data-Study-Final_New-Section.pdf) (last visited Nov. 29, 2021).

## Opioid Antagonists

Opioid receptor antagonists block one or more of the opioid receptors in the central or peripheral nervous system. The two most commonly used, centrally-acting opioid receptor antagonists are naloxone and naltrexone. Naloxone comes in intravenous, intramuscular, and intranasal formulations and is FDA-approved for the use in an opioid overdose and the reversal of respiratory depression associated with opioid use. Naltrexone is available in both oral and long-acting injectable formulations and is FDA-approved for the treatment of opioid and/or alcohol maintenance treatment. The most commonly used peripheral opioid receptor antagonist is methylnaltrexone, which is a potent competitive antagonist acting at the digestive tract and is also FDA-approved for the treatment of opioid-induced constipation.<sup>10</sup>

## The Florida Public Health Institute, Inc.

The Florida Public Health Institute (Institute) is a not-for-profit corporation established by s. 381.98, F.S., with the purpose of advancing the knowledge and practice of public health, including promoting health awareness in Florida. The Institute is tasked with procuring funds to complement, supplement, and enhance the missions of the various organizations, entities, and departments that provide public health initiatives by serving as the lead corporation in the state for promoting public health awareness. The Institute is required to enter into partnerships with providers of continuing education for health care practitioners, including, but not limited to, hospitals and state and local medical organizations, to ensure that practitioners are aware of the most recent and complete diagnostic and treatment tools.

Additionally, s. 381.981, F.S., requires the Institute to, in consultation with the department, coordinate monthly health awareness campaigns with national, state, and local health care organizations and government entities, targeting a wide range of the public, including: parents; teachers and other school employees; students in 4th through 12th grades, colleges, and universities; state agency employees; county and local government employees; patients of county health departments; Medicaid recipients; health care professionals and providers; and the public in general. The health campaigns must include the following diseases in at least one monthly campaign every 24 months:

- Cancer, including breast, prostate, cervical, ovarian, colorectal, and skin cancer and leukemia.
- Heart disease.
- Stroke.
- Lung disease, including asthma and smoking-relating disease.
- Neurological disorders and disease, including Alzheimer's disease, Parkinson's disease, and epilepsy.
- Gastrointestinal disease.
- Kidney disease.
- Diabetes.

---

<sup>10</sup> *Opioid Antagonists*, Theriot, Jonathan, et. al., (last updated July 23, 2021), available at <https://www.ncbi.nlm.nih.gov/books/NBK537079/#:~:text=3%5D%5B4%5D-.The%20two%20most%20commonly%20used%20centrally%20acting%20opioid%20receptor%20antagonists,depression%20associated%20with%20opioid%20use>. (last visited Nov. 29, 2021).

- Liver disease.
- Autoimmune disorders.
- Birth defects and prenatal care.
- Obesity and malnutrition.
- Sexually transmissible disease.
- Hepatitis A, hepatitis B, and hepatitis C.
- Arthritis.
- Vaccine-preventable diseases.
- Infectious diseases, including HIV/AIDS.
- Substance abuse.
- Mental illness.
- Lupus.
- Osteoporosis.

### III. Effect of Proposed Changes:

This bill amends s. 381.887, F.S., to:

- Include the prescribing, ordering and dispensing of emergency opioid antagonists within the purpose of the section, which is to provide for the emergency treatment for suspected opioid overdose;
- Authorize a pharmacist to order, and dispense pursuant to that order, an emergency opioid antagonist with an autoinjection delivery system or intranasal application delivery system to a patient or caregiver;<sup>11</sup>
- Add personnel of a law enforcement agency or other agencies to the list of persons authorized to possess, store, and administer emergency opioid antagonists under the section. The bill specifies that such personnel includes, but is not limited to, correctional probation officers and child protective investigators who, while acting within the scope or course of employment, come into contact with controlled substances or persons at risk of experiencing an opioid overdose; and
- Provide immunity from any civil or criminal liability to the listed persons authorized to possess, store, and administer emergency opioid antagonists under the section for the administering of emergency opioid antagonists.<sup>12</sup>

The bill amends s. 381.981, F.S., requiring the Florida Public Health Institute, Inc., to include emergency opioid antagonists as part of substance abuses in their statutorily required health awareness campaigns.

The bill also amends s. 395.1041, F.S., to require a hospital emergency department or urgent care center to report the treatment of a person in response to an actual or suspected overdose to the department if the patient was not transported to the hospital by a BLS or ALS provider and to require a BLS or ALS provider to report when it treats and releases or transports to a medical

---

<sup>11</sup> Section 381.887, F.S., defines “patient” as a person who is at risk of experiencing an opioid overdose, and defines “caregiver” as a family member, friend, or person in a position to have recurring contact with a person at risk of experiencing an opioid overdose.

<sup>12</sup> These persons include emergency responders as well as crime laboratory personnel for the statewide criminal analysis laboratory system and their supervisors.

facility a person in response to an emergency call for a suspected or actual overdose of a controlled substance. The provider must use an appropriate reporting method with secure access, including, but not limited to, the Washington/Baltimore High Intensity Drug Trafficking Overdose Detection Mapping Application Program or other program identified by the department rule and must use its best effort to report such incidents within 120 hours of discovering the incident.

The bill provides an effective date of July 1, 2022.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/SB 544 may have an indeterminate negative fiscal impact on BLS providers, ALS providers, hospital emergency departments, and urgent care centers that are required to report specified incidents of treatment of patients suffering from suspected or actual overdoses of controlled substances.

C. Government Sector Impact:

The Department of Health has existing reporting systems for hospital emergency departments, urgent care centers and life support services to report data; however,

ongoing maintenance, additional data storage and software licensing will be needed. The cost is estimated to be \$64,000 recurring and can be absorbed with existing resources.<sup>13</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 381.887, 381.981, and 395.1041.

**IX. Additional Information:**

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

**PCS (455298) by Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services):**

The committee substitute:

- Removes the requirement that the Florida Public Health Institute, Inc., in consultation with the Department of Health (department), educate the public regarding the use of emergency opioid antagonists as part of its statutory duty to educate the public regarding substance abuse; however, the Florida Public Health Institute must include emergency opioid antagonists in their educational information about preventing, detecting, treating, and curing disease awareness campaigns.
- Modifies the list of persons authorized to possess, store, and administer emergency opioid antagonists to include personnel of a law enforcement agency or other agency and that such personnel include, but is not limited to, correctional probation officers and child protective investigators.
- Removes the technical adjustments to s. 401.253, F.S.

**B. Amendments:**

None.

---

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

---

---

<sup>13</sup> Department of Health, Senate Bill 544, 2022 Agency Legislative Analysis (January 11, 2022) (on file with the Senate Appropriations Subcommittee on Health and Human Services).



576-02109-22

Proposed Committee Substitute by the Committee on Appropriations  
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to drug-related overdose prevention; amending s. 381.887, F.S.; revising the purpose of specified provisions relating to the prescribing, ordering, and dispensing of emergency opioid antagonists to certain persons by authorized health care practitioners; authorizing pharmacists to order certain emergency opioid antagonists; providing certain authorized persons immunity from civil or criminal liability for administering emergency opioid antagonists under certain circumstances; authorizing personnel of law enforcement agencies and other agencies to administer emergency opioid antagonists under certain circumstances; amending s. 381.981, F.S.; revising requirements for a certain health awareness campaign; amending s. 395.1041, F.S.; requiring hospital emergency departments and urgent care centers to report incidents involving a suspected or actual overdose to the department under certain circumstances; providing requirements for the reports; requiring hospital emergency departments and urgent care centers to use their best efforts to report such incidents to the Department of Health within a specified timeframe; providing an effective date.

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



576-02109-22

Section 1. Subsections (2), (3), and (4) of section 381.887, Florida Statutes, are amended to read:

381.887 Emergency treatment for suspected opioid overdose.—

(2) The purpose of this section is to provide for the prescribing, ordering, and dispensing ~~prescription~~ of emergency opioid antagonists ~~an emergency opioid antagonist~~ to patients and caregivers and to encourage the prescribing, ordering, and dispensing ~~prescription~~ of emergency opioid antagonists by authorized health care practitioners.

(3) (a) An authorized health care practitioner may prescribe and dispense an emergency opioid antagonist to, and a pharmacist may order an emergency opioid antagonist with an autoinjection delivery system or intranasal application delivery system for, a patient or caregiver for use in accordance with this section. ~~and~~

(b) A pharmacist ~~pharmacists~~ may dispense an emergency opioid antagonist pursuant to a prescription by an authorized health care practitioner. ~~A pharmacist may dispense an emergency opioid antagonist with such a prescription or pursuant to a non-patient-specific standing order for~~ an autoinjection delivery system or intranasal application delivery system, which must be appropriately labeled with instructions for use, pursuant to a pharmacist's order or pursuant to a nonpatient-specific standing order.

(c) A ~~such~~ patient or caregiver is authorized to store and possess approved emergency opioid antagonists and, in an emergency situation when a physician is not immediately available, administer the emergency opioid antagonist to a person believed in good faith to be experiencing an opioid



455298

576-02109-22

57 overdose, regardless of whether that person has a prescription  
58 for an emergency opioid antagonist.

59 (4) The following persons are authorized to possess, store,  
60 and administer emergency opioid antagonists as clinically  
61 indicated and are immune from any civil liability or criminal  
62 liability as a result of administering an emergency opioid  
63 antagonist:

64 (a) Emergency responders, including, but not limited to,  
65 law enforcement officers, paramedics, and emergency medical  
66 technicians.

67 (b) Crime laboratory personnel for the statewide criminal  
68 analysis laboratory system as described in s. 943.32, including,  
69 but not limited to, analysts, evidence intake personnel, and  
70 their supervisors.

71 (c) Personnel of a law enforcement agency or other agency,  
72 including, but not limited to, correctional probation officers  
73 and child protective investigators who, while acting within the  
74 scope or course of employment, come into contact with a  
75 controlled substance or persons at risk of experiencing an  
76 opioid overdose.

77 Section 2. Paragraph (r) of subsection (2) of section  
78 381.981, Florida Statutes, is amended to read:

79 381.981 Health awareness campaigns.—

80 (2) The awareness campaigns shall include the provision of  
81 educational information about preventing, detecting, treating,  
82 and curing the following diseases or conditions. Additional  
83 diseases and conditions that impact the public health may be  
84 added by the board of directors of the Florida Public Health  
85 Institute, Inc.; however, each of the following diseases or



455298

576-02109-22

86 conditions must be included in an awareness campaign during at  
87 least 1 month in any 24-month period:

88 (r) Substance abuse, including, but not limited to,  
89 emergency opioid antagonists.

90 Section 3. Subsection (8) is added to section 395.1041,  
91 Florida Statutes, to read:

92 395.1041 Access to emergency services and care.—

93 (8) REPORTING OF CONTROLLED SUBSTANCE OVERDOSES.—A hospital  
94 emergency department or an urgent care center that treats and  
95 releases a person in response to a suspected or actual overdose  
96 of a controlled substance must report such incident to the  
97 department if the patient was not transported by a transport  
98 service operating pursuant to part III of chapter 401. Such  
99 reports must be made using an appropriate method with secure  
100 access, including, but not limited to, the Washington/Baltimore  
101 High Intensity Drug Trafficking Overdose Detection Mapping  
102 Application Program, the Florida Prehospital EMS Tracking and  
103 Reporting System (EMSTARS), or another program identified by  
104 department rule. If a hospital emergency department or an urgent  
105 care center reports such an incident, it must use its best  
106 efforts to make the report to the department within 120 hours  
107 after becoming aware of the incident.

108 Section 4. This act shall take effect July 1, 2022.



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

**BILL:** CS/SB 544

**INTRODUCER:** Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); and Senator Boyd

**SUBJECT:** Drug-related Overdose Prevention

**DATE:** January 31, 2022      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	<b>Favorable</b>
2.	<u>Howard</u>	<u>Money</u>	<u>AHS</u>	<b>Recommend: Fav/CS</b>
3.	<u>Howard</u>	<u>Sadberry</u>	<u>AP</u>	<b>Fav/CS</b>

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 544 amends section 381.887, Florida Statutes, to expand access to emergency opioid antagonists by:

- Allowing pharmacists to order, as well as dispense, emergency opioid antagonists with an autoinjection delivery system or intranasal delivery system;
- Providing that specified persons who are authorized to possess, store, and administer emergency opioid antagonists are immune from any civil or criminal liability resulting from the administration of such emergency opioid antagonists; and
- Adding specified personnel of a law enforcement agency or other agencies to the list of persons who are authorized to possess, store, and administer emergency opioid antagonists.

The bill also amends section 395.1041, Florida Statutes, to require hospital emergency departments, urgent care centers, and basic (BLS) and advanced life support (ALS) providers to report the treatment of actual or suspected overdose victims under certain circumstances.

The bill amends section 381.981, Florida Statutes, requiring the Florida Public Health Institute, Inc., to include emergency opioid antagonists as part of substance abuses in their statutorily required health awareness campaigns.

The Department of Health (department) will incur costs for ongoing maintenance, additional storage and software licensing for their reporting systems for hospital emergency departments,

urgent care centers and life support services to report data which can be absorbed within existing resources.

The bill provides an effective date of July 1, 2022.

## II. Present Situation:

### History of the Opioid Crisis in Florida

According to the National Institute on Drug Abuse:<sup>1</sup>

- “In the late 1990s, pharmaceutical companies reassured the medical community that patients would not become addicted to prescription opioid pain relievers, and health care providers began to prescribe them at greater rates” and
- “This subsequently led to widespread diversion and misuse of these medications before it became clear that these medications could indeed be highly addictive.”

Between the early 2000s and the early 2010s, Florida was infamous as the “pill mill capital” of the country. At the peak of the pill mill crisis, doctors in Florida bought 89 percent of all the oxycodone sold in the country.<sup>2</sup>

Between 2009 and 2011, the Legislature enacted a series of reforms to combat prescription drug abuse. These reforms included strict regulation of pain management clinics; creating the Prescription Drug Monitoring Program (PDMP); and stricter regulation on selling, distributing, and dispensing controlled substances.<sup>3</sup> “In 2016, the opioid prescription rate was 75 per 100 persons in Florida. This rate was down from a high of 83 per 100.”<sup>4</sup>

As reported at the time by the Florida Attorney General’s Opioid Working Group:

Drug overdose is now the leading cause of non-injury related death in the United States. Since 2000, drug overdose death rates increased by 137 percent, including a 200 percent increase in the rate of overdose deaths involving opioids. In 2015, over 52,000 deaths in the U.S. were attributed to drug poisoning, and over 33,000 (63 percent) involved an opioid. In 2015, 3,535 deaths occurred in Florida where at least one drug was identified as the cause of death. More specifically, 2,535 deaths were caused by at least one opioid in 2015. Stated differently, seven lives per day were lost to opioids in Florida in 2015. Overall, the state had a rate of opioid-caused deaths of 13 per 100,000. The three counties with the

---

<sup>1</sup> National Institute on Drug Abuse, *Opioid Overdose Crisis* (Rev. Jan. 2019), available at <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis> (last visited Nov. 29, 2021).

<sup>2</sup> Lizette Alvarez, *Florida Shutting ‘Pill Mill’ Clinics*, *The New York Times* (Aug. 31, 2011), available at <http://www.nytimes.com/2011/09/01/us/01drugs.html> (last visited Nov. 29, 2021).

<sup>3</sup> See Chapters 2009-198, 2010-211, and 2011-141, Laws of Fla.

<sup>4</sup> Attorney General’s Opioid Working Group, *Florida’s Opioid Epidemic: Recommendations and Best Practices*, 7 (Mar. 1, 2019), available at [https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/\\$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf](https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf) (last visited Nov. 29, 2021).

highest opioid death rate were Manatee County (37 per 100,000), Dixie County (30 per 100,000), and Palm Beach County (22 per 100,000).<sup>5</sup>

Early in 2017, the federal Centers for Disease Control and Prevention (CDC) declared the opioid crisis an epidemic.<sup>6</sup> Shortly thereafter, on May 3, 2017, Governor Rick Scott signed Executive Order 17-146 declaring the opioid epidemic a public health emergency in Florida.<sup>7</sup>

### ***House Bill 21 (2018)***

In 2018, the Florida Legislature passed CS/CS/HB 21 (Chapter 2018-13, Laws of Florida) to combat the opioid crisis. CS/CS/HB 21:

- Required additional training for practitioners on the safe and effective prescribing of controlled substances;
- Restricted the duration of prescriptions for Schedule II opioid medications to three days or up to seven days if medically necessary;
- Reworked the PDMP statute to require that prescribing practitioners check the PDMP prior to prescribing a controlled substance and to allow the integration of PDMP data with electronic health records and the sharing of PDMP data between Florida and other states; and
- Provided for additional funding for treatment and other issues related to opioid abuse.

### ***Status of the Opioid Crisis after HB 21***

There is some evidence that the passage of HB 21 reduced opioid use in Florida. For example, one study that reviewed pharmacy prescriptions claims for a health plan serving more than 45,000 Floridians found that on average, the number of enrollees per month that began opioid use between April of 2019 and August of 2019 dropped from 5.5 per 1,000 patients to 4.6 per 1,000 patients.<sup>8</sup>

Unfortunately, with the onset of the COVID-19 pandemic, the incidence of opioid use disorder and resulting overdose deaths has once again risen. A report from Project Opioid details provisional data from the department showing that deaths from drug overdoses have increased by 43 percent between 2019 and 2020, from 56 deaths per 100,000 in 2019 to 94 deaths per 100,000 in 2020. Additionally, fentanyl, an extremely potent opioid drug, is the leading cause of overdose deaths in Florida, and the incidence of fentanyl overdose deaths increased by 38 percent, from 2,348 in 2019 to 3,244 in 2020.<sup>9</sup>

---

<sup>5</sup> *Id.*

<sup>6</sup> See Exec. Order No. 17-146, available at <https://www.flgov.com/wp-content/uploads/2017/05/17146.pdf>. (last visited Mar. 12, 2021).

<sup>7</sup> *Id.*

<sup>8</sup> Juan M. Hincapie-Castillo, et al., Changes in Opioid Use After Florida's Restriction Law for Acute Pain Prescriptions, JAMA Netw Open. 2020 Feb; 3(2): e200234, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7049083/>. (last visited Nov. 29, 2021).

<sup>9</sup> Project Opioid, A Pandemic Fueling an Epidemic in Florida in 2020, available at [https://projectopioid.org/wp-content/uploads/2020/12/PO-2020-Data-Study-Final\\_New-Section.pdf](https://projectopioid.org/wp-content/uploads/2020/12/PO-2020-Data-Study-Final_New-Section.pdf) (last visited Nov. 29, 2021).

## Opioid Antagonists

Opioid receptor antagonists block one or more of the opioid receptors in the central or peripheral nervous system. The two most commonly used, centrally-acting opioid receptor antagonists are naloxone and naltrexone. Naloxone comes in intravenous, intramuscular, and intranasal formulations and is FDA-approved for the use in an opioid overdose and the reversal of respiratory depression associated with opioid use. Naltrexone is available in both oral and long-acting injectable formulations and is FDA-approved for the treatment of opioid and/or alcohol maintenance treatment. The most commonly used peripheral opioid receptor antagonist is methylnaltrexone, which is a potent competitive antagonist acting at the digestive tract and is also FDA-approved for the treatment of opioid-induced constipation.<sup>10</sup>

## The Florida Public Health Institute, Inc.

The Florida Public Health Institute (Institute) is a not-for-profit corporation established by s. 381.98, F.S., with the purpose of advancing the knowledge and practice of public health, including promoting health awareness in Florida. The Institute is tasked with procuring funds to complement, supplement, and enhance the missions of the various organizations, entities, and departments that provide public health initiatives by serving as the lead corporation in the state for promoting public health awareness. The Institute is required to enter into partnerships with providers of continuing education for health care practitioners, including, but not limited to, hospitals and state and local medical organizations, to ensure that practitioners are aware of the most recent and complete diagnostic and treatment tools.

Additionally, s. 381.981, F.S., requires the Institute to, in consultation with the department, coordinate monthly health awareness campaigns with national, state, and local health care organizations and government entities, targeting a wide range of the public, including: parents; teachers and other school employees; students in 4th through 12th grades, colleges, and universities; state agency employees; county and local government employees; patients of county health departments; Medicaid recipients; health care professionals and providers; and the public in general. The health campaigns must include the following diseases in at least one monthly campaign every 24 months:

- Cancer, including breast, prostate, cervical, ovarian, colorectal, and skin cancer and leukemia.
- Heart disease.
- Stroke.
- Lung disease, including asthma and smoking-relating disease.
- Neurological disorders and disease, including Alzheimer's disease, Parkinson's disease, and epilepsy.
- Gastrointestinal disease.
- Kidney disease.
- Diabetes.

---

<sup>10</sup> *Opioid Antagonists*, Theriot, Jonathan, et. al., (last updated July 23, 2021), available at <https://www.ncbi.nlm.nih.gov/books/NBK537079/#:~:text=3%5D%5B4%5D-.The%20two%20most%20commonly%20used%20centrally%20acting%20opioid%20receptor%20antagonists,depression%20associated%20with%20opioid%20use>. (last visited Nov. 29, 2021).

- Liver disease.
- Autoimmune disorders.
- Birth defects and prenatal care.
- Obesity and malnutrition.
- Sexually transmissible disease.
- Hepatitis A, hepatitis B, and hepatitis C.
- Arthritis.
- Vaccine-preventable diseases.
- Infectious diseases, including HIV/AIDS.
- Substance abuse.
- Mental illness.
- Lupus.
- Osteoporosis.

### III. Effect of Proposed Changes:

This bill amends s. 381.887, F.S., to:

- Include the prescribing, ordering and dispensing of emergency opioid antagonists within the purpose of the section, which is to provide for the emergency treatment for suspected opioid overdose;
- Authorize a pharmacist to order, and dispense pursuant to that order, an emergency opioid antagonist with an autoinjection delivery system or intranasal application delivery system to a patient or caregiver;<sup>11</sup>
- Add personnel of a law enforcement agency or other agencies to the list of persons authorized to possess, store, and administer emergency opioid antagonists under the section. The bill specifies that such personnel includes, but is not limited to, correctional probation officers and child protective investigators who, while acting within the scope or course of employment, come into contact with controlled substances or persons at risk of experiencing an opioid overdose; and
- Provide immunity from any civil or criminal liability to the listed persons authorized to possess, store, and administer emergency opioid antagonists under the section for the administering of emergency opioid antagonists.<sup>12</sup>

The bill amends s. 381.981, F.S., requiring the Florida Public Health Institute, Inc., to include emergency opioid antagonists as part of substance abuses in their statutorily required health awareness campaigns.

The bill also amends s. 395.1041, F.S., to require a hospital emergency department or urgent care center to report the treatment of a person in response to an actual or suspected overdose to the department if the patient was not transported to the hospital by a BLS or ALS provider and to require a BLS or ALS provider to report when it treats and releases or transports to a medical

---

<sup>11</sup> Section 381.887, F.S., defines “patient” as a person who is at risk of experiencing an opioid overdose, and defines “caregiver” as a family member, friend, or person in a position to have recurring contact with a person at risk of experiencing an opioid overdose.

<sup>12</sup> These persons include emergency responders as well as crime laboratory personnel for the statewide criminal analysis laboratory system and their supervisors.

facility a person in response to an emergency call for a suspected or actual overdose of a controlled substance. The provider must use an appropriate reporting method with secure access, including, but not limited to, the Washington/Baltimore High Intensity Drug Trafficking Overdose Detection Mapping Application Program or other program identified by the department rule and must use its best effort to report such incidents within 120 hours of discovering the incident.

The bill provides an effective date of July 1, 2022.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 544 may have an indeterminate negative fiscal impact on BLS providers, ALS providers, hospital emergency departments, and urgent care centers that are required to report specified incidents of treatment of patients suffering from suspected or actual overdoses of controlled substances.

C. Government Sector Impact:

The Department of Health has existing reporting systems for hospital emergency departments, urgent care centers and life support services to report data; however,

ongoing maintenance, additional data storage and software licensing will be needed. The cost is estimated to be \$64,000 recurring and can be absorbed with existing resources.<sup>13</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 381.887, 381.981, and 395.1041.

**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 Appropriations on January 27, 2022:**

The committee substitute:

- Removes the requirement that the Florida Public Health Institute, Inc., in consultation with the Department of Health (department), educate the public regarding the use of emergency opioid antagonists as part of its statutory duty to educate the public regarding substance abuse; however, the Florida Public Health Institute must include emergency opioid antagonists in their educational information about preventing, detecting, treating, and curing disease awareness campaigns.
- Modifies the list of persons authorized to possess, store, and administer emergency opioid antagonists to include personnel of a law enforcement agency or other agency and that such personnel include, but is not limited to, correctional probation officers and child protective investigators.
- Removes the technical adjustments to s. 401.253, F.S.

- B. **Amendments:**

None.

---

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

---

---

<sup>13</sup> Department of Health, Senate Bill 544, 2022 Agency Legislative Analysis (January 11, 2022) (on file with the Senate Appropriations Subcommittee on Health and Human Services).

By Senator Boyd

21-00566A-22

2022544\_\_

1 A bill to be entitled  
 2 An act relating to drug-related overdose prevention;  
 3 amending s. 381.887, F.S.; revising the purpose of  
 4 specified provisions relating to the prescribing,  
 5 ordering, and dispensing of emergency opioid  
 6 antagonists to certain persons by authorized health  
 7 care practitioners; requiring the Florida Public  
 8 Health Institute, Inc., in consultation with the  
 9 Department of Health, to educate the public regarding  
 10 the use of emergency opioid antagonists; authorizing  
 11 pharmacists to order certain emergency opioid  
 12 antagonists; providing certain authorized persons  
 13 immunity from civil or criminal liability for  
 14 administering emergency opioid antagonists under  
 15 certain circumstances; authorizing civilian personnel  
 16 of law enforcement agencies to administer emergency  
 17 opioid antagonists under certain circumstances;  
 18 amending s. 395.1041, F.S.; requiring hospital  
 19 emergency departments and urgent care centers to  
 20 report incidents involving a suspected or actual  
 21 overdose to the department under certain  
 22 circumstances; providing requirements for the report;  
 23 requiring hospital emergency departments and urgent  
 24 care centers to use best efforts to report such  
 25 incidents to the department within a specified  
 26 timeframe; amending s. 401.253, F.S.; requiring,  
 27 rather than authorizing, basic life support services  
 28 and advanced life support services to report incidents  
 29 involving a suspected or actual overdose of a

Page 1 of 5

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

21-00566A-22

2022544\_\_

30 controlled substance within a specified timeframe;  
 31 providing an effective date.  
 32  
 33 Be It Enacted by the Legislature of the State of Florida:  
 34  
 35 Section 1. Subsections (2), (3), and (4) of section  
 36 381.887, Florida Statutes, are amended to read:  
 37 381.887 Emergency treatment for suspected opioid overdose.—  
 38 (2) (a) The purpose of this section is to provide for the  
 39 prescribing, ordering, and dispensing ~~prescription~~ of emergency  
 40 opioid antagonists ~~an emergency opioid antagonist~~ to patients  
 41 and caregivers and to encourage the prescribing, ordering, and  
 42 dispensing ~~prescription~~ of emergency opioid antagonists by  
 43 authorized health care practitioners.  
 44 (b) The Florida Public Health Institute, Inc., in  
 45 consultation with the Department of Health, shall educate the  
 46 public regarding the use of emergency opioid antagonists in  
 47 accordance with s. 381.981(2)(r).  
 48 (3) (a) An authorized health care practitioner may prescribe  
 49 and dispense an emergency opioid antagonist to, and a pharmacist  
 50 may order an emergency opioid antagonist with an autoinjection  
 51 delivery system or intranasal application delivery system for, a  
 52 patient or caregiver for use in accordance with this section.  
 53 ~~and~~  
 54 (b) A pharmacist ~~pharmacists~~ may dispense an emergency  
 55 opioid antagonist pursuant to a prescription by an authorized  
 56 health care practitioner. A pharmacist may dispense an emergency  
 57 opioid antagonist with ~~such a prescription or pursuant to a non-~~  
 58 ~~patient-specific standing order for~~ an autoinjection delivery

Page 2 of 5

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



21-00566A-22

2022544\_\_

59 system or intranasal application delivery system, which must be  
60 appropriately labeled with instructions for use, pursuant to a  
61 pharmacist's order or pursuant to a nonpatient-specific standing  
62 order.

63 (c) A ~~such~~ patient or caregiver is authorized to store and  
64 possess approved emergency opioid antagonists and, in an  
65 emergency situation when a physician is not immediately  
66 available, administer the emergency opioid antagonist to a  
67 person believed in good faith to be experiencing an opioid  
68 overdose, regardless of whether that person has a prescription  
69 for an emergency opioid antagonist.

70 (4) The following persons are authorized to possess, store,  
71 and administer emergency opioid antagonists as clinically  
72 indicated and are immune from any civil liability or criminal  
73 liability as a result of administering an emergency opioid  
74 antagonist:

75 (a) Emergency responders, including, but not limited to,  
76 law enforcement officers, paramedics, and emergency medical  
77 technicians.

78 (b) Crime laboratory personnel for the statewide criminal  
79 analysis laboratory system as described in s. 943.32, including,  
80 but not limited to, analysts, evidence intake personnel, and  
81 their supervisors.

82 (c) Civilian personnel of a law enforcement agency,  
83 including, but not limited to, employees of a sheriff's office  
84 authorized to provide child protective investigative services  
85 under s. 39.3065 and correctional probation officers who, while  
86 acting within the scope or course of employment, come into  
87 contact with controlled substances or persons at risk of

Page 3 of 5

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

21-00566A-22

2022544\_\_

88 experiencing an opioid overdose.

89 Section 2. Subsection (8) is added to section 395.1041,  
90 Florida Statutes, to read:

91 395.1041 Access to emergency services and care.—

92 (8) REPORTING OF CONTROLLED SUBSTANCE OVERDOSES.—A hospital  
93 emergency department or urgent care center that treats and  
94 releases a person in response to a suspected or actual overdose  
95 of a controlled substance must report such incident to the  
96 department if the patient was not transported by a basic life  
97 support service or an advanced life support service as those  
98 terms are defined in s. 401.23. Such reports must be made using  
99 an appropriate method with secure access, including, but not  
100 limited to, the Washington/Baltimore High Intensity Drug  
101 Trafficking Overdose Detection Mapping Application Program or  
102 other program identified by department rule. Hospital emergency  
103 departments and urgent care centers shall use best efforts to  
104 make the report to the department within 120 hours after  
105 discovering an incident.

106 Section 3. Paragraph (a) of subsection (1) of section  
107 401.253, Florida Statutes, is amended to read:

108 401.253 Reporting of controlled substance overdoses.—

109 (1) (a) A basic life support service or an advanced life  
110 support service that which treats and releases, or transports to  
111 a medical facility, a person in response to an emergency call  
112 for a suspected or actual overdose of a controlled substance  
113 must ~~may~~ report such incidents to the department. Such reports  
114 must be made using the Emergency Medical Service Tracking and  
115 Reporting System or other appropriate method with secure access,  
116 including, but not limited to, the Washington/Baltimore High

Page 4 of 5

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

21-00566A-22

2022544\_\_

117 Intensity Drug Trafficking Overdose Detection Mapping  
118 Application Program or other program identified by ~~the~~  
119 department ~~in~~ rule. ~~If a~~ Basic life support services and service  
120 ~~or~~ advanced life support services ~~service reports such~~  
121 ~~incidents, it shall use make its~~ best efforts to make the report  
122 to the department within 120 hours after responding ~~it responds~~  
123 to an ~~the~~ incident.

124 Section 4. This act shall take effect July 1, 2022.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Banking and Insurance, *Chair*  
Agriculture  
Appropriations Subcommittee on Agriculture,  
Environment, and General Government  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Judiciary  
Rules

## JOINT COMMITTEE:

Joint Legislative Auditing Committee

## SENATOR JIM BOYD

21st District

January 20, 2022

Senator Kelli Stargel  
404 South Monroe Street  
201 The Capitol  
Tallahassee, FL 32399

Dear Madam Chair Stargel:

I respectfully request CS/SB 544: Drug-related Overdose Prevention, be scheduled for a hearing in the Committee on Appropriations at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me.

Thank you for your consideration of this matter.

Best regards,

A handwritten signature in blue ink that reads "Jim Boyd".

Jim Boyd

cc: Tim Sadberry  
Alicia Weiss

## REPLY TO:

- 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445
- 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

Jan 27 2022 Meeting Date

544 Bill Number or Topic

Appropriations Committee

Amendment Barcode (if applicable)

Name Lauren Jackson Phone 931-265-8999

Address 205 S. Adams St. Street Email lauren@erichsconsultant.com

Tallahassee FL 32301 City State Zip

Speaking: [ ] For [ ] Against [ ] Information OR Waive Speaking: [X] In Support [ ] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[ ] I am appearing without compensation or sponsorship.

[X] I am a registered lobbyist, representing:

THE SEMINOLE COUNTY SHERIFFS OFFICE

[ ] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to

Senate professional staff conducting the meeting

27 Nov. 2022

Meeting Date

544

Bill Number or Topic

Appropriations

Committee

Amendment Barcode (if applicable)

Name Matthew R. Holliday

Phone 239-826-7864 m.

Address 350 7<sup>th</sup> Street North  
Street

Email Matthew.holliday@nchmd.org

Naples  
City

FL  
State

34002  
Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:  
NCH Healthcare System

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

*While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)*

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

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

1/27/22

Meeting Date

544

Bill Number or Topic

Appropriations

Committee

Amendment Barcode (if applicable)

Name

Philip Swerman

Phone

Address

Street

Email

City

State

Zip

Speaking:

For

Against

Information

**OR**

Waive Speaking:

In Support

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without  
compensation or sponsorship.

I am a registered lobbyist,  
representing:

Americans for  
Prosperity

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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

S-001 (08/10/2021)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: CS/SB 838

INTRODUCER: Appropriations Committee; and Senator Wright and others

SUBJECT: Fire Investigators

DATE: January 31, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<b>Favorable</b>
3.	<u>Sanders</u>	<u>Sadberry</u>	<u>AP</u>	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

---

**I. Summary:**

CS/SB 838 expands the definition of “firefighter” in section 112.1816, Florida Statutes, related to cancer diagnoses for firefighters, to include “full-time, Florida-certified fire investigator.”

Upon diagnosis of one of the 21 specific cancers enumerated within section 112.1816, Florida Statutes, the bill has the effect of making a fire investigator eligible for benefits under the statute. The benefits are an alternative to pursuing a workers’ compensation claim, and entitle an eligible firefighter to a one-time cash payout of \$25,000, upon the firefighter’s initial diagnosis of cancer, and cancer treatment with the employer reimbursing the firefighter for any out-of-pocket deductible, copayment, or coinsurance costs related to the cancer treatment.

Based on the conclusive presumption contained in the statute that the cancer or the resulting treatment of cancer occurred in-the-line-of-duty, if a firefighter meets the retirement plan’s definition of totally and permanently disabled due to the cancer or circumstances that arise out of the treatment of cancer, the firefighter is eligible for enhanced disability benefits either under an employer-sponsored retirement plan or employer-sponsored disability retirement plan. Likewise, if the firefighter dies from the cancer or circumstances that arise from the cancer treatment, the death is conclusively presumed to be in-the-line-of-duty, resulting in a higher death benefit for the firefighter’s beneficiaries.

The Department of Financial Services currently employs 104 fire investigators within the Division of Investigative and Forensic Services, 86 of which are Florida-certified fire

investigators or are in the process of becoming certified. These fire investigators respond to fire scenes throughout the State of Florida, supporting local law enforcement, and spend an average of three hours per investigation on-site. These on-site audits and investigations typically occur the same day of the fire or within three days of the fire. As a result, fire investigators sustain significant exposure to hazardous vapors, gases, and particles known to contribute to chronic health conditions, including cancer, as these dangerous chemicals and carcinogens remain after the fire.

The bill has a minimal impact to the State Risk Management Trust Fund. (See section **V. Fiscal Impact Statement.**)

The bill takes effect July 1, 2022.

## **II. Present Situation:**

### **Cancer Studies Regarding Firefighters**

The incidence of cancer among firefighters appears to be higher on average than other occupations. Firefighters work in inherently dangerous situations on a daily basis. They are exposed to many different carcinogens, either inhaled or absorbed through the skin both on the scene and in the firehouse. Studies have been conducted at the state, national, and international level resulting in the identification of cancers found to be common among firefighters.<sup>1</sup> This information has been used to train and educate firefighters to reduce exposure to carcinogens resulting from firefighting activities.

In 2010, the National Institute for Occupational Safety and Health initiated a study to evaluate the cancer risk of firefighters.<sup>2</sup> The study served to identify whether firefighters are at a higher risk of developing cancer related to exposure on the job. Researchers studied death related to cancer as well as specific types of cancers involved. Researchers took into consideration the types and number of fire runs, use of protective equipment, and diesel exhaust controls. The study spanned four years and the sample size included over 30,000 career firefighters serving in Chicago, Philadelphia, and San Francisco between 1950 and 2010.

According to the 2010 study, firefighters have a nine percent higher risk of being diagnosed with cancer and a 14 percent higher risk of dying from cancer than the general population in the United States. The cancers mostly responsible for this higher risk were respiratory (lung, mesothelioma), gastrointestinal (oral cavity, esophageal, large intestine), and kidney.<sup>3</sup>

---

<sup>1</sup> Occupation and Cancer, American Cancer Society, available at <https://www.cancer.org/content/dam/cancer-org/cancer-control/en/booklets-flyers/occupation-and-cancer-fact-sheet.pdf>; 15 Jobs That Put You at a Higher Risk of Cancer, available at <https://www.cheatsheet.com/money-career/jobs-put-higher-cancer-risk.html/?a=viewall>; Cancer Facts and Figures, American Cancer Society, available at <https://www.cancer.org/research/cancer-facts-statistics/all-cancer-facts-figures.html>.

<sup>2</sup> See Exposure–response relationships for select cancer and non-cancer health outcomes in a cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950–2009), available at [https://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-\(2015\)-508.pdf](https://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-(2015)-508.pdf).

<sup>3</sup> *Id.*



## Recent Florida Legislation

In 2019, the Legislature created s. 112.1816, F.S.,<sup>4</sup> to make firefighters who are diagnosed with certain cancers eligible to receive certain disability or death benefits. Specifically, in lieu of pursuing workers' compensation coverage, a firefighter is entitled to cancer treatment and a one-time cash payout of \$25,000, upon the firefighter's initial diagnosis of cancer. In order to be entitled to such benefits, the firefighter must:

- Be employed full-time as a firefighter;
- Be employed by the state, university, city, county, port authority, special district, or fire control district;
- Have been employed by his or her employer for at least five continuous years;
- Not have used tobacco products for at least the preceding five years; and
- Have not been employed in any other position in the preceding five years which is proven to create a higher risk for cancer.

Under the statute, the term "cancer" includes bladder cancer, brain cancer, breast cancer, cervical cancer, colon cancer, esophageal cancer, invasive skin cancer, kidney cancer, large intestinal cancer, lung cancer, malignant melanoma, mesothelioma, multiple myeloma, non-Hodgkin's lymphoma, oral cavity and pharynx cancer, ovarian cancer, prostate cancer, rectal cancer, stomach cancer, testicular cancer, and thyroid cancer.

The employer must provide coverage within an employer-sponsored health plan or through a group health insurance trust fund. The employer must timely reimburse the firefighter for any out-of-pocket deductible, copayment, or coinsurance costs incurred due to the treatment of cancer.

For disability and death benefits, the employer must consider a firefighter permanently and totally disabled if the firefighter is diagnosed with one of the 21 enumerated cancers and meets the retirement plan's definition of totally and permanently disabled due to the diagnosis of cancer or circumstances that arise out of the treatment of cancer. Moreover, the cancer or the treatment of cancer is deemed to have occurred in-the-line-of-duty, resulting in higher disability and death benefits.

To cover the costs associated with changes to Florida Retirement System (FRS) benefits (disability retirement benefits and in-line-of-duty benefits), the statute provides adjustments to the employer-paid contribution rates for the Special Risk class and the Deferred Retirement Option Program that fund the FRS's normal costs and unfunded actuarial liability, and adjusts the percentage of funds allocated to provide in-the-line-of-duty death benefits for investment plan members.

To date, three cancer claims have been submitted under the statute, totaling \$66,308 in payments.<sup>5</sup>

---

<sup>4</sup> Ch. 2019-21, Laws of Fla.

<sup>5</sup> Department of Financial Services, *Senate Bill 838 Agency Analysis* (November 19, 2021) (on file with the Senate Committee on Banking and Insurance).

Section 112.1816, F.S., does not currently apply to full-time fire investigators.

### **Division of the State Fire Marshal (Division)**

State law on fire prevention and control designates the Chief Financial Officer as the State Fire Marshal, operating through the division.<sup>6</sup> Pursuant to this authority, the State Fire Marshal:

- Regulates, trains, and certifies fire service personnel;
- Investigates the causes of fires;
- Enforces arson laws;
- Regulates the installation of fire equipment;
- Conducts firesafety inspections of state property;
- Develops firesafety standards;
- Provides facilities for the analysis of fire debris; and
- Operates the Florida State Fire College.

The division is comprised of two bureaus: the Bureau of Fire Prevention (BFP) and the Bureau of Fire Standards and Training (BFST).<sup>7</sup> The BFP conducts fire/life safety inspections and construction plans review on all state-owned buildings; regulates the fireworks and the fire sprinkler industries; inspects and licenses boilers; and certifies suppression industry workers.<sup>8</sup> The BFST approves firefighter training curricula; offers fire service training at the Florida State Fire College; and certifies that fire service members meet industry-based standards.<sup>9</sup>

### ***Florida State Fire College***

The Florida State Fire College, offers basic, intermediate, and advanced training and education courses, develops educational curricula to be used by other fire-rescue training agencies, and conducts research into new methods and technologies related to fire-rescue activities.<sup>10</sup> Course offerings fall into five general categories: academic, certification, certificate of competency, vocational, and non-credit.<sup>11</sup> The Fire Investigation is one such advanced training program.

### ***Fire Investigator Program***

The Fire Investigator Program is a voluntary, advanced training program administered by the Florida State Fire College and designed for certified firefighters, certified law enforcement officers, law enforcement crime scene technicians, and certified firesafety inspectors who have fire investigation responsibilities.<sup>12</sup>

The program offers Fire Investigator I and II Certifications of Competency. In the first, the individual must complete at least 360 hours of training, including courses in Fire Chemistry, Fire

---

<sup>6</sup> Section 633.104, F.S.

<sup>7</sup> Department of Financial Services, Division of the State Fire Marshal, *What We Do*, <https://www.myfloridacfo.com/division/sfm/> (last visited Dec. 19, 2019).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *See* Rule 69A-37.064, F.A.C.

<sup>11</sup> *Id.*

<sup>12</sup> *See* Rule 69A-37.065(3), F.A.C.

Origin and Cause, Fire Protection Systems, Building Construction, Latent Investigation, Arson Investigation, Post Blast Investigation, and Legal Issues for Fire Investigators.<sup>13</sup>

The Level II Certification of Competency is available to an individual holding a Fire Investigator II Certificate of Competency if the individual is also a certified firefighter, certified law enforcement officer, law enforcement crime scene technician, or certified sworn or non-sworn firesafety inspector, and has completed a Fire Investigator Portfolio and Fire Investigator Task Book.<sup>14</sup>

Since 2005, 1,740 individuals have been certified as Fire Investigators through the State Fire College.<sup>15</sup> Of these, 947 individuals hold both a Firefighter II and Fire Investigator certification, and meet the criteria to be covered by the current definition of firefighter under s. 112.1816, F.S.<sup>16</sup>

The Department of Financial Services currently employs 104 fire investigators with the Division of Investigative and Forensic Services. Of these, 86 are Florida-certified or are in the process of earning certification.<sup>17</sup> These fire investigators respond to fire scenes throughout the State of Florida, supporting local law enforcement, and spend an average of three hours per investigation on-site. These on-site audits and investigations typically occur the same day of the fire or within three days of the fire. As a result, fire investigators sustain significant exposure to hazardous vapors, gases, and particles that are known to contribute to chronic health conditions, including cancer, as these dangerous chemicals and carcinogens remain after the fire.

### III. Effect of Proposed Changes:

**Section 1** amends s. 112.1816, F.S., related to cancer diagnoses for firefighters, to include a “full-time, Florida-certified fire investigator” in the current definition of “firefighter.” The bill further adds “or the investigation of fires and explosives” to the list of primary responsibilities of an “employer” within the current definition of “firefighter.”

Upon diagnosis of one of the 21 specific cancers enumerated within s. 112.1816, F.S., the bill has the effect of making a fire investigator eligible for the following benefits under the statute: (1) cancer treatment, at the employer’s expense, and (2) a \$25,000 cash payment. Under the bill, the fire investigator also becomes eligible for disability and death benefits.

Based on the conclusive presumption contained in the statute that the cancer or the resulting treatment of cancer occurred in-the-line-of duty, and if the fire investigator meets the retirement plan’s definition of totally and permanently disabled due to the diagnosis of cancer or circumstances that arise out of the treatment of cancer, the fire investigator becomes eligible for enhanced disability benefits either under an employer-sponsored retirement plan or employer-sponsored disability retirement plan.

---

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Department of Financial Services, *Senate Bill 838 Agency Analysis* (Nov. 19, 2021) (on file with the Senate Committee on Banking and Insurance).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

Likewise, if the fire investigator dies from the cancer or circumstances that arise from the cancer treatment, the fire investigator's death is conclusively presumed to be in-the-line-of-duty, resulting in a higher death benefit for the firefighter's beneficiaries.

**Section 2** provides a legislative finding that determines that this act fulfills an important state interest.

**Section 3** provides an effective date of July 1, 2022.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has a minimal impact to the State Risk Management Trust Fund.

Since 2005, 1,740 individuals have been certified as a Fire Investigator through the Florida State Fire College. Nine hundred and forty-seven of the 1,740 hold both a

Firefighter II and Fire Investigator certification, and meet the criteria to be covered by the current definition of firefighter in s. 112.1816, F.S.<sup>18</sup>

The precise number of individuals currently working as full-time fire investigators is unknown, as this is a one-time certification.<sup>19</sup>

Since the creation of s. 112.1816, F.S., in 2019, there have been three cancer claims reported totaling \$66,308 in payments, a claims rate of less than one percent over the two-year period. It is anticipated the addition of the Florida-certified fire investigators would only have a minimal fiscal impact on the Risk Management Trust Fund.<sup>20</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 112.1816 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

**CS by Appropriations on January 27, 2022:**

The committee substitute clarifies the intent that fire investigators are covered in the definition of firefighters for the purposes of cancer diagnosis.

**B. Amendments:**

None.

---

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

---

---

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*



865484

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/27/2022	.	
	.	
	.	
	.	

---

The Committee on Appropriations (Wright) recommended the following:

**Senate Amendment**

Delete lines 20 - 24  
and insert:  
prevention and extinguishing of fires; the protection of life  
and property; ~~and~~ the enforcement of municipal, county, and  
state fire prevention codes and laws pertaining to the  
prevention and control of fires; and the investigation of fires  
and explosives.



814112

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/27/2022	.	
	.	
	.	
	.	

---

The Committee on Appropriations (Wright) recommended the following:

**Senate Amendment to Amendment (865484)**

Delete lines 6 - 8  
and insert:  
and property; and the enforcement of municipal, county, and  
state fire prevention codes and laws pertaining to the  
prevention and control of fires; or the investigation of fires

By Senator Wright

14-01027-22

2022838\_\_

1                                   A bill to be entitled  
2       An act relating to fire investigators; amending s.  
3       112.1816, F.S.; revising the definition of the term  
4       "firefighter" to include full-time, Florida-certified  
5       fire investigators for the purpose of expanding  
6       eligibility for certain cancer treatment benefits to  
7       include such investigators; providing a declaration of  
8       important state interest; providing an effective date.  
9  
10    Be It Enacted by the Legislature of the State of Florida:  
11  
12                   Section 1. Paragraph (c) of subsection (1) of section  
13    112.1816, Florida Statutes, is amended to read:  
14                   112.1816 Firefighters; cancer diagnosis.—  
15                   (1) As used in this section, the term:  
16                   (c) "Firefighter" means an individual employed as a full-  
17    time firefighter or full-time, Florida-certified fire  
18    investigator within the fire department or public safety  
19    department of an employer whose primary responsibilities are the  
20    prevention and extinguishing of fires; the investigation of  
21    fires and explosives; the protection of life and property; and  
22    the enforcement of municipal, county, and state fire prevention  
23    codes and laws pertaining to the prevention and control of  
24    fires.  
25                   Section 2. The Legislature determines and declares that  
26    this act fulfills an important state interest.  
27                   Section 3. This act shall take effect July 1, 2022.





The Florida Senate

## Committee Agenda Request

**To:** Senator Kelli Stargel, Chair  
Committee on Appropriations

**Subject:** Committee Agenda Request

**Date:** January 21, 2022

---

I respectfully request that **Senate Bill 838**, relating to Fire Investigators, be placed on the:

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

A handwritten signature in cursive script that reads "Tom A. Wright".

---

Senator Tom A. Wright  
Florida Senate, District 14

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

838

Bill Number or Topic

814112

Amendment Barcode (if applicable)

AA

1/27/22

Meeting Date

Appropriations

Committee

Name Chase Mitchell

Phone 850/413/2866

Address 200 E Gaines St.

Email chase.mitchell@myfloridacfo.com

Street

Tallahassee

FL

32399

City

State

Zip

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

CFU ÷ State Fire Marshal Jimmy Patronis

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

JAN 27, 2022

Meeting Date

SB-838

Bill Number or Topic

Appropriations

Committee

Amendment Barcode (if applicable)

Name Chief Ray Colburn

Phone 407-468-6622

Address 221 Pinewood Dr

Email ray@ffca.org

Street

Tallahassee FL 32303

City

State

Zip

Speaking: [ ] For [ ] Against [ ] Information OR Waive Speaking: [x] In Support [ ] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[x] I am appearing without compensation or sponsorship.

[ ] I am a registered lobbyist, representing:

[ ] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

FLORIDA FIRE CHIEFS' ASSOC.

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf | flsenate.gov

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

1-27-22

The Florida Senate  
**APPEARANCE RECORD**

838

Meeting Date

Appropriations

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Meredith Stanfield

Phone 850.556.7647

Address 343 W. Madison

Email Meredith@fpfp.org

Street

Tallahassee FL 32303

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Professional Firefighters

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

1/27/22

Meeting Date

838

Bill Number or Topic

Appropriations

Committee

Amendment Barcode (if applicable)

Name Chase Mitchell

Phone 850-43-2866

Address 200 E Gaines St.

Email chase.mitchell@my.floridacfo.com

Street

Tallahassee

FL

32399

City

State

Zip

Speaking: [ ] For [ ] Against [ ] Information OR Waive Speaking: [x] In Support [ ] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[ ] I am appearing without compensation or sponsorship.

[x] I am a registered lobbyist, representing:

CFO & State Fire Marshal Jimmy Patronis

[ ] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: SB 1680  
 INTRODUCER: Senator Gruters  
 SUBJECT: Financial Institutions  
 DATE: January 26, 2022      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schrader</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Sanders</u>	<u>Sadberry</u>	<u>AP</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

**I. Summary:**

SB 1680 makes a number of revisions to Florida law relating to financial institutions. The bill:

- Allows foreign nationals proposing to own 10 percent or more of any class of voting securities of a proposed or established bank to appear by video during the public hearing considering approval of the application;
- Prohibits the direct or indirect charging of a fee to a customer by a third-party agent or other entity for an online audit verification of the associated balance of an account which is maintained by a financial institution;
- Revises the required scheduling dates for examination of financial institutions;
- Allows the Office of Financial Regulation (OFR) 90 additional days to meet its statutory obligation to periodically examine a financial institution when a federal agency suspends or cancels a previously scheduled examination;
- Changes from “all or substantially all” assets to 50 percent of assets, liabilities, or a combination of assets and liabilities, the limit of assets that a mutual financial institution may sell to a stock financial institution, absent first converting to a capital stock financial institution;
- Revises the definition of “financial institution” for the Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act;
- Requires credit unions, within 30 days following a meeting where any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, to notify the OFR;
- Revises the scope of the OFR’s investigation of applicants seeking authority to start a bank or trust company to include the need for bank and trust facilities in a target market as well as in the primary service area, and the ability of the target market to support the proposed bank or trust company;
- Revises a requirement that the proposed president or chief executive officer of a proposed banking corporation have at least one year of direct experience as an executive officer,

director, or regulator of a financial institution within the last five years to repeal the five year requirement;

- Requires persons acquiring a controlling interest in a state bank or state trust company through probate or trust notify the OFR within 90 days after acquiring such interest;
- Defines a “de novo branch” for the purposes of an existing de novo interstate branching provision;
- Authorizes a family trust company or licensed family trust company to maintain the deposit account, required under current law, with any bank that is insured by the Federal Deposit Insurance Corporation, or with any credit union insured by the National Credit Union Administration, either of which must be located within the United States;
- Revises when family trust companies, licensed family trust companies, or foreign licensed family trust companies must file a required annual renewal application;
- Allows international bank agencies and international branches to maintain a required deposit in banks outside of Florida, provided the deposit is in a bank within the United States; and
- Requires qualified limited service affiliates to suspend otherwise permissible activities if the jurisdiction of an international trust entity served by the qualified limited service affiliate is identified on the Financial Action Task Force’s list of High-Risk Jurisdictions subject to a Call for Action (black list) or on the list of Jurisdictions Under Increased Monitoring (grey list).

The bill does not impact state revenues or expenditures.

The bill is effective July 1, 2022.

## II. Present Situation:

### Regulation of Financial Institutions

Florida law defines the term “financial institution” broadly; the term includes “state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.”<sup>1</sup>

However, not all financial institutions are expressly authorized to accept or hold deposits or certificates of deposits.<sup>2</sup>

---

<sup>1</sup> Section 655.005(1)(i), F.S.

<sup>2</sup> For instance, holding a deposit does not fall within the enumerated permissible activities of an international representative office, an international administrative office, an international trust company representative office, or a qualified limited service affiliate. *See* ss. 663.062, 663.063, 663.409, and 663.531, F.S.

### ***Dual Regulatory System***

Banks and credit unions may be either state or federally chartered. The Office of Financial Regulation (OFR) is responsible for chartering and supervising state financial institutions, including state-chartered banks and state-chartered credit unions.<sup>3</sup>

National banks are chartered pursuant to the National Bank Act and supervised by the Office of the Comptroller of the Currency.<sup>4</sup> National banks are required to be members of the Federal Reserve System; state banks may apply for membership.<sup>5</sup> The Federal Reserve is the primary federal regulator of state member banks, and also serves as the primary regulator of bank holding companies and financial holding companies.<sup>6</sup>

Federally chartered credit unions are chartered and supervised by the National Credit Union Administration (NCUA).<sup>7</sup> Both state- and federally chartered credit unions must obtain insurance of their accounts and are subject to examination by the NCUA.<sup>8</sup>

### **Consumer Protection Florida Deceptive and Unfair Trade Practices Act (FDUTPA)**

#### ***History and Purpose of FDUTPA***

The FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.<sup>9</sup> The state attorney or the Department of Legal Affairs may bring actions when it is in the public interest on behalf of consumers or governmental entities.<sup>10</sup> The Office of the State Attorney may enforce violations of the FDUTPA if the violations take place in its jurisdiction. The Department of Legal Affairs has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.<sup>11</sup> Consumers may also file suit through private actions.<sup>12</sup>

#### ***Remedies under the FDUTPA***

The Department of Legal Affairs and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders;

---

<sup>3</sup> Section 655.012(1)(a), F.S.

<sup>4</sup> 12 U.S.C. s. 481.

<sup>5</sup> 12 U.S.C. s. 208.3 and 222.

<sup>6</sup> 12 U.S.C. s. 248.

<sup>7</sup> See 12 U.S.C. s. 1751, et. seq.

<sup>8</sup> Section 657.033, F.S.; 12 U.S.C. s. 1784.

<sup>9</sup> Section 501.202, F.S.

<sup>10</sup> Sections 501.207 and 501.202, F.S. David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLA. B.J. 52, December 2002, available at [http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division\\*](http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division*) (last visited on Jan. 13, 2022).

<sup>11</sup> Section 501.203(2), F.S.

<sup>12</sup> Section 501.211, F.S.



- Civil penalties of up to \$10,000 per willful violation; and
- Civil penalties of up to \$15,000 per willful violation where certain aggravating factors are found.<sup>13</sup>

Remedies for private parties are limited to:

- A declaratory judgment and an injunction where a person is aggrieved by an FDUTPA violation; and
- Actual damages, attorney fees and court costs, where a person has suffered a loss due to an FDUTPA violation.<sup>14</sup>

### ***Exemptions under the FDUTPA***

The FDUTPA exempts certain entities from its governance, including:<sup>15</sup>

- Any person or activity regulated under laws administered by the Office of Insurance Regulation (OIR) of the Financial Services Commission;
- Banks, credit unions, and savings and loan associations regulated by the OFR;
- Banks, credit unions, or savings and loan associations regulated by federal agencies; or
- Any person or activity regulated under the laws administered by the former Department of Insurance, which are now administered by the Department of Financial Services (DFS).

### **Examination of Financial Institutions**

Pursuant to s. 655.045(1), F.S., the OFR is required to conduct an examination of each state financial institution at least every 18 months. The OFR is authorized to accept an examination from an appropriate federal regulatory agency or conduct a joint or concurrent examination of the institution with the federal agency. However, at least once every 36 months, the OFR must conduct an examination of each state financial institution in a manner that allows the preparation of a complete examination report not subject to the right of a federal or other non-Florida entity to limit access to the information contained therein. The alternating, joint, or concurrent examination authorized by this provision reduces regulatory burden on the financial institutions subject to dual regulation, and the OFR works in coordination with these federal agencies when possible.<sup>16</sup>

According to the OFR, many of the documents it must analyze in these examinations are paper files with digital copies not available. As such, examiners must be physically present at an institution to perform examinations. The COVID-19 pandemic has created issues in adhering to examination schedules. Additionally, other natural disasters (such as hurricanes) can create problematic examination environments.<sup>17</sup>

---

<sup>13</sup> Sections 501.207(1), 501.2075, 501.2077, and 501.208, F.S.

<sup>14</sup> Sections 501.211(1)-(2) and 501.2105, F.S.

<sup>15</sup> Section 501.212(4), F.S.

<sup>16</sup> Office of Financial Regulation (OFR), *SB 1680 Analysis* (Jan. 12, 2022) (on file with the Senate Committee on Banking and Insurance).

<sup>17</sup> *Id.*

### **Financial Institution Acquisition of Assets and Assumption of Liabilities**

Current law allows a financial entity, under s. 655.414, F.S., to acquire “all or substantially all” of the assets of, or assume all or any part of the liabilities of, any other financial institution subject to certain conditions. Similarly, subsection (6) of the statute states that a mutual financial institution may not sell “all or substantially all” of its assets to a stock financial institution, subject to certain conditions. For both of these provisions, the term “substantially all” is not defined and may be subject to some conjecture. According to the OFR, this undefined term has caused some confusion in the financial industry.<sup>18</sup>

### **Money Laundering and Terrorist Financing in Financial Institutions Act**

The Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act, under s. 655.50, F.S., was created to require the submission certain reports to the OFR and the maintenance of certain records involving currency or monetary instruments or suspicious activities where such reports and records deter the use of financial institutions to conceal, move, or provide proceeds relating to criminal or terrorist activities and if such reports and records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. Subsection (3) of the act defines “financial institutions” a financial institution, as defined in 31 U.S.C. s. 5312, as amended, including a credit card bank, located in this state. This definition is quite broad, and includes a number of entities over which the OFR generally does not have regulatory authority—such as the United States Postal Service, casinos, travel agencies—or are obsolete—such as telegraph companies.<sup>19</sup>

### **Credit Union Boards of Directors**

Section 657.021(1)-(6), F.S., specifies the minimum requirements for boards of directors for credit unions, including the filling of vacancies, meeting requirements, and conduct requirements. As part of these requirements, subsection (2) requires directors assuming office in a credit union make a prescribed oath, and a signed copy of the oath must be filed with the OFR within 30 days after election. According to the OFR, at the Federal-level, the NCUA historically required credit unions to submit a record of the names and addresses of the members of the board of directors, members of the committees on a particular form called “Report of Officials.” The OFR had access to these documents through agreements with the NCUA. However, in 2009, the NCUA moved to a web-based system to collect this data and the forms were no longer collected.<sup>20</sup> At present, Florida law does not require state-chartered credit unions to submit a similar report.

---

<sup>18</sup> *Supra* note 16, p. 4.

<sup>19</sup> The world’s last telegram was sent in 2013. Monica Sarkar, *The Day Telegrams Came to a Final STOP*, CNN (July 15, 2013).

<sup>20</sup> National Credit Union Administration (NCUA), *NCUA Supervisory Letter 09-CU-17*, “Credit Union Online: Credit Union Profile and 5300 Call Report,” available at <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/credit-union-online-credit-union-profile-and-5300-call-report> (August 2009).

## Target Markets

According to the American Bankers Association, nearly 75 percent of United States residents most often access their bank accounts via electronic platforms (i.e., via mobile device or personal computer).<sup>21</sup> With this ever-growing trend, and branch traffic slowing, many banks have been closing bank branches at a growing pace and making investments in electronic platforms.<sup>22</sup>

While the trend in banking has been to de-emphasize the local branch, a Florida application for authority to organize a banking corporation or trust company must describe the community where the principal office of the bank will be located<sup>23</sup> and part of the OFR's approval process looks at the need for, and ability to support, the proposed bank or trust company in the entity's primary service area.<sup>24</sup> In order for an application to be approved, the local conditions in the primary service area must indicate a reasonable promise of successful operation.<sup>25</sup> The OFR evaluates the viability of the business plan in light of current conditions in the primary service area and the metropolitan statistical area or county, as well as in the industry in general.<sup>26</sup>

## Applications for Authority to Organize a Banking Corporation or Trust Company

Section 658.19, F.S., specifies the requirements for an application for authority to organize a banking corporation or trust company, which must be filed with the OFR by the proposed directors, and what the application must include. Upon the submission of this application, pursuant to s. 658.20, F.S., the OFR must investigate the:

- Character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors;
- Need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area where the proposed bank or trust company is to be located; and
- Ability of the primary service area to support the proposed bank or trust company and all other existing bank or trust facilities in the primary service area.

Section 658.20, F.S., also authorizes the OFR to obtain criminal record information from the National Crime Information Center or from the Florida Department of Law Enforcement to conduct the required investigation.

To approve an application, the OFR must find, in part, that:<sup>27</sup>

- Local conditions indicate reasonable promise of successful operation for the proposed state bank or trust company;
- The proposed capitalization is in such amount as the OFR deems adequate;
- The proposed capital structure is in such form as the OFR may require;

---

<sup>21</sup> American Bankers Association, *Survey: Bank Customers Preference for Digital Channels Continues to Grow*, <https://bankingjournal.aba.com/2019/11/aba-survey-customer-preference-for-digital-banking-continues-to-grow> (Nov. 5, 2019).

<sup>22</sup> *Id.*

<sup>23</sup> Section 658.19, F.S.

<sup>24</sup> Section 658.20, F.S.

<sup>25</sup> Rule 69U-105.206(2)(a), F.A.C.

<sup>26</sup> Rule 69U-105.206(2)(a)1.-2., F.A.C.

<sup>27</sup> Section 658.21, F.S.

- The proposed officers have sufficient financial institution experience, ability, standing, and reputation in order to be approved. As part of this requirement, the proposed president or chief executive officer must have at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last five years;
- The corporate name of the proposed state bank or trust company is approved by the OFR; and
- Provision has been made for suitable quarters at the location specified in the application.

In regards to the requirement that the proposed president or chief executive officer have at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last five years, the OFR has expressed a concern that this provision narrows the pool of otherwise qualified potential executive officers who may serve in that capacity at a new Florida-chartered bank. By comparison, proposed chief executive officers of proposed nationally chartered banks are not subject to a similar restriction.<sup>28</sup>

### **Trust Representative Offices**

According to 12 C.F.R. s. 9.2(k), a trust representative office is an office of a national bank, other than a main office or a branch, at which the bank engages in certain activities relating to their fiduciary business. Examples of such activities include advertising, marketing, and soliciting for fiduciary business; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; acting as a liaison between the trust office and the customer; and inspecting or maintaining custody of fiduciary assets or holding title to real property.

In Florida, the OFR supervises state-chartered banks with trust powers and state-chartered trust companies. The determination of whether an entity qualifies as a “trust company” is dependent on whether an entity has “trust powers” and is engaging in “trust business,” defined as follows:<sup>29</sup>

- “Trust powers” means the rights and powers necessary to act as a fiduciary and, when the context so requires or admits, the term also means the authority granted to a bank, state or federal association, or trust company by, or pursuant to, the laws of this or any other jurisdiction to engage in trust business; and
- “Trust business” means the business of acting as a fiduciary when such business is conducted by a bank, a state or federal association, or a trust company, or when conducted by any other business organization for compensation that the OFR does not consider to be de minimis.

Based on this definition, an office that provides just ancillary fiduciary services to a nationally-chartered bank or trust company (or one chartered by another state) would not qualify as a trust company.

---

<sup>28</sup> *Supra* note 16.

<sup>29</sup> Section 658.12, F.S.

### **Controlling Interests in State Banks and Trust Companies**

Under s. 658.28, F.S., for the purposes of determining whether a party has acquired control of a bank or trust company, in general, a party will be presumed to have such control if any of the following are true:

- The party directly or indirectly owns, control, or has the power to vote 25 percent or more of any class of voting securities of the institution;
- The party controls, in any manner, the election of a majority of the directors, trustees, or other governing body of the institution;
- The party owns, controls, or has the power to vote 10 percent or more of any class of voting securities and exercise a controlling influence over management or policies of the institution; or
- The OFR determines, after notice and opportunity for a hearing, that the person or persons directly or indirectly exercises a controlling influence over the bank or trust company.

In addition, the OFR is not limited to the above standards or criteria in determining whether any such person may be deemed to be acting by or through one or more other persons. The presumption above, regarding where a party owns, controls, or has the power to vote 10 percent or more of any class of voting securities and exercise a controlling influence over management or policies of the institution, is rebuttable by notifying the OFR and presenting information rebutting control at an informal conference.<sup>30</sup> After such hearing, if the OFR determines that the party in question does, in fact, have control of the bank or trust company, the party must file the application required under s. 658.28(1), F.S.

Section 658.28(1), F.S., also requires persons seeking to purchase or otherwise acquire controlling interest in a state bank or trust company, to first apply with the OFR for a certificate of approval. Approval is based upon the OFR's determination, after investigation and review, that the proposed new owners are qualified by reputation, character, experience, and financial responsibility to control and operate the bank or trust company and that the interests of the other stockholders, if any, the depositors and creditors of the bank or trust company, and the public generally will not be jeopardized by the proposed change.

Florida law does not currently contemplate the acquisition of a controlling interest without prior approval. However, according to the OFR, not every such acquisition is planned. Shares may pass to an unapproved owner by operation of law, such as by way of inheritance. For example, if a controlling shareholder dies and their shares pass to an unapproved beneficiary, the unapproved beneficiary commits an unavoidable, technical violation of statute upon becoming the owner of the shares.<sup>31</sup>

### **De Novo Interstate Branching by State Banks**

Section 658.2953(11)(a), F.S., permits state banks to, with approval of the OFR, establish and maintain a de novo branch or acquire a branch in a state other than Florida by submitting an

---

<sup>30</sup> Section 658.28(3), F.S.

<sup>31</sup> *Supra* note 16.

application to the OFR. Section 658.2953(11)(a), F.S., also allows out-of-state bank meeting certain conditions to establish and maintain a de novo branch or acquire a branch in Florida.

### **Family Trust Companies**

A family trust company provides trust services to wealthy families and cannot provide services to the general public. These services include serving as a trustee of trusts held for the benefit of the family members, as well as providing other fiduciary, investment advisory, wealth management, and administrative services to the family. A family might wish to form a family trust company in order to keep family matters more private than they would be if turned over to an independent trustee, to gain liability protection, to establish its own trust fee structure, and to obtain tax advantages. Traditional trust companies require regulatory oversight, licensing of investment personnel, public disclosure and capitalization requirements considered by practitioners to be overbroad and intrusive for the family trust.

In 2014, the Legislature authorized the creation of family trust companies in Florida.<sup>32</sup> The Florida Family Trust Company Act (act) is codified in ch. 662, F.S. The act allows for the creation of family trust companies in Florida and provides differing degrees of regulatory oversight by the OFR.

Chapter 662, F.S., creates three types of family trust companies: family trust companies, licensed family trust companies, and foreign licensed family trust companies. A “family trust company” is a corporation or limited liability company that is exclusively owned by one or more family members, is organized or qualified to do business in this state, and acts or proposes to act as a fiduciary to serve one or more family members.<sup>33</sup> A “licensed family trust company” means a family trust company that has been issued a license that has not been revoked or suspended by the OFR.<sup>34</sup> A “foreign licensed family trust company” means a family trust company that is licensed by a state other than Florida, or the District of Columbia.<sup>35</sup> Family trust companies that are not licensed and foreign family trust companies must register with the OFR and renew such registration annually.<sup>36</sup> Family trust companies and licensed family trust companies must maintain a deposit account with a state-chartered or national financial institution that has a principal or branch office in Florida.<sup>37</sup>

### **Asset Maintenance or Capital Equivalency for International Bank Agencies and International Branches**

International bank agencies and international branches are permitted to conduct activities similar to those of a state-chartered financial institution in regards to loans, extension of credit, or investment. An international bank agency may act as custodian and may furnish investment

---

<sup>32</sup> Chapter 2014-97, Laws of Fla.

<sup>33</sup> See s. 662.111(12), F.S., and does not serve as a fiduciary for a person, entity, trust, or estate that is not a family member, except that it may serve as a fiduciary for up to 35 individuals who are not family members if the individuals are current or former employees of the family trust company or one or more trusts, companies, or other entities that are family members

<sup>34</sup> See s. 662.111(16), F.S.

<sup>35</sup> See s. 662.111(15), F.S.

<sup>36</sup> See ss. 662.122 and 662.128, F.S.

<sup>37</sup> Section 662.1225(1), F.S.

management, and investment advisory services, to nonresident entities or persons whose principal places of business or domicile are outside the United States and to resident entities or persons with respect to international, foreign, or domestic investments.<sup>38</sup> An international branch has the same rights and privileges as a federally-licensed international branch.<sup>39</sup> Under s. 663.07, F.S., each international bank agency and international branch must maintain, with one or more banks in this state evidence of dollar deposits or investment securities, as specified by the OFR, of the type that may be held by a state bank.

### **Financial Action Task Force (FATF)**

The FATF is an international global money laundering and terrorist financing watchdog group. It is an intergovernmental policy-making body that sets international standards and advocates to bring about national legislative and regulatory reforms.<sup>40</sup> The FATF currently comprises 39 member jurisdictions and two regional organizations (the European Council and the Gulf Cooperation Council). These members represent most major global financial centers.<sup>41</sup> As part of its activities, the FATF publishes, three times per year, two public documents that identify jurisdictions having weak measures to combat money laundering and terrorist financing: 1) High-Risk Jurisdictions subject to a Call for Action, and 2) Jurisdictions under Increased Monitoring.<sup>42</sup>

#### ***High-Risk Jurisdictions subject to a Call for Action***

According to the FATF, the jurisdictions identified on the High-Risk Jurisdictions subject to a Call for Action (also known as the “black list”) have significant strategic deficiencies in their regimes to counter money laundering, terrorist financing, and financing of proliferation. For such jurisdictions, the FATF calls on all of its members and urges all jurisdictions to apply enhanced due diligence, and in the most serious cases, countries are called upon to apply counter-measures to protect the international financial system from the ongoing money laundering, terrorist financing, and proliferation financing risks emanating from the country.<sup>43</sup> Due to the ongoing COVID-19 pandemic, the FATF has paused the review process for countries on the list of High-Risk Jurisdictions subject to a Call for Action given that the countries on the list—North Korea and Iran—are already subject to the FATF’s call for countermeasures.<sup>44</sup>

#### ***Jurisdictions under Increased Monitoring***

Jurisdictions identified as being under increased monitoring (also known as the “grey list”) by the FATF are actively working with the organization to address strategic deficiencies in their

---

<sup>38</sup> Section 663.061, F.S.

<sup>39</sup> Section 663.064, F.S.

<sup>40</sup> Financial Action Task Force, *About*, <https://www.fatf-gafi.org/about/> (last visited Jan. 21, 2022).

<sup>41</sup> Financial Action Task Force, *FATF Members and Observers*, <https://www.fatf-gafi.org/about/membersandobservers/> (last visited Jan. 21, 2022).

<sup>42</sup> Financial Action Task Force, *Topic: High-risk and other monitored jurisdictions*, [https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/?hf=10&b=0&s=desc\(fatf\\_releasedate\)](https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/?hf=10&b=0&s=desc(fatf_releasedate)) (last visited Jan. 21, 2022).

<sup>43</sup> *Id.*

<sup>44</sup> Financial Action Task Force, *High-Risk Jurisdictions subject to a Call for Action - October 2021*, <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-october-2021.html> (Oct. 21, 2021) (last visited Jan. 21, 2022).

regimes to counter money laundering, terrorist financing, and proliferation financing. Jurisdictions identified as such are subject to increased monitoring, but have committed to swiftly resolve the deficiencies identified by the FATF within an agreed upon timeframe.<sup>45</sup>

### **Qualified Limited Service Affiliates of International Trust Entities (QLSA)**

Part IV of ch. 663, F.S., regulates QLSAs in Florida. Pursuant to s. 663.530, F.S., a QLSA means a person or entity that is qualified under this part to perform the permissible activities outlined in s. 663.531, F.S., related to or for the benefit of an affiliated international trust entity. This section also defines an “international trust entity” as an international trust company or organization, or any similar business entity, or an affiliated or subsidiary entity that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws where such entity is organized and supervised. Section 663.531(1), F.S., allows a QLSA to engage in:

- Marketing and liaison services related to or for the benefit of the affiliated international trust entities, directed exclusively at professionals and current or prospective nonresident clients of an affiliated international trust entity;
- Advertising and marketing at trade, industry, or professional events;
- Transmission of documents between the international trust entity and its current or prospective clients or a designee of such clients; and
- Transmission of information about the trust or trust holdings of current clients between current clients or their designees and the international trust entity.

To qualify as a QLSA, the entity must file a written notice with the OFR that includes, in part, a declaration (under penalty of perjury) that jurisdiction of the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or facilitate the financial services functions, banking, or fiduciary activities of the international trust entity is not listed on the Financial Action Task Force Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism.<sup>46</sup> While this is a required disclosure, the OFR asserts that it does not have a mechanism to suspend or revoke the qualification of the QLSA if the jurisdiction of the international trust entity is later added to this list.<sup>47</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 120.80(3)(a), F.S., to allow a foreign national proposing to own or control 10 percent or more of any class of voting securities of a proposed or established bank, trust company, or capital stock savings association to appear at the public hearing required to be held for such matter via video conference in lieu of appearing personally.

<sup>45</sup> Financial Action Task Force, *Jurisdictions under Increased Monitoring – October 2021*, <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2021.html> (Oct. 21, 2021) (last visited Jan. 21, 2022.). Countries currently on the grey list, as of the most recent October 2021 update are: Albania, Barbados, Burkina Faso, Cambodia, Cayman Islands, Haiti, Jamaica, Jordan, Mali, Malta, Morocco, Myanmar, Nicaragua, Pakistan, Panama, Philippines, Senegal, South Sudan, Syria, Turkey, Uganda, Yemen, and Zimbabwe. Botswana and Mauritius were most recently removed from the list.

<sup>46</sup> Section 663.532(1)(i)3., F.S.

<sup>47</sup> *Supra* note 16.



**Section 2** amends s. 475.01, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S., in the bill.

**Section 3** creates s. 501.2076, F.S., to make the direct or indirect charging of a customer a fee, by a third-party agent or other entity, for an online audit verification of the associated balance of an account which is maintained by a financial institution, a violation of the Florida Deceptive and Unfair Trade Practices Act.

**Section 4** amends s. 518.117, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S., in the bill.

**Section 5** amends s. 655.045(1)(a), F.S., to revise the specific date of July 1, 2014, to July 1, 2023, which the scheduling of examinations are pegged to for financial institutions.

The section also creates s. 655.045(1)(f), F.S., to allow the Office of Financial Regulation (OFR) an additional 90 days to meet the examination frequency requirement under the section when a federal agency suspends or cancels a previously scheduled examination. The examination requirement would be considered to have been met upon the federal agency in question conducting the examination—or the OFR conducting the examination instead.

The section also amends s. 655.045(4), F.S., to require each director of a state financial institution to sign a receipt regarding an examination report, with the signature certifying that the director has read the report. The signed receipt must be returned to the OFR.

**Section 6** amends s. 655.414, F.S., to revise language allowing financial entities to acquire “all or substantially all” of the assets of, or assume all or any part of the liabilities of, any other financial institution subject to certain conditions. The bill updates this language to read “50 percent or more of the assets of, liabilities of, or a combination of assets and liabilities of.” The 50 percent is calculated based on the most recent quarterly reporting date.

Similarly, subsection (6) of the section presently states that a mutual financial institution may not sell “all or substantially all” of its assets to a stock financial institution, without certain conditions being met. The bill also updates this to read “50 percent or more.”

**Section 7** amends s. 655.50, F.S., to revise the definition of “financial institution” for the Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act. The definition is changed to repeal a reference to federal law and to instead mean any financial institution, as defined in Florida law,<sup>48</sup> other than an international representative office, an international administrative office, or a qualified limited service affiliate.

**Section 8** creates s. 657.021(2), F.S., to require credit unions, within 30 days following a meeting where any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, to submit to the OFR the names and residence addresses of the elected person or persons on a specified form. The provision also directs the OFR to adopt rules to create the form.

---

<sup>48</sup> Section 655.005(1)(i), F.S.

**Section 9** repeals s. 657.028(6), F.S., which requires notice to the OFR of changes in management similar to those created in Section 8 of this bill.

**Section 10** amends s. 658.12, F.S., to create a definition for “target market” to mean the group of clients or potential clients from whom a bank or proposed bank expects to draw deposits and to whom a bank focuses or intends to focus its marketing efforts. The term also means the group of clients or potential clients from whom a trust company, a trust department of a bank or association, a proposed trust company, or a proposed trust department of a bank or an association expects to draw its fiduciary accounts and to whom it focuses or intends to focus its marketing efforts.

**Section 11** amends s. 658.20, F.S., to incorporate the definition of target market created in Section 10 and effectively expand the scope of the OFR’s investigation (regarding an application for authority to organize a bank or trust company) to include the need for bank and trust facilities in a target market as well as in the primary service area, and the ability of a target market to support the proposed bank or trust company.

**Section 12** amends s. 658.21, F.S., to revise a requirement that, for the OFR to approve an application for authority to organize a banking corporation or trust company, the proposed president or chief executive officer must have at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last five years. The revision eliminates the requirement that the one year of experience be within the last five years.

**Section 13** creates s. 658.28, F.S., to create a requirement that persons acquiring a controlling interest in a state bank or state trust company through probate or trust notify the office within 90 days after acquiring such interest. The bill also stipulates that this interest does not give rise to a presumption of control unless such persons votes the shares or the office has issued a certificate of approval in response to an application approval of change control pursuant to subsection (1) of the section.

**Section 14** amends s. 658.2953, F.S., to create a definition of “de novo branch” to mean a branch of a financial institution which is originally established by the financial institution as a branch and does not become a branch of such financial institution as a result of specified transactions. This clarifies the applicability of s. 658.2953(11), F.S., which regulates de novo interstate branching, but currently does not define the term.

**Section 15** amends s. 662.1225, F.S., to allow a family trust company or licensed family trust company to maintain the deposit account, required under the section, with any bank that is both insured by the Federal Deposit Insurance Corporation and located in the United States, or with a credit union insured by the National Credit Union Administration and located in the United States. Under current law, such companies were limited to only state-chartered or national financial institution that has a principal or branch office in Florida.

**Section 16** amends s. 662.128, F.S., to require family trust companies, licensed family trust companies, or foreign licensed family trust companies to file an annual renewal application no later than 45 days after the anniversary of the filing of either the initial application or the prior

year's renewal application. The previous requirement under s. 662.128, F.S., has also been retained in the section, specifying that such entities must file their renewal 45 days after the end of each calendar year. As presently written, this may require entities, other than those whose anniversary dates fall within the first 45 days of the year, to file two renewals each year.

**Section 17** amends s. 633.07, F.S., to allow international bank agencies and international branches to maintain the required deposit amount under the section with one or more banks insured by the Federal Deposit Insurance Corporation and located within the United States. Under current law, the deposit had to be maintained at a bank in Florida.

**Section 18** amends s. 663.532, F.S., to require qualified limited service affiliates (QLSA) to suspend the activities the QLSA is otherwise permitted to engage in, under s. 663.408, F.S., if the QLSA or the OFR becomes aware that the jurisdiction of an international trust entity served by the QLSA is included on the Financial Action Task Force (FATF) list of High-Risk Jurisdictions subject to a Call for Action (black list) or list of Jurisdictions Under Increased Monitoring (grey list). Such a suspension of activities must continue until the jurisdiction in question is removed from the FATF black list or grey list.

As of the most recent October 2021 update, the following countries are on the FATF grey list: Albania, Barbados, Burkina Faso, Cambodia, Cayman Islands, Haiti, Jamaica, Jordan, Mali, Malta, Morocco, Myanmar, Nicaragua, Pakistan, Panama, Philippines, Senegal, South Sudan, Syria, Turkey, Uganda, Yemen, and Zimbabwe.<sup>49</sup> Presently, North Korea and Iran are on the FATF black list.<sup>50</sup>

**Section 19** amends s. 736.0802, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S., in the bill.

**Section 20** provides an effective date of July 1, 2022.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared tax revenues as specified in Art. VII, s. 18 of the Florida Constitution.

##### B. Public Records/Open Meetings Issues:

None.

---

<sup>49</sup>Financial Action Task Force, *Jurisdictions under Increased Monitoring – October 2021*, <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-october-2021.html> (last visited Jan. 21, 2022).

<sup>50</sup>Financial Action Task Force, *High-Risk Jurisdictions subject to a Call for Action – October 2021*, <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-october-2021.html> (last visited Jan. 21, 2022). See also, <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-february-2020.html> (last visited Jan. 21, 2022).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

**Section 3** prohibits a third-party agent or other entity from directly or indirectly charging a consumer a fee for an online audit verification of an account or of the associated balance of an account which is maintained by a financial institution.<sup>51</sup>

B. Private Sector Impact:

While the bill may encourage the formation of new Florida-chartered institutions, which would have a positive impact on employment, economic growth, investment and access to financial services, the impact to the private sector is indeterminate. As indicated above, **Section 3** prohibits a third-party agent or other entity from directly or indirectly charging a consumer a fee for an online audit verification of an account or of the associated balance of an account which is maintained by a financial institution.<sup>52</sup>

C. Government Sector Impact:

The bill does not impact state revenues or expenditures.<sup>53</sup> However, **Section 5** of the bill could lead to the Office of Financial Regulation (OFR) taking on additional examination costs in the event that a federal agency suspends or cancels a financial institution examination and the OFR ends up conducting the examination in that agency's stead.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

---

<sup>51</sup> *Supra* note 16, p. 10.

<sup>52</sup> *Supra* note 16, pp. 9-10.

<sup>53</sup> *Supra* note 16, p. 9.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 120.80, 475.01, 518.117, 655.045, 655.414, 655.50, 657.021, 657.028, 658.12, 658.165, 658.20, 658.21, 658.28, 658.2953, 662.1225, 662.128, 663.07, 663.532, and 736.0802.

This bill creates section 501.2076 of the Florida Statutes.

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

---

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

---

By Senator Gruters

23-00513C-22

20221680\_\_

1 A bill to be entitled  
 2 An act relating to financial institutions; amending s.  
 3 120.80, F.S.; providing that the failure of foreign  
 4 nationals to appear through video conference at  
 5 certain hearings is grounds for denial of certain  
 6 applications; amending s. 475.01, F.S.; conforming a  
 7 cross-reference; creating s. 501.2076, F.S.; providing  
 8 that the imposition of fees or charges upon consumers  
 9 for online audit verifications of financial  
 10 institution accounts is a violation of the Florida  
 11 Deceptive and Unfair Trade Practices Act; amending s.  
 12 518.117, F.S.; conforming a cross-reference; amending  
 13 s. 655.045, F.S.; revising the circumstances pursuant  
 14 to which the Office of Financial Regulation is  
 15 required to conduct certain examinations; authorizing  
 16 the office to delay examinations of state financial  
 17 institutions under certain circumstances; specifying  
 18 that examination requirements are deemed met under  
 19 certain circumstances; requiring copies of certain  
 20 examination reports to be furnished to state financial  
 21 institutions; requiring certain directors to review  
 22 and acknowledge receipt of such reports; amending s.  
 23 655.414, F.S.; revising the entities that may assume  
 24 liabilities and assets, and the liabilities and assets  
 25 that may be assumed, according to certain procedures,  
 26 conditions, and limitations; specifying the basis for  
 27 calculating percentages of assets or liabilities;  
 28 revising the assets a mutual financial institution may  
 29 sell, subject to certain conditions; amending s.

Page 1 of 21

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

23-00513C-22

20221680\_\_

30 655.50, F.S.; revising the definition of the term  
 31 "financial institution"; amending s. 657.021, F.S.;  
 32 requiring credit unions to submit specified  
 33 information to the office after certain meetings;  
 34 repealing s. 657.028(6), F.S., relating to credit  
 35 union board member, committee member, and officer  
 36 election and appointment record reporting  
 37 requirements; amending s. 658.12, F.S.; defining the  
 38 term "target market"; amending s. 658.20, F.S.;  
 39 requiring the office, upon receiving applications for  
 40 authority to organize a bank or trust company, to  
 41 investigate the need for new bank facilities in a  
 42 primary service area or for a target market and the  
 43 ability of such service area or target market to  
 44 support new and existing bank facilities; amending s.  
 45 658.21, F.S.; revising financial institution  
 46 application approval requirements to include  
 47 consideration of target market conditions; deleting a  
 48 requirement that certain proposed financial  
 49 institution presidents or chief executive officers  
 50 have certain experience within a specified timeframe;  
 51 amending s. 658.28, F.S.; requiring a person or group  
 52 to notify the office within a specified timeframe upon  
 53 acquiring a controlling interest in a bank or trust  
 54 company in this state; amending s. 658.2953, F.S.;  
 55 defining the term "de novo branch"; amending s.  
 56 662.1225, F.S.; revising the type of institution with  
 57 which certain family trust companies are required to  
 58 maintain a deposit account; amending s. 662.128, F.S.;

Page 2 of 21

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

23-00513C-22

20221680\_\_

59 revising the timeframe for filing renewal applications  
 60 for certain family trust companies; amending s.  
 61 663.07, F.S.; revising the banks with which  
 62 international bank agencies or branches shall maintain  
 63 certain deposits; amending s. 663.532, F.S.; revising  
 64 references to lists of jurisdictions used for  
 65 qualifying qualified limited service affiliates;  
 66 requiring limited service affiliates to suspend  
 67 certain permissible activities under certain  
 68 circumstances; specifying that such suspensions remain  
 69 in effect until certain conditions are met; amending  
 70 s. 736.0802, F.S.; conforming a cross-reference;  
 71 reenacting s. 658.165(1), F.S., relating to banker's  
 72 banks, for the purpose of incorporating amendments  
 73 made by the act; providing an effective date.

74  
 75 Be It Enacted by the Legislature of the State of Florida:

76  
 77 Section 1. Paragraph (a) of subsection (3) of section  
 78 120.80, Florida Statutes, is amended to read:

79 120.80 Exceptions and special requirements; agencies.—

80 (3) OFFICE OF FINANCIAL REGULATION.—

81 (a) Notwithstanding s. 120.60(1), in proceedings for the  
 82 issuance, denial, renewal, or amendment of a license or approval  
 83 of a merger pursuant to title XXXVIII:

84 1.a. The Office of Financial Regulation of the Financial  
 85 Services Commission shall have published in the Florida  
 86 Administrative Register notice of the application within 21 days  
 87 after receipt.

Page 3 of 21

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

23-00513C-22

20221680\_\_

88 b. Within 21 days after publication of notice, any person  
 89 may request a hearing. Failure to request a hearing within 21  
 90 days after notice constitutes a waiver of any right to a  
 91 hearing. The Office of Financial Regulation or an applicant may  
 92 request a hearing at any time prior to the issuance of a final  
 93 order. Hearings shall be conducted pursuant to ss. 120.569 and  
 94 120.57, except that the Financial Services Commission shall by  
 95 rule provide for participation by the general public.

96 2. Should a hearing be requested as provided by sub-  
 97 subparagraph 1.b., the applicant or licensee shall publish at  
 98 its own cost a notice of the hearing in a newspaper of general  
 99 circulation in the area affected by the application. The  
 100 Financial Services Commission may by rule specify the format and  
 101 size of the notice.

102 3. Notwithstanding s. 120.60(1), and except as provided in  
 103 subparagraph 4., an application for license for a new bank, new  
 104 trust company, new credit union, new savings and loan  
 105 association, or new licensed family trust company must be  
 106 approved or denied within 180 days after receipt of the original  
 107 application or receipt of the timely requested additional  
 108 information or correction of errors or omissions. An application  
 109 for such a license or for acquisition of such control which is  
 110 not approved or denied within the 180-day period or within 30  
 111 days after conclusion of a public hearing on the application,  
 112 whichever is later, shall be deemed approved subject to the  
 113 satisfactory completion of conditions required by statute as a  
 114 prerequisite to license and approval of insurance of accounts  
 115 for a new bank, a new savings and loan association, a new credit  
 116 union, or a new licensed family trust company by the appropriate

Page 4 of 21

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

23-00513C-22

20221680\_\_

117 insurer.

118 4. In the case of an application for license to establish a  
 119 new bank, trust company, or capital stock savings association in  
 120 which a foreign national proposes to own or control 10 percent  
 121 or more of any class of voting securities, and in the case of an  
 122 application by a foreign national for approval to acquire  
 123 control of a bank, trust company, or capital stock savings  
 124 association, the Office of Financial Regulation shall request  
 125 that a public hearing be conducted pursuant to ss. 120.569 and  
 126 120.57. Notice of such hearing shall be published by the  
 127 applicant as provided in subparagraph 2. The failure of such  
 128 foreign national to appear personally at or to participate  
 129 through video conference in the hearing shall be grounds for  
 130 denial of the application. Notwithstanding s. 120.60(1) and  
 131 subparagraph 3., every application involving a foreign national  
 132 shall be approved or denied within 1 year after receipt of the  
 133 original application or any timely requested additional  
 134 information or the correction of any errors or omissions, or  
 135 within 30 days after the conclusion of the public hearing on the  
 136 application, whichever is later.

137 Section 2. Subsection (4) of section 475.01, Florida  
 138 Statutes, is amended to read:

139 475.01 Definitions.—

140 (4) A broker acting as a trustee of a trust created under  
 141 chapter 689 is subject to the provisions of this chapter unless  
 142 the trustee is a bank, state or federal association, or trust  
 143 company possessing trust powers as defined in s. 658.12(24) ~~or~~  
 144 ~~658.12(23)~~.

145 Section 3. Section 501.2076, Florida Statutes, is created

Page 5 of 21

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

23-00513C-22

20221680\_\_

146 to read:

147 501.2076 Violations involving consumer financial  
 148 institution account fees.—The imposition of a fee or other  
 149 charge by a third party agent or entity directly or indirectly  
 150 upon a consumer for an online audit verification of an account  
 151 maintained by a financial institution as defined in s.  
 152 655.005(1)(i) or of the associated balance of such account is a  
 153 violation of this part.

154 Section 4. Section 518.117, Florida Statutes, is amended to  
 155 read:

156 518.117 Permissible investments of fiduciary funds.—A  
 157 fiduciary that is authorized by lawful authority to engage in  
 158 trust business as defined in s. 658.12(21) ~~or 658.12(20)~~ may  
 159 invest fiduciary funds in accordance with s. 660.417 so long as  
 160 the investment otherwise complies with this chapter.

161 Section 5. Paragraph (a) of subsection (1) and subsection  
 162 (4) of section 655.045, Florida Statutes, are amended, and  
 163 paragraph (f) is added to subsection (1) of that section, to  
 164 read:

165 655.045 Examinations, reports, and internal audits;  
 166 penalty.—

167 (1) The office shall conduct an examination of the  
 168 condition of each state financial institution at least every 18  
 169 months. The office may conduct more frequent examinations based  
 170 upon the risk profile of the financial institution, prior  
 171 examination results, or significant changes in the institution  
 172 or its operations. The office may use continuous, phase, or  
 173 other flexible scheduling examination methods for very large or  
 174 complex state financial institutions and financial institutions

Page 6 of 21

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



23-00513C-22 20221680\_\_

175 owned or controlled by a multi-financial institution holding  
176 company. The office shall consider examination guidelines from  
177 federal regulatory agencies in order to facilitate, coordinate,  
178 and standardize examination processes.

179 (a) The office may accept an examination of a state  
180 financial institution made by an appropriate federal regulatory  
181 agency or may conduct a joint or concurrent examination of the  
182 institution with the federal agency. However, if the office  
183 accepts an examination report in accordance with this paragraph,  
184 the office shall conduct at least once during each 36-month  
185 period beginning July 1, ~~2023~~ 2014, a subsequent the office  
186 ~~shall conduct an~~ examination of each state financial institution  
187 in a manner that allows the preparation of a complete  
188 examination report not subject to the right of a federal or  
189 other non-Florida entity to limit access to the information  
190 contained therein. The office may furnish a copy of all  
191 examinations or reviews made of financial institutions or their  
192 affiliates to the state or federal agencies participating in the  
193 examination, investigation, or review, or as otherwise  
194 authorized under s. 655.057.

195 (f) In coordinating an examination required under this  
196 section, if a federal agency suspends or cancels a previously  
197 scheduled examination of a state financial institution, the  
198 office has an additional 90 days to meet the examination  
199 requirement of this section. In such case, the requirement is  
200 deemed met by the federal agency conducting the examination or  
201 upon the office conducting the examination instead.

202 (4) A copy of the report of each examination must be  
203 furnished to the state financial institution ~~entity~~ examined and

23-00513C-22 20221680\_\_

204 presented to the board of directors at its next regular or  
205 special meeting. Each director shall review the report and  
206 acknowledge receipt of the report and such review by signing and  
207 dating the prescribed signature page of the report and returning  
208 a copy of the signed page to the office.

209 Section 6. Section 655.414, Florida Statutes, is amended to  
210 read:

211 655.414 Acquisition of assets; assumption of liabilities.—  
212 With prior approval of the office, and upon such conditions as  
213 the commission prescribes by rule, a financial institution  
214 ~~entity~~ may acquire 50 percent or more ~~all or substantially all~~  
215 of the assets of, liabilities of, or a combination of assets and  
216 ~~or assume all or any part of the liabilities of,~~ any other  
217 financial institution in accordance with the procedures and  
218 subject to the following conditions and limitations:

219 (1) CALCULATION OF ASSET OR LIABILITY PERCENTAGES.—  
220 Percentages of assets or liabilities must be calculated based on  
221 the most recent quarterly reporting date.

222 (2) ADOPTION OF A PLAN.—The board of directors of the  
223 acquiring or assuming financial entity and the board of  
224 directors of the transferring financial institution must adopt,  
225 by a majority vote, a plan for such acquisition, assumption, or  
226 sale on terms that are mutually agreed upon. The plan must  
227 include:

228 (a) The names and types of financial institutions involved.  
229 (b) A statement setting forth the material terms of the  
230 proposed acquisition, assumption, or sale, including the plan  
231 for disposition of all assets and liabilities not subject to the  
232 plan.

23-00513C-22

20221680\_\_

233 (c) A provision for liquidation, if applicable, of the  
 234 transferring financial institution upon execution of the plan,  
 235 or a provision setting forth the business plan for the continued  
 236 operation of each financial institution after the execution of  
 237 the plan.

238 (d) A statement that the entire transaction is subject to  
 239 written approval of the office and approval of the members or  
 240 stockholders of the transferring financial institution.

241 (e) If a stock financial institution is the transferring  
 242 financial institution and the proposed sale is not for cash, a  
 243 clear and concise statement that dissenting stockholders of the  
 244 institution are entitled to the rights set forth in s. 658.44(4)  
 245 and (5).

246 (f) The proposed effective date of the acquisition,  
 247 assumption, or sale and such other information and provisions as  
 248 necessary to execute the transaction or as required by the  
 249 office.

250 (3)~~(2)~~ APPROVAL OF OFFICE.—Following approval by the board  
 251 of directors of each participating financial institution, the  
 252 plan, together with certified copies of the authorizing  
 253 resolutions adopted by the boards and a completed application  
 254 with a nonrefundable filing fee, must be forwarded to the office  
 255 for approval or disapproval. The office shall approve the plan  
 256 of acquisition, assumption, or sale if it appears that:

257 (a) The resulting financial entity or entities would have  
 258 an adequate capital structure in relation to their activities  
 259 and their deposit liabilities;

260 (b) The plan is fair to all parties; and

261 (c) The plan is not contrary to the public interest.

23-00513C-22

20221680\_\_

262  
 263 If the office disapproves the plan, it shall state its  
 264 objections and give the parties an opportunity to amend the plan  
 265 to overcome such objections.

266 (4)~~(3)~~ VOTE OF MEMBERS OR STOCKHOLDERS.—If the office  
 267 approves the plan, it may be submitted to the members or  
 268 stockholders of the transferring financial institution at an  
 269 annual meeting or at a special meeting called to consider such  
 270 action. Upon a majority vote of the total number of votes  
 271 eligible to be cast or, in the case of a credit union, a  
 272 majority vote of the members present at the meeting, the plan is  
 273 adopted.

274 (5)~~(4)~~ ADOPTED PLAN; CERTIFICATE; ABANDONMENT.—

275 (a) If the plan is adopted by the members or stockholders  
 276 of the transferring financial institution, the president or vice  
 277 president and the cashier, manager, or corporate secretary of  
 278 such institution shall submit the adopted plan to the office,  
 279 together with a certified copy of the resolution of the members  
 280 or stockholders approving it.

281 (b) Upon receipt of the certified copies and evidence that  
 282 the participating financial institutions have complied with all  
 283 applicable state and federal law and rules, the office shall  
 284 certify, in writing, to the participants that the plan has been  
 285 approved.

286 (c) Notwithstanding approval of the members or stockholders  
 287 or certification by the office, the board of directors of the  
 288 transferring financial institution may abandon such a  
 289 transaction without further action or approval by the members or  
 290 stockholders, subject to the rights of third parties under any

23-00513C-22 20221680\_\_

291 contracts relating thereto.

292 ~~(6)(5)~~ FEDERALLY CHARTERED OR OUT-OF-STATE INSTITUTION AS A

293 PARTICIPANT.—If one of the participants in a transaction under

294 this section is a federally chartered financial institution or

295 an out-of-state financial institution, all participants must

296 also comply with requirements imposed by federal and other state

297 law for the acquisition, assumption, or sale and provide

298 evidence of such compliance to the office as a condition

299 precedent to the issuance of a certificate authorizing the

300 transaction; however, if the purchasing or assuming financial

301 institution is a federal or out-of-state state-chartered

302 financial institution and the transferring state financial

303 entity will be liquidated, approval of the office is not

304 required.

305 ~~(7)(6)~~ STOCK INSTITUTION ACQUIRING MUTUAL INSTITUTION.—A

306 mutual financial institution may not sell 50 percent or more ~~all~~

307 ~~or substantially all~~ of its assets to a stock financial

308 institution until it has first converted into a capital stock

309 financial institution in accordance with s. 665.033(1) and (2).

310 For this purpose, references in s. 665.033(1) and (2) to

311 associations also refer to credit unions but, in the case of a

312 credit union, the provision concerning proxy statements does not

313 apply.

314 Section 7. Paragraph (c) of subsection (3) of section

315 655.50, Florida Statutes, is amended to read:

316 655.50 Florida Control of Money Laundering and Terrorist

317 Financing in Financial Institutions Act.—

318 (3) As used in this section, the term:

319 (c) “Financial institution” has the same meaning as in s.

23-00513C-22 20221680\_\_

320 655.005(1)(i), excluding an international representative office,

321 an international administrative office, or a qualified limited

322 service affiliate means a financial institution, as defined in

323 31 U.S.C. s. 5312, as amended, including a credit card bank,

324 located in this state.

325 Section 8. Present subsections (2) through (8) of section

326 657.021, Florida Statutes, are redesignated as subsections (3)

327 through (9), respectively, and a new subsection (2) is added to

328 that section, to read:

329 657.021 Board of directors; executive committee

330 responsibilities; oaths; reports to the office.—

331 (2) Within the 30 days following the annual meeting or any

332 other meeting at which any director, officer, member of the

333 supervisory or audit committee, member of the credit committee,

334 or credit manager is elected or appointed, the credit union

335 shall submit to the office the names and residence addresses of

336 the elected or appointed person or persons on a form adopted by

337 the commission and provided by the office.

338 Section 9. Subsection (6) of section 657.028 is repealed.

339 Section 10. Present subsections (20) through (24) of

340 section 658.12, Florida Statutes, are redesignated as

341 subsections (21) through (25), respectively, and a new

342 subsection (20) is added to that section, to read:

343 658.12 Definitions.—Subject to other definitions contained

344 in the financial institutions codes and unless the context

345 otherwise requires:

346 (20) “Target market” means the group of clients or

347 potential clients from whom:

348 (a) A bank or proposed bank expects to draw deposits and to

23-00513C-22 20221680\_\_

349 whom the bank or proposed bank focuses or intends to focus its  
350 marketing efforts; or

351 (b) A trust company, a trust department of a bank or  
352 association, a proposed trust company, or a proposed trust  
353 department of a bank or an association expects to draw its  
354 fiduciary accounts and to whom the trust company, the trust  
355 department of a bank or association, the proposed trust company,  
356 or the proposed trust department of a bank or association  
357 focuses or intends to focus its marketing efforts.

358 Section 11. Paragraphs (b) and (c) of subsection (1) of  
359 section 658.20, Florida Statutes, are amended to read:

360 658.20 Investigation by office.—

361 (1) Upon the filing of an application, the office shall  
362 make an investigation of:

363 (b) The need for bank or trust facilities or additional  
364 bank or trust facilities, as the case may be, in the primary  
365 service area where the proposed bank or trust company is to be  
366 located or for the target market that the bank or trust company  
367 intends to engage with in business.

368 (c) The ability of the primary service area or target  
369 market to support the proposed bank or trust company and all  
370 other existing bank or trust facilities that serve the same  
371 primary service area or target market in the primary service  
372 area.

373 Section 12. Subsections (1) and (4) of section 658.21,  
374 Florida Statutes, are amended to read:

375 658.21 Approval of application; findings required.—The  
376 office shall approve the application if it finds that:

377 (1) Local and target market conditions indicate reasonable

23-00513C-22 20221680\_\_

378 promise of successful operation for the proposed state bank or  
379 trust company. In determining whether an applicant meets the  
380 requirements of this subsection, the office shall consider all  
381 materially relevant factors, including:

382 (a) The purpose, objectives, and business philosophy of the  
383 proposed state bank or trust company.

384 (b) The projected financial performance of the proposed  
385 bank or trust company.

386 (c) The feasibility of the proposed bank or trust company,  
387 as stated in the business plan, particularly with respect to  
388 asset and liability growth and management.

389 (4) The proposed officers have sufficient financial  
390 institution experience, ability, standing, and reputation and  
391 the proposed directors have sufficient business experience,  
392 ability, standing, and reputation to indicate reasonable promise  
393 of successful operation, and none of the proposed officers or  
394 directors has been convicted of, or pled guilty or nolo  
395 contendere to, any violation of s. 655.50, relating to the  
396 control of money laundering and terrorist financing; chapter  
397 896, relating to offenses related to financial institutions; or  
398 similar state or federal law. At least two of the proposed  
399 directors who are not also proposed officers must have had at  
400 least 1 year of direct experience as an executive officer,  
401 regulator, or director of a financial institution within the 5  
402 years before the date of the application. However, if the  
403 applicant demonstrates that at least one of the proposed  
404 directors has very substantial experience as an executive  
405 officer, director, or regulator of a financial institution more  
406 than 5 years before the date of the application, the office may

23-00513C-22 20221680\_\_

407 modify the requirement and allow the applicant to have only one  
 408 director who has direct financial institution experience within  
 409 the last 5 years. The proposed president or chief executive  
 410 officer must have had at least 1 year of direct experience as an  
 411 executive officer, director, or regulator of a financial  
 412 institution ~~within the last 5 years.~~

413 Section 13. Present subsections (2), (3), and (4) of  
 414 section 658.28, Florida Statutes, are redesignated as  
 415 subsections (3), (4), and (5), respectively, and a new  
 416 subsection (2) is added to that section, to read:

417 658.28 Acquisition of control of a bank or trust company.—  
 418 (2) If a person or a group of persons, directly or  
 419 indirectly, acquires a controlling interest in a state bank or  
 420 state trust company, as contemplated by this section, through  
 421 probate or trust, the person or group of persons shall notify  
 422 the office within 90 days after acquiring such an interest. Such  
 423 an interest does not give rise to a presumption of control until  
 424 the person or group of persons votes the shares or the office  
 425 has issued a certificate of approval in response to an  
 426 application pursuant to subsection (1).

427 Section 14. Present paragraphs (a), (b), and (c) of  
 428 subsection (11) of section 658.2953, Florida Statutes, are  
 429 redesignated as paragraphs (b), (c), and (d), respectively, and  
 430 a new paragraph (a) is added to that subsection, to read:

431 658.2953 Interstate branching.—  
 432 (11) DE NOVO INTERSTATE BRANCHING ~~BY STATE BANKS.~~  
 433 (a) As used in this subsection, the term "de novo branch"  
 434 means a branch of a bank which is originally established by the  
 435 bank as a branch and does not become a branch of such bank as a

23-00513C-22 20221680\_\_

436 result of:  
 437 1. The bank's acquisition of another bank or of a branch of  
 438 another bank; or  
 439 2. The conversion, merger, or consolidation of any bank or  
 440 branch.

441 Section 15. Paragraph (d) of subsection (1) of section  
 442 662.1225, Florida Statutes, is amended to read:

443 662.1225 Requirements for a family trust company, licensed  
 444 family trust company, or foreign licensed family trust company.—  
 445 (1) A family trust company or a licensed family trust  
 446 company shall maintain:  
 447 (d) A deposit account with:  
 448 1. A bank located in the United States and insured by the  
 449 Federal Deposit Insurance Corporation; or  
 450 2. A credit union located in the United States and insured  
 451 by the National Credit Union Administration ~~with a state-~~  
 452 ~~chartered or national financial institution that has a principal~~  
 453 ~~or branch office in this state.~~

454 Section 16. Subsection (1) of section 662.128, Florida  
 455 Statutes, is amended to read:  
 456 662.128 Annual renewal.—  
 457 (1) ~~Within 45 days after the end of each calendar year,~~ A  
 458 family trust company, licensed family trust company, or foreign  
 459 licensed family trust company shall file an ~~its~~ annual renewal  
 460 application with the office on an annual basis no later than 45  
 461 days after the anniversary of the filing of either the initial  
 462 application or the prior year's renewal application.

463 Section 17. Subsection (1) of section 663.07, Florida  
 464 Statutes, is amended to read:

23-00513C-22

20221680\_\_

465 663.07 Asset maintenance or capital equivalency.—  
 466 (1) Each international bank agency and international branch  
 467 shall:  
 468 (a) Maintain with one or more banks insured by the Federal  
 469 Deposit Insurance Corporation and located within the United  
 470 States in this state, in such amounts as the office specifies,  
 471 evidence of dollar deposits or investment securities of the type  
 472 that may be held by a state bank for its own account pursuant to  
 473 s. 658.67. The aggregate amount of dollar deposits and  
 474 investment securities for an international bank agency or  
 475 international branch shall, at a minimum, equal the greater of:  
 476 1. Four million dollars; or  
 477 2. Seven percent of the total liabilities of the  
 478 international bank agency or international branch excluding  
 479 accrued expenses and amounts due and other liabilities to  
 480 affiliated branches, offices, agencies, or entities; or  
 481 (b) Maintain other appropriate reserves, taking into  
 482 consideration the nature of the business being conducted by the  
 483 international bank agency or international branch.  
 484  
 485 The commission shall prescribe, by rule, the deposit,  
 486 safekeeping, pledge, withdrawal, recordkeeping, and other  
 487 arrangements for funds and securities maintained under this  
 488 subsection. The deposits and securities used to satisfy the  
 489 capital equivalency requirements of this subsection shall be  
 490 held, to the extent feasible, in one or more state or national  
 491 banks located in this state or in a federal reserve bank.  
 492 Section 18. Present subsections (4), (5), and (6) of  
 493 section 663.532, Florida Statutes, are redesignated as

Page 17 of 21

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

23-00513C-22

20221680\_\_

494 subsections (5), (6), and (7), respectively, a new subsection  
 495 (4) is added to that section, and paragraphs (i) and (j) of  
 496 subsection (1) of that section are amended, to read:  
 497 663.532 Qualification.—  
 498 (1) To qualify as a qualified limited service affiliate  
 499 under this part, a proposed qualified limited service affiliate  
 500 must file a written notice with the office, in the manner and on  
 501 a form prescribed by the commission. Such written notice must  
 502 include:  
 503 (i) A declaration under penalty of perjury signed by the  
 504 executive officer, manager, or managing member of the proposed  
 505 qualified limited service affiliate that, to the best of his or  
 506 her knowledge:  
 507 1. No employee, representative, or agent provides, or will  
 508 provide, banking services; promotes or sells, or will promote or  
 509 sell, investments; or accepts, or will accept, custody of  
 510 assets.  
 511 2. No employee, representative, or agent acts, or will act,  
 512 as a fiduciary in this state, which includes, but is not limited  
 513 to, accepting the fiduciary appointment, executing the fiduciary  
 514 documents that create the fiduciary relationship, or making  
 515 discretionary decisions regarding the investment or distribution  
 516 of fiduciary accounts.  
 517 3. The jurisdiction of the international trust entity or  
 518 its offices, subsidiaries, or any affiliates that are directly  
 519 involved in or facilitate the financial services functions,  
 520 banking, or fiduciary activities of the international trust  
 521 entity is not listed on the Financial Action Task Force's list  
 522 of High-Risk Jurisdictions subject to a Call for Action or list

Page 18 of 21

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

23-00513C-22 20221680\_\_

523 ~~of Jurisdictions under Increased Monitoring Force Public~~  
 524 ~~Statement or on its list of jurisdictions with deficiencies in~~  
 525 ~~anti money laundering or counterterrorism.~~

526 (j) For each international trust entity that the proposed  
 527 qualified limited service affiliate will provide services for in  
 528 this state, the following:

- 529 1. The name of the international trust entity;
- 530 2. A list of the current officers and directors of the  
 531 international trust entity;
- 532 3. Any country where the international trust entity is  
 533 organized or authorized to do business;
- 534 4. The name of the home-country regulator;
- 535 5. Proof that the international trust entity has been  
 536 authorized by charter, license, or similar authorization by its  
 537 home-country regulator to engage in trust business;
- 538 6. Proof that the international trust entity lawfully  
 539 exists and is in good standing under the laws of the  
 540 jurisdiction where it is chartered, licensed, or organized;
- 541 7. A statement that the international trust entity is not  
 542 in bankruptcy, conservatorship, receivership, liquidation, or in  
 543 a similar status under the laws of any country;
- 544 8. Proof that the international trust entity is not  
 545 operating under the direct control of the government or the  
 546 regulatory or supervisory authority of the jurisdiction of its  
 547 incorporation, through government intervention or any other  
 548 extraordinary actions, and confirmation that it has not been in  
 549 such a status or under such control at any time within the prior  
 550 3 years;
- 551 9. Proof and confirmation that the proposed qualified

23-00513C-22 20221680\_\_

552 limited service affiliate is affiliated with the international  
 553 trust entities provided in the notice; and

554 10. Proof that the jurisdictions where the international  
 555 trust entity or its offices, subsidiaries, or any affiliates  
 556 that are directly involved in or that facilitate the financial  
 557 services functions, banking, or fiduciary activities of the  
 558 international trust entity are not listed on the Financial  
 559 Action Task Force's list of High-Risk Jurisdictions subject to a  
 560 Call for Action or list of Jurisdictions under Increased  
 561 Monitoring Force Public Statement or on its list of  
 562 jurisdictions with deficiencies in anti money laundering or  
 563 counterterrorism.

564  
 565 The proposed qualified limited service affiliate may provide  
 566 additional information in the form of exhibits when attempting  
 567 to satisfy any of the qualification requirements. All  
 568 information that the proposed qualified limited service  
 569 affiliate desires to present to support the written notice must  
 570 be submitted with the notice.

571 (4) The qualified limited service affiliate shall suspend  
 572 the permissible activities provided in s. 663.531 relating to a  
 573 specific jurisdiction if the qualified limited service affiliate  
 574 becomes aware that the jurisdiction of an international trust  
 575 entity served by the qualified limited service affiliate is  
 576 included on the Financial Action Task Force's list of High-Risk  
 577 Jurisdictions subject to a Call for Action or list of  
 578 Jurisdictions under Increased Monitoring. Suspensions under this  
 579 subsection must remain in effect until the jurisdiction is  
 580 removed from the Financial Action Task Force's list of High Risk

23-00513C-22

20221680\_\_

581 Jurisdictions subject to a Call for Action or list of  
582 Jurisdictions under Increased Monitoring.

583 Section 19. Paragraph (a) of subsection (5) of section  
584 736.0802, Florida Statutes, is amended to read:

585 736.0802 Duty of loyalty.—

586 (5) (a) An investment by a trustee authorized by lawful  
587 authority to engage in trust business, as defined in s.  
588 658.12(21) ~~s. 658.12(20)~~, in investment instruments, as defined  
589 in s. 660.25(6), that are owned or controlled by the trustee or  
590 its affiliate, or from which the trustee or its affiliate  
591 receives compensation for providing services in a capacity other  
592 than as trustee, is not presumed to be affected by a conflict  
593 between personal and fiduciary interests provided the investment  
594 otherwise complies with chapters 518 and 660 and the trustee  
595 complies with the requirements of this subsection.

596 Section 20. For the purpose of incorporating the amendment  
597 made by this act to section 658.20, Florida Statutes, in a  
598 references thereto, subsection (1) of section 658.165, Florida  
599 Statutes, is reenacted to read:

600 658.165 Banker's banks; formation; applicability of  
601 financial institutions codes; exceptions.—

602 (1) If authorized by the office, a corporation may be  
603 formed under the laws of this state for the purpose of becoming  
604 a banker's bank. An application for authority to organize a  
605 banker's bank is subject to ss. 658.19, 658.20, and 658.21,  
606 except that s. 658.20(1)(b) and (c) and the minimum stock  
607 ownership requirements for the organizing directors provided in  
608 s. 658.21(2) do not apply.

609 Section 21. This act shall take effect July 1, 2022.



1/27/22

Meeting Date

Appropriations

Committee

# The Florida Senate APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

SB 1680

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Commissioner Russell Weigel**

Phone

Address **101 E Gaines St**

Email **Russell.Weigel@flofr.gov**

Street

**Tallahassee**

**FL**

**32399**

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

### PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

**Office of Financial Regulation**

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

*While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)*

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

S-001 (08/10/2021)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Subcommittee on  
Transportation,  
Tourism, and Economic Development,  
*Chair*  
Appropriations  
Appropriations Subcommittee on Criminal  
and Civil Justice  
Criminal Justice  
Ethics and Elections  
Transportation

**SENATOR GEORGE B. GAINER**  
2nd District

January 24, 2022

Dear Chair Stargel,

I am respectfully requesting a formal excusal for the upcoming Appropriations meeting on January 27th. I regret that I will be unable to attend as I am still recovering from surgery.

If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5002.

Thank you,

A handwritten signature in blue ink that reads "George B. Gainer".

Senator George Gainer  
District 2

A handwritten signature in black ink that reads "Kurt Stargel".

### REPLY TO:

- 840 West 11th Street, Panama City, Florida 32401 (850) 747-5454
- Northwest Florida State College, 100 East College Boulevard, Building 330, Rooms 105 and 112, Niceville, Florida 32578 (850) 747-5454
- 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR BEN ALBRITTON**

26th District

January 26, 2022

Chair Stargel,

I would formally like to request to be excused from Appropriations Committee on January 27<sup>th</sup>.  
Your consideration is greatly appreciated.

A handwritten signature in blue ink that reads "Ben Albritton".

Ben Albritton, Senate District 26

A handwritten signature in black ink that reads "Wilton Simpson".

**REPLY TO:**

- 150 North Central Avenue, Bartow, Florida 33830 (863) 534-0073
- 410 Taylor Street, Suite 106, Punta Gorda, Florida 33950 (941) 575-5717
- 314 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore

# CourtSmart Tag Report

Room: KB 412

Case No.: -

Type:

Caption: Senate Appropriations Committee

Judge:

Started: 1/27/2022 11:34:44 AM

Ends: 1/27/2022 12:57:29 PM

Length: 01:22:46

11:34:45 AM Sen. Stargel (Chair)  
11:35:58 AM S 838  
11:36:05 AM Sen. Wright  
11:37:12 AM Am. 865484  
11:37:28 AM Sen. Wright  
11:37:36 AM Am. 814112  
11:37:42 AM Sen. Wright  
11:38:00 AM Chase Mitchell, State Fire Marshal (waives in support)  
11:38:00 AM Am. 865484 (cont.)  
11:38:29 AM S 838 (cont.)  
11:38:46 AM Meredith Stanfield, Florida Professional Firefighters (waives in support)  
11:38:47 AM Ray Colburn, Chief, Florida Fire Chiefs' Association (waives in support)  
11:39:01 AM Sen. Wright  
11:39:48 AM S 534  
11:40:05 AM Sen. Harrell  
11:41:02 AM Sen. Book  
11:41:29 AM Sen. Stargel  
11:41:39 AM Sen. Harrell  
11:42:30 AM S 1680  
11:42:37 AM Sen. Gruters  
11:43:51 AM S 544  
11:44:20 AM PCS 455298  
11:44:44 AM Sen. Boyd  
11:46:12 AM Lauren Jackson, Seminole County Sheriff's Office (waives in support)  
11:46:21 AM Matthew Holliday, NCH Healthcare System (waives in support)  
11:46:26 AM Phillip Suderman, Americans for Prosperity (waives in support)  
11:46:39 AM Sen. Boyd  
11:47:34 AM S 406  
11:47:56 AM Sen. Berman  
11:48:46 AM Martha Edenfield, Probate and Trust Law Section, The Florida Bar; The Real Property (waives in support)  
11:48:51 AM Aimee Diaz Lyon, Business Law Section, The Florida Bar (waives in support)  
11:49:01 AM Sen. Berman  
11:49:52 AM S 350  
11:49:57 AM Sen. Bean  
11:50:55 AM Larry Williams, Chesapeake Utilities Corporation (waives in support)  
11:50:57 AM Victoria Price, Florida Public Utilities Corporation; Chesapeake Utilities Corporation (waives in support)  
11:51:05 AM Sen. Bean  
11:51:51 AM S 454  
11:51:56 AM Sen. Perry  
11:52:26 AM Melinda Coonrod, Florida Commission on Offender Review (waives in support)  
11:52:33 AM Sen. Perry  
11:53:33 AM S 498  
11:53:36 AM Sen. Baxley  
11:54:27 AM Theresa Bulger, Florida Academy of Audiologists; Coalition for Spoken Languages; FLAGB; Clarke School; Sertoma Foundation (waives in support)  
11:54:38 AM Brita Lincoln, Florida PTA (waives in support)  
11:54:44 AM Rowan Woods-Moseley  
11:54:46 AM Ronald Woods-Moseley  
11:54:50 AM Mary-Lynn Cullery (waives in support)  
11:54:59 AM Trina Woods-Moseley  
11:57:07 AM Sen. Bean  
11:58:20 AM Sen. Baxley

11:58:23 AM Sen. Gibson  
12:00:11 PM Sen. Brandes  
12:02:22 PM Sen. Stewart  
12:03:00 PM Sen. Stargel  
12:03:40 PM Sen. Baxley  
12:05:59 PM S 282  
12:06:09 PM Sen. Rouson  
12:06:19 PM Am. 388896  
12:08:09 PM Natalie Kelly, Florida Association of Managing Entities (waives in support)  
12:08:14 PM Amy Farrington (waives in support)  
12:08:27 PM Sen. Rouson  
12:08:38 PM S 282 (cont.)  
12:08:43 PM Joni Hunt, Halifax Health (waives in support)  
12:08:46 PM Natalie Kelly, Florida Association of Managing Entities (waives in support)  
12:08:50 PM Matthew Holliday, NCH Healthcare System (waives in support)  
12:08:56 PM Sean Burnfin, Steering Committee on Problem-Solving Courts, State Courts System (waives in support)  
12:09:02 PM Clay Meenan, Florida Hospital Association (waives in support)  
12:09:07 PM Brita Lincoln, Florida PTA (waives in support)  
12:09:15 PM Sen. Book  
12:09:56 PM Sen. Rouson  
12:11:07 PM S 434  
12:11:13 PM Sen. Hooper  
12:11:33 PM Tim Parson, Florida Attractions Association; Florida Chamber of Commerce (waives in support)  
12:11:44 PM Monte Stevens, AAA (waives in support)  
12:11:48 PM Samantha Padgett, Florida Restaurant and Lodging Association (waives in support)  
12:11:53 PM Adam Basford, Associated Industries of Florida (waives in support)  
12:11:59 PM Bob McKee, Florida Association of Counties (waives in support)  
12:12:06 PM Phillip Suderman, Americans for Prosperity (waives in opposition)  
12:12:12 PM Sen. Hooper  
12:13:07 PM S 494  
12:13:20 PM PCS 602302  
12:13:29 PM Sen. Hutson  
12:14:40 PM Am. 476130  
12:14:47 PM Sen. Hutson  
12:15:22 PM S 494 (cont.)  
12:15:32 PM Jessica Crawford, Florida Fish and Wildlife Commission (waives in support)  
12:15:37 PM Travis Moore, Defenders of Wildlife (waives in support)  
12:15:48 PM Sen. Pizzo  
12:16:24 PM Sen. Hutson  
12:17:14 PM S 468  
12:17:23 PM Sen. Perry  
12:18:10 PM Am. 571360  
12:18:24 PM Sen. Brandes  
12:23:12 PM Richard Reeves, Florida Association of Insurance Agents (waives in support)  
12:23:18 PM Gina Wilson, Chief Operating Officer, Florida Hurricane Catastrophe Fund  
12:29:42 PM Adam Basford  
12:30:27 PM Paul Handerhan, Federal Association for Insurance Reform  
12:34:37 PM Carolyn Johnson, Florida Chamber of Commerce  
12:36:33 PM Sen. Brandes  
12:36:46 PM C. Johnson  
12:37:36 PM Sen. Brandes  
12:37:53 PM C. Johnson  
12:38:12 PM Sen. Albritton  
12:39:11 PM C. Johnson  
12:39:59 PM Sen. Gibson  
12:40:15 PM C. Johnson  
12:40:49 PM Sen. Pizzo  
12:41:01 PM C. Johnson  
12:41:05 PM Sen. Pizzo  
12:41:08 PM C. Johnson  
12:41:12 PM Sen. Powell  
12:41:49 PM G. Wilson

12:43:12 PM Sen. Brandes  
12:43:30 PM G. Wilson  
12:46:37 PM Sen. Brandes  
12:46:41 PM G. Wilson  
12:47:11 PM Sen. Brandes  
12:47:20 PM G. Wilson  
12:47:21 PM Sen. Brandes  
12:47:31 PM G. Wilson  
12:48:35 PM Sen. Brandes  
12:49:02 PM G. Wilson  
12:49:51 PM Sen. Stargel  
12:50:03 PM Sen. Brandes  
12:50:11 PM Sen. Pizzo  
12:51:20 PM Sen. Brandes  
12:55:19 PM S 468 (cont.)  
12:55:35 PM Paul Handerhan, Federal Association for Insurance Reform (waives in support)  
12:55:36 PM Greg Black, R Street Institute (waives in support)  
12:55:40 PM Lumar Taylor, State Board of Administration  
12:55:49 PM Sen. Perry  
12:56:58 PM Sen. Albritton  
12:57:19 PM Sen. Stewart