The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Detert, Chair
Senator Abruzzo, Vice Chair

MEETING DATE: Monday, March 24, 2014
TIME: 4:00 —6:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Detert, Chair; Senator Abruzzo, Vice Chair; Senators Bean, Hays, Hukill, Margolis, Richter, Ring, Simpson, Stargel, and Thompson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 1676** Appropriations (Identical H 7153)	Internal Revenue Code; Adopting the 2014 version of the code, etc. CM 03/24/2014	
2	**SB 1216** Latvala (Compare H 7095)	Professional Sports Facilities; Authorizing a distribution for an applicant that has been approved by the Legislature and certified by the Department of Economic Opportunity under specified provisions; providing for municipalities and counties to expend an increased portion of local government half-cent sales tax revenues to reimburse the state as required by a contract; requiring the Department of Economic Opportunity to screen applicants for state funding for sports development; revising the requirements for an applicant to be certified to receive state funding for a facility for a spring training franchise, etc. CM 03/24/2014 AP	
3	**SB 1480** Benacquisto (Similar H 1227)	Microfinance; Creating the “Florida Microfinance Act”; establishing the Microfinance Loan Program; requiring the Department of Economic Opportunity to contract with at least one entity to administer the program; requiring applicants for funds from the Microfinance Loan Program to meet certain qualifications; requiring the department to be guided by the 5-year statewide strategic plan and to advertise and promote the loan program; establishing the Microfinance Guarantee Program, etc. CM 03/24/2014 ATD AP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 1524** Thrasher (Identical H 7085, Compare H 7087, Link S 1526)	Security of Confidential Personal Information; Citing this act as the "Florida Information Protection Act of 2014"; repealing provisions relating to a breach of security concerning confidential personal information in third-party possession; requiring specified entities to take reasonable measures to protect and secure data containing personal information in electronic form; requiring notice to individuals of data security breaches in certain circumstances, etc. CM 03/24/2014 RC	
5	**SB 1010** Richter (Compare H 4017)	Cable and Video Services; Repealing provisions relating to reports required to be submitted to the Legislature by the Office of Program Policy Analysis and Government Accountability and the Department of Agricultural and Consumer Services on the status of competition in the cable and video service industry and the staffing requirements associated with consumer complaints related to video and cable certificateholders, respectively, etc. CU 03/11/2014 Favorable CM 03/24/2014	
6	**SB 374** Detert (Similar H 189)	Growth Management; Revising restrictions on an initiative or referendum process with regard to local comprehensive plan amendments and map amendments, etc. CA 03/11/2014 Favorable CM 03/24/2014 RC	
7	**CS/CS/SB 570** Judiciary / Banking and Insurance / Galvano (Compare CS/CS/H 321, H 471, CS/H 565, CS/H 805, S 462, CS/S 758, CS/S 1260)	Title Insurance; Specifying that a title insurer is liable for all of its unpaid losses and claims; specifying which state law governs the amount of the reserve when a title insurer transfers its domicile to this state; specifying that only a licensed and appointed agent or agency is authorized to sell title insurance; revising the application requirements for a title insurance agency license; limiting the remedies available for the breach of duty arising from a title insurance contract, etc. BI 02/04/2014 Fav/CS JU 03/11/2014 Fav/CS CM 03/24/2014	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 1142** Lee (Similar CS/H 1057, Compare H 1003, S 1136)	Ticket Sales; Providing enhanced criminal penalties for second and subsequent violations concerning fraudulent creation or possession of an admission ticket; providing criminal penalties for persons who commit such violations involving more than a specified number of tickets; prohibiting the purchase, sale, and transfer of certain multiuse tickets; prohibiting the sale and transfer of certain cards, wristbands, and media that access or are associated with multiuse tickets, etc. CM 03/24/2014 CJ AP	
9	**SB 1182** Brandes (Compare CS/H 771)	Secondary Metals Recyclers; Providing for a type two transfer of the regulation of secondary metals recyclers from the Department of Revenue to the Department of Agriculture and Consumer Services; authorizing investigators of the Department of Agriculture and Consumer Services to inspect regulated metals property and records of secondary metals recyclers; requiring that a secondary metals recycler maintain certain insurance coverage throughout the registration period; prohibiting a secondary metals recycler from purchasing or allowing any person to purchase certain metals on a Sunday, etc. CM 03/24/2014 AG AP	
10	**SB 1438** Bean (Identical H 1391, H 1419)	Qualified Television Loan Fund; Creating the Qualified Television Loan Fund; requiring the Department of Economic Opportunity to contract with a fund administrator; providing for the fund administrator's compensation and removal; providing qualified television content criteria; requiring the Auditor General to conduct an operational audit of the fund and the fund administrator, etc. CM 03/24/2014 ATD AP	
11	**CS/SB 898** Communications, Energy, and Public Utilities / Abruzzo (Compare H 803)	Communications Services Tax; Revising the definition of the term "sales price" to exclude charges for the sale of communications services between a franchisor and its franchisee; defining the term "franchisee", etc. CU 03/04/2014 Fav/CS CM 03/24/2014 AFT AP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Other Related Meeting Documents		

An electronic copy of the Appearance Request form is available to download from any Senate committee page on the Senate's website, www.flsenate.gov.

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 Commerce and Tourism

BILL: SB 1676

INTRODUCER: Appropriations Committee

SUBJECT: Internal Revenue Code

DATE: March 21, 2014 REVISED: ________ ________ ________ ________

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Babin	Kynoch		**AP SPB 7086 as introduced**
1.	Hrdlicka	Hrdlicka	CM	**Pre-meeting**

I. Summary:

SB 1676 updates Florida's corporate Income Tax Code by adopting the Internal Revenue Code as in effect on January 1, 2014.

The Revenue Estimating Conference (REC) estimates that this bill will not have a fiscal impact.

II. Present Situation:

Florida imposes a 5.5 percent tax on the taxable income of corporations and financial institutions doing business in Florida. The determination of taxable income for Florida tax purposes begins with the taxable income used for federal income tax purposes. This means that a corporation paying taxes in Florida receives the same treatment in Florida as is allowed in determining its federal taxable income.

Florida maintains this relationship with the federal Internal Revenue Code by each year adopting the federal Internal Revenue Code as it exists on January 1 of the year. By doing this, Florida adopts any changes that were made in the previous year to the determination of federal taxable income.

III. Effect of Proposed Changes:

The bill updates Florida's corporate Income Tax Code to reflect changes in the federal Internal Revenue Code.

The bill takes effect upon becoming a law and operates retroactively to January 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By adopting recent changes to the Internal Revenue Code, Florida provides ease of administration for Florida corporate taxpayers.

C. Government Sector Impact:

The REC estimates that SB 1676 will have no fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 220.03 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 the Committee on Appropriations

576-02575-14 20141676__

A bill to be entitled

An act relating to the Internal Revenue Code; amending s. 220.03, F.S.; adopting the 2014 version of the code; providing an effective date.

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

Section 1. Paragraph (n) of subsection (1) and paragraph (c) of subsection (2) of section 220.03, Florida Statutes, are amended to read:

220.03 Definitions.—

(1) SPECIFIC TERMS.—When used in this code, and when not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the following terms shall have the following meanings:

(n) “Internal Revenue Code” means the United States Internal Revenue Code of 1986, as amended and in effect on January 1, 2014 ~~2013~~, except as provided in subsection (3).

(2) DEFINITIONAL RULES.—When used in this code and neither otherwise distinctly expressed nor manifestly incompatible with the intent thereof:

(c) Any term used in this code has the same meaning as when used in a comparable context in the Internal Revenue Code and other statutes of the United States relating to federal income taxes, as such code and statutes are in effect on January 1, 2014 ~~2013~~. However, if subsection (3) is implemented, the meaning of a term shall be taken at the time the term is applied under this code.

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

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and operate retroactively to January 1, 2014.

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 Commerce and Tourism

BILL: SB 1216

INTRODUCER: Senator Latvala

SUBJECT: Professional Sports Facilities

DATE: March 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Askey	Hrdlicka	CM	**Pre-meeting**
2.			AP	

I. Summary:

SB 1216 creates the Sports Development program. The program allows for distributions to professional sports franchises, approved by the Legislature and approved by the Department of Economic Opportunity (DEO), up to a tiered annual cap of $3 million for the construction or improvement of a professional sports facility. Distributions can be up to 30 years for a potential maximum amount of $90 million per certified applicant. The total annual distributions for all certified applicants are capped at $13 million.

The bill allows the use of half-cent sales tax program revenue for a municipality or county to reimburse the state as required in the Sports Development program. The bill increases the amount that can be used to $3 million.

The bill requires the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA) to include a detailed analysis of the Sports Development program in the Economic Development Programs Evaluation beginning January 1, 2018, and for every 3 years thereafter.

The bill provides an exception in the certification process for an applicant to receive funding for a facility for the retention of a Major League Baseball spring training franchise. The bill provides that such an agreement can be signed at any time before the expiration of an existing agreement, as long as the applicant has never received state funding for the facility as a spring training facility and the facility was constructed before January 1, 2000.

II. Present Situation:

Professional Sports in Florida

Florida currently has 10 major professional sports teams. The oldest major professional sports team in the state is the Miami Dolphins football franchise of the National Football League. The

Dolphins franchise began in 1966 as an expansion team as part of the now-defunct American Football League. The newest major professional sports team in the state is the Orlando Lions (Orlando City Soccer Club) in Major League Soccer (MLS). The club will become the MLS's 21st franchise in 2015. Below is a summary table of information on major professional sports franchises in Florida:

Franchise	Sport	League	Year Founded	Facility	Facility Opened	County
Miami Dolphins	Football	NFL	1966	Sun Life Stadium	1987	Miami-Dade
Tampa Bay Buccaneers	Football	NFL	1976	Raymond James Stadium	1998	Hillsborough
Miami Heat	Basketball	NBA	1988	American Airlines Arena	1999	Miami-Dade
Orlando Magic	Basketball	NBA	1989	Amway Center	2010	Orange
Tampa Bay Lightening	Hockey	NHL	1992	Tampa Bay Times Forum	1996	Hillsborough
Florida Panthers	Hockey	NHL	1993	BB&T Center	1998	Broward
Miami Marlins	Baseball	MLB	1993	Marlins Park	2012	Miami-Dade
Jacksonville Jaguars	Football	NFL	1995	EverBank Field	1995	Duval
Tampa Bay Rays	Baseball	MLB	1998	Tropicana Field	1990, occupied by Rays since 1998	Pinellas
Orlando City Soccer Club/ "Lions"	Soccer	MLS	2015	Orlando City Stadium (mid-2015)	2015 (est.)	Orange and Osceola / Orange

In addition to the 10 major professional sports teams, Florida is also home to 33 Minor League franchises in various sports, three Arena Football League teams, and two NASCAR sanctioned tracks. MLB's Spring Training Grapefruit League is also based in Florida, with 15 teams claiming the state as their second home for preseason training and exhibition games.

State Incentives for Professional Sports Teams

Section 288.1162, F.S., provides the procedure by which professional sports franchises in Florida may be certified to receive state funding for the purpose of paying for the acquisition, construction, reconstruction, or renovation of a facility for a new or retained professional sports franchise. Local governments, non-profit, and for-profit entities may apply to the program.

The DEO is responsible for screening and certifying applicants for state funding. Applicants qualifying as new professional sports franchises must be a professional sports franchise that was not based in Florida prior to April 1, 1987. Applicants qualifying as retained professional sports

franchises must have had a league-authorized location in the state on or before December 31, 1976, and be continuously located at the location. The number of certified professional sports franchises, both new and retained, is limited to eight total franchises.

For both new and retained franchises, the DEO must confirm and verify that:

- A local government is responsible for the construction, management, or operation of the professional sports franchise facility, or holds title to the property where the facility is located;
- The applicant has a verified copy of a signed agreement with a new professional sports franchise for at least 10 years, or for 20 years in the case of a retained franchise;
- The applicant has a verified copy of the approval by the governing body of the NFL, MLB, NHL, or NBA authorizing the location of a new franchise in the state after April 1, 1987, for new professional sports franchises, or verified evidence of a league-authorized location in the state on or before December 31, 1976, for a retained professional sports franchise;
- The applicant has projections demonstrating a paid annual attendance of over 300,000 annually;
- The applicant has an independent analysis demonstrating that the amount of sales taxes generated by the use or operation of the facility will generate $2 million annually;
- The city or county where the facility is located has certified by resolution after a public hearing that the application serves a public purpose; and
- The applicant has demonstrated that it has provided or is capable of providing financial or other commitments of more than one-half of the costs incurred or related to the improvement or development of the facility.

Any applicant who meets the above mentioned criteria as verified by the DEO is eligible to receive monthly payments from the state of $166,667 for not more than 30 years,[1] for an annual payment totaling $2,000,004. The Department of Revenue (DOR) disburses the payments.

Further, payments may only be used for the public purposes of paying for the acquisition, construction, reconstruction, or renovation of a facility for a new or retained professional sports franchise; reimbursing associated costs for such activities; paying or pledging payments of debt service on bonds issued for such activities; funding debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to bonds issued for such activities; or refinancing the bonds. The state may only pursue recovery of funds if the Auditor General finds that the distributions were not expended as required by statute.

No facility may be certified more than once, and no sports franchise can be the basis for more than one certification unless the previous certification was withdrawn by the facility or invalidated by the DEO before any funds were disbursed under s. 212.20(6)(d), F.S.

As of January 8, 2013, there were eight certified new or retained professional sports franchise facilities in Florida. The facilities and the payment distribution for each are listed below:

[1] Section 212.20(6)(d)6.b., F.S.

Facility name	Certified entity	Franchise	First Payment	Final Payment	Total payments as of January 2014
Sun Life Stadium	Dolphins Stadium/ South Florida Stadium	Florida (Miami) Marlins[2]	06/1994	06/2023	$41,166,749
Everbank Field	City of Jacksonville	Jacksonville Jaguars	06/1994	05/2024	$39,333,412
Tropicana Field	City of St. Petersburg	Tampa Bay Rays	06/1995	06/2025	$37,166,741
Tampa Bay Times Forum	Tampa Bay Sports Authority	Tampa Bay Lightning	09/1995	08/2025	$36,833,407
BB&T Center	Broward County	Florida Panthers	08/1996	07/2026	$35,000,070
Raymond James Stadium	Hillsborough County	Tampa Bay Buccaneers	01/1997	12/2026	$34,166,729
American Airlines Arena	BPL, LTD	Miami Heat	03/1998	03/2028	$31,666,730
Amway Center	City of Orlando	Orlando Magic	02/2008	01/2038	$12,000,024

(*Information from the Department of Economic Opportunity and Department of Revenue*)

A local government may be certified to receive funding for the purpose of acquiring, constructing, reconstructing, or renovating a spring training facility.[3] There are 10 certified local governments for spring training facilities under s. 288.11621, F.S. The entities receive up to $41,667 monthly for up to 30 years.

In 2013, the Legislature approved a new funding program for spring training facilities. Section 288.11631, F.S., provides a facility used by a single spring training franchise a distribution up to $55,555 per month for up to 30 years; and a facility used by more than one franchise can receive up to $111,110 monthly for up to 37.5 years.[4] Distributions under this new program may not begin until July 1, 2016.

Monthly sales tax distributions ($166,667 for up to 300 months) also fund the professional golf hall of fame.[5] The International Game Fish Association World Center facility received a lump-sum payment ($999,996) after it was certified in 2000 and received a monthly distribution ($83,333 for up to 168 months) which ended in Fiscal Year 2013-14.[6]

[2] The Marlins franchise relocated from Sun Life Stadium to Marlins Park for the 2012 baseball season.
[3] Sections 288.11621 and 288.11631, F.S.
[4] Chapter 2013-42, L.O.F. Section 212.20(6)(d)6.e., F.S.
[5] Sections 212.20(6)(d)6.c. and 288.1168, F.S.
[6] Sections 212.20(6)(d)6.d. and 288.1169, F.S.

Sales and Use Tax

Chapter 212, F.S., contains the state's statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. A 6 percent sales and use tax is levied on tangible personal property and a limited number of services. The statutes currently provide for more than 200 different exemptions.

Local Government Half-cent Sales Tax Program

The Local Government Half-cent Sales Tax Program is the largest source of revenue received by local governments among the state's shared revenue sources. The program primarily serves to provide ad valorem and utility tax relief, in addition to providing eligible local governments revenues for local programs.[7] A local government may also pledge funds from the program for payment of principal and interest on any capital project.[8]

Moneys for the program are collected pursuant to the provisions of ch. 212, F.S. The program distributes funds to eligible local governments through three distributions of sales tax revenues remitted by a sales tax dealer within the eligible participating county.[9] The *ordinary* distribution operates by a transfer of 8.814 percent of net sales tax proceeds remitted by a sales tax dealer in the eligible local government's jurisdiction to the Local Government Half-cent Sales Tax Clearing Trust Fund (trust fund).[10] The *emergency* and *supplemental* distributions operate by a transfer of 0.095 percent of net sales tax proceeds to the trust fund, and are available only to those counties that meet certain fiscal eligibility requirements, or have an inmate population of greater than 7 percent of the total county population.[11] An additional, separate distribution from the trust fund is available to qualifying fiscally constrained counties.[12]

If a majority of the governing body of a county government and a majority of the members of the governing authority of municipalities representing at least 50 percent of the county's municipal population adopt an ordinance, up to $2 million annually of the program funds allocated to that county may be used for the following purposes:[13, 14]

- Funding a facility certified as a new or retained professional sports franchise under s. 288.1162, F.S., or a facility certified as a spring training franchise under s. 288.11621, F.S.; and
- Funding an applicant certified as a "motorsports entertainment complex" under s. 288.1171, F.S.

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[7] Office of Economic and Demographic Research, *2013 Local Government Financial Information Handbook*, (December 2013), available at: http://edr.state.fl.us/Content/local-government/reports/lgfih13.pdf, (last visited on March 6, 2014).
[8] Section 218.64, F.S.
[9] Section 218.63, F.S., defines eligibility requirements. In order to participate in the program, a local government must meet the revenue sharing eligibility requirements specified in s. 218.23, F.S. See also s. 218.62, F.S.
[10] Section 212.20(6)(d)2., F.S.
[11] Section 212.20(6)(d)3., F.S.
[12] Section 218.67, F.S.
[13] Section 218.64(3)(b), F.S.
[14] If a county and municipal government's governing body support using program funds to support funding of professional sports, spring training, or motorsports entertainment complexes, their distribution for general use is provided *after* funding is provided for these projects.

III. Effect of Proposed Changes:

Sports Development Program

Section 4 creates s. 288.11625, F.S., which establishes the Sports Development program. The program is administered by the DEO which is responsible for screening applicants for state funding under s. 212.20, F.S. The purpose of the program is to provide state funding to a professional sports franchise of the National Football League (NFL), the National Hockey League (NHL), the National Basketball Association (NBA), the National or American Leagues of Major League Baseball (MLB), Major League Soccer (MLS), or the National Association for Stock Car Auto Racing (NASCAR) for the construction, reconstruction, renovation, or improvement of a facility. The facility must be the responsibility of, or on land owned by, a unit of local government. The bill excludes any portion of a facility used for transient lodging.

The DEO shall complete evaluations of applications within 60 days and notify the applicant if the application has been recommended to the Legislature or denied. Applications can be submitted between June 1 and November 1 annually. By February 1 of each year, the DEO will rank the recommended applications and present them to the Legislature for approval. Applications that are approved by the Legislature and subsequently certified by the DEO do not need to be approved by the Legislature each year to receive funding. Certified applications remain certified for the duration of the agreement between the unit of local government that is responsible for the facility or owns the property the facility is on and the beneficiary of the state funding or 30 years, whichever is less.

The bill requires the DEO, prior to recommendation of an application, to verify that:

- The applicant or beneficiary is responsible for the improvements to the facility and has obtained at least three bids on the project;
- If the applicant is the beneficiary that the facility is on land owned by local government;
- The local government, in whose jurisdiction the facility will be located, has an exclusive intent agreement to negotiate with the beneficiary in this state;
- The local government supports the application for state funds, verified by adoption of a resolution that the project serves a public purpose;
- The applicant or beneficiary has not defaulted or failed to meet statutory requirements of a previous state-administered sports program under s. 288.1162, F.S. (professional sports franchises), s. 288.11621, F.S. (spring training baseball franchises), or s. 288.1168, F.S. (professional golf hall of fame);
- The applicant or beneficiary is not receiving distributions under s. 212.20, F.S.;
- The facility that is the subject of the application is not the subject of distributions under s. 212.20, F.S.;
- The applicant has a commitment to employing state residents, contracting with Florida-based firms, and purchasing materials available locally to the greatest extent possible;
- The project will commence within 12 months of receiving state funds; and
- If the applicant is a local government, then it has an agreement between it and the beneficiary for the use of the facility.

If the applicant is the beneficiary, then the beneficiary must enter into an agreement with the DEO that requires: 1) The beneficiary to reimburse the state for any funds that have been and

will be distributed if the beneficiary relocates before the expiration of the agreement; and 2) The beneficiary to pay for signage to be displayed in a prominent location and feature Florida advertising approved by the Florida Tourism Industry Marketing Corporation (Visit Florida).

The DEO must rank the applications based on their ability to positively impact the state under the following criteria:

- The proposed use of state funds;
- The length of time a beneficiary has agreed to use the facility;
- The percentage of total project funds provided by the applicant and beneficiary with priority given to applications with 50 percent or more of total project funds not from state distributions;
- The number and type of signature events the facility is likely to attract during the duration of the agreement with the beneficiary;[15]
- The increase in ticket sales and attendance annually due to the project;
- The potential to attract out-of-state visitors;
- The length of time a beneficiary has been in-state or partnered with local government, with priority given to franchises new to the state;
- The facility's multiuse capabilities;
- The facility's projected employment of state residents, contracts with Florida-based firms, and locally purchased materials;
- The amount of private and local financial or in-kind contributions; and
- The amount of positive advertising or media coverage the facility generates.

The bill directs the DEO to determine the annual distribution based on the total cost of the project. At the time of evaluation and review by the department, the applicant must provide an analysis by an independent certified public accountant that shows the amount of state sales tax generated at the facility during the 12 months prior to the submission of the application (referred to as the baseline) and the expected amount of new incremental state sales tax generated by sales (above the baseline) as a result of the project. The DEO will distribute an amount equal to the new incremental sales tax generated by sales tax at the facility with annual caps based on total project cost. Projects with a total project cost of over $200 million are capped at $3 million annually. Projects with a total project cost of at least $100 and less than $200 million are capped at $2 million annually. Projects with a total project cost less than $100 million are capped at $1 million annually.

The bill caps total distributions for this program at $13 million for any 12 month period.

The bill requires a contract to be signed between a certified applicant and the DEO that specifies the terms of the state's investment and the criteria for a certified applicant to remain certified. The contract requires the certified applicant to submit an annual independent analysis that demonstrates the actual amount of new incremental state sales tax generated during the previous

[15] The bill defines "signature event" as a professional sports event with significant export factor potential. "Export factor" means the attraction of economic activity or growth into the state which otherwise would not have occurred. Examples of signature events may include but are not limited to: NFL Super Bowls, All-Star games, international sporting events and tournaments, professional automobile race championships, and the establishment of a new professional sports franchise in this state.

12 months compared to the baseline established in the application and evaluation. This requirement applies 12 months after completion of the project or 12 months after the first 4 annual distributions, whichever is less. The analysis must be submitted within 60 days after the end of the previous 12 month period. The contract also requires the certified applicant to reimburse the state for the amount each year that the actual new incremental state sales tax generated by sales at the facility is less than the annual distributions it received under this program during the most recent 12 month period. This requirement also applies 12 months after project completion or 12 months after receiving the first 4 annual distributions, whichever is less. The DEO may place a lien on the applicant's facility if it is unwilling or unable to reimburse the state in this matter. If the applicant is a municipality or county, it may reimburse the state from its half-cent sales tax allocation. Reimbursements are sent to the DOR for deposit in the General Revenue Fund. The contract can include any provisions deemed prudent by the DEO and must specify other information that the certified applicant must report to the DEO.

The applicant my use the state funds for the following purposes:

- Construction, reconstruction, renovation, or improving a facility;
- Paying or pledging payment of debt service on bonds issued for construction or renovation of the facility;
- Funding debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to bonds issued for construction or renovation of the facility; or
- Reimbursing the costs of the aforementioned uses for funds or refinancing bonds issued for the construction or renovation of the facility.

The bill requires the certified applicant to annually submit by November 1 any information the DEO requires. The DEO shall summarize this information for its inclusion in its annual report to the Legislature due February 1.

Every 5 years after an applicant receives its first distribution, the DEO must verify that the applicant is still meeting program requirements. If the applicant is not meeting the requirements that information must be included in the annual report for the Governor and the Legislature; the report must also include the DEO's recommended future action. The DEO can consider mitigating circumstances that may have prevented the applicant from meeting program requirements when recommending future action.

The bill permits the Auditor General (AG) to conduct audits on the independent analysis required of the applicant and to verify that the distributions are being expended according to program requirements. If the AG determines that distributions are being improperly expended, the AG must inform the DOR, which may pursue recovery of the distributions.

A certified applicant may be subject to repayment of distributions if the beneficiary breaks the terms of the agreement for facility use and relocates or if the DEO determines that the applicant has been false, misleading, deceptive, or otherwise untrue in any information submitted to the DEO. The repayment of distributions includes all state funds that were distributed and will be distributed.

The bill permits the applicant to halt payments of distribution by informing the DEO in writing at least 20 days prior to the next monthly distribution.

The bill permits the DEO to adopt rules to implement the program.

Section 1 amends s. 212.20, F.S., to authorize the DOR to distribute monthly amounts from state sales tax revenue equal to one-twelfth of the annual distribution amount certified by the DEO under the Sports Development program created by s. 288.11625, F.S. The DOR must begin distributions 45 days from notification by the DEO of an applicant's certification by the DEO and approval by the Legislature. The DOR may not distribute more than $13 million annually under s. 212.20(6)(d)6.f., F.S.

Section 2 amends s. 218.64, F.S., to authorize the additional use of half-cent sales tax program revenue for reimbursing the state as required by a contract pursuant to s. 288.11625(7), F.S. Due to the annual project cap in s. 288.11625, F.S., the bill also raises the amount of the half-cent sales tax that can be used to $3 million, from $2 million, on:

- Funding a facility certified as a new or retained professional sports franchise or a facility certified as a spring training franchise;
- Funding an applicant certified as a "motorsport entertainment complex"; and
- Reimbursing the state as required by contract in s. 288.11625(7).

Section 3 amends s. 288.0001, F.S., to require the EDR and the OPPAGA to include a detailed analysis of the Sports Development program created by s. 288.11625, F.S., in the annual Economic Development Programs Evaluation beginning January 1, 2018, and every 3 years thereafter.

Spring Training

Section 5 amends s. 288.11631, F.S., allowing an exception in the certification process for an applicant to receive funding for a facility for the retention of a spring training franchise. Current law provides that a signed agreement for the use of the facility by the franchise, required in the certification process, cannot be signed more than 4 years before the expiration of any existing agreement with the spring training franchise for the use of the facility. The bill provides that such an agreement can be signed at any time before the expiration of an existing agreement, as long as the applicant has never received state funding for the facility as a spring training facility under ss. 288.11621 and 288.11631, F.S., and the facility was constructed before January 1, 2000.

Section 6 authorizes the DEO to adopt emergency rules to implement the bill.

Section 7 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

There may be indeterminate negative fiscal impact beginning in Fiscal Year 2016-17 due to the changes to the Spring Training Program, which may permit certain applicants to apply for certification earlier than under current law.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The DOR reported an insignificant departmental impact.[16]

The DEO reported that it would require one FTE to administer the Sports Development Program, at a cost of $85,000.[17]

VI. Technical Deficiencies:

The DOR reported that under s. 288.11625(11), F.S., the bill requires reimbursements under certain circumstances but does not specify how the state is to receive those payments. The DOR assumes that the intent is the same as proposed language in s. 288.11625(7), F.S., requiring reimbursements to be sent to the DOR for deposit into the General Revenue Fund.[18]

VII. Related Issues:

The bill permits, and considers all conditions met for, the DEO to adopt emergency rules for the purpose of implementing the bill. The emergency rules will remain in effect for 6 months after adopted and may be renewed during the process to adopt permanent rules. The DEO is also authorized to adopt rules to implement the Sports Development Program.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.20, 218.64, 288.0001, and 288.11631.

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[16] Department of Revenue, *Legislative Bill Analysis: SB 1216*, March 3, 2014.
[17] Department of Economic Opportunity, *Legislative Bill Analysis: SB 1216*. March 12, 2014.
[18] Department of Revenue, *Legislative Bill Analysis: SB 1216*, March 3, 2014.

This bill creates section 288.11625 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.

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Commerce and Tourism (Ring) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Paragraph (d) of subsection (6) of section
6 212.20, Florida Statutes, is amended to read:
7 212.20 Funds collected, disposition; additional powers of
8 department; operational expense; refund of taxes adjudicated
9 unconstitutionally collected.—
10 (6) Distribution of all proceeds under this chapter and s.

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11 202.18(1)(b) and (2)(b) shall be as follows:
12 (d) The proceeds of all other taxes and fees imposed
13 pursuant to this chapter or remitted pursuant to s. 202.18(1)(b)
14 and (2)(b) shall be distributed as follows:
15 1. In any fiscal year, the greater of $500 million, minus
16 an amount equal to 4.6 percent of the proceeds of the taxes
17 collected pursuant to chapter 201, or 5.2 percent of all other
18 taxes and fees imposed pursuant to this chapter or remitted
19 pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in
20 monthly installments into the General Revenue Fund.
21 2. After the distribution under subparagraph 1., 8.814
22 percent of the amount remitted by a sales tax dealer located
23 within a participating county pursuant to s. 218.61 shall be
24 transferred into the Local Government Half-cent Sales Tax
25 Clearing Trust Fund. Beginning July 1, 2003, the amount to be
26 transferred shall be reduced by 0.1 percent, and the department
27 shall distribute this amount to the Public Employees Relations
28 Commission Trust Fund less $5,000 each month, which shall be
29 added to the amount calculated in subparagraph 3. and
30 distributed accordingly.
31 3. After the distribution under subparagraphs 1. and 2.,
32 0.095 percent shall be transferred to the Local Government Half-
33 cent Sales Tax Clearing Trust Fund and distributed pursuant to
34 s. 218.65.
35 4. After the distributions under subparagraphs 1., 2., and
36 3., 2.0440 percent of the available proceeds shall be
37 transferred monthly to the Revenue Sharing Trust Fund for
38 Counties pursuant to s. 218.215.
39 5. After the distributions under subparagraphs 1., 2., and

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40 3., 1.3409 percent of the available proceeds shall be
41 transferred monthly to the Revenue Sharing Trust Fund for
42 Municipalities pursuant to s. 218.215. If the total revenue to
43 be distributed pursuant to this subparagraph is at least as
44 great as the amount due from the Revenue Sharing Trust Fund for
45 Municipalities and the former Municipal Financial Assistance
46 Trust Fund in state fiscal year 1999-2000, no municipality shall
47 receive less than the amount due from the Revenue Sharing Trust
48 Fund for Municipalities and the former Municipal Financial
49 Assistance Trust Fund in state fiscal year 1999-2000. If the
50 total proceeds to be distributed are less than the amount
51 received in combination from the Revenue Sharing Trust Fund for
52 Municipalities and the former Municipal Financial Assistance
53 Trust Fund in state fiscal year 1999-2000, each municipality
54 shall receive an amount proportionate to the amount it was due
55 in state fiscal year 1999-2000.
56 6. Of the remaining proceeds:
57 a. In each fiscal year, the sum of $29,915,500 shall be
58 divided into as many equal parts as there are counties in the
59 state, and one part shall be distributed to each county. The
60 distribution among the several counties must begin each fiscal
61 year on or before January 5th and continue monthly for a total
62 of 4 months. If a local or special law required that any moneys
63 accruing to a county in fiscal year 1999-2000 under the then-
64 existing provisions of s. 550.135 be paid directly to the
65 district school board, special district, or a municipal
66 government, such payment must continue until the local or
67 special law is amended or repealed. The state covenants with
68 holders of bonds or other instruments of indebtedness issued by

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69 local governments, special districts, or district school boards
70 before July 1, 2000, that it is not the intent of this
71 subparagraph to adversely affect the rights of those holders or
72 relieve local governments, special districts, or district school
73 boards of the duty to meet their obligations as a result of
74 previous pledges or assignments or trusts entered into which
75 obligated funds received from the distribution to county
76 governments under then-existing s. 550.135. This distribution
77 specifically is in lieu of funds distributed under s. 550.135
78 before July 1, 2000.
79 b. The department shall distribute $166,667 monthly
80 pursuant to s. 288.1162 to each applicant certified as a
81 facility for a new or retained professional sports franchise
82 pursuant to s. 288.1162. Up to $41,667 shall be distributed
83 monthly by the department to each certified applicant as defined
84 in s. 288.11621 for a facility for a spring training franchise.
85 However, not more than $416,670 may be distributed monthly in
86 the aggregate to all certified applicants for facilities for
87 spring training franchises. Distributions begin 60 days after
88 such certification and continue for not more than 30 years,
89 except as otherwise provided in s. 288.11621. A certified
90 applicant identified in this sub-subparagraph may not receive
91 more in distributions than expended by the applicant for the
92 public purposes provided for in s. 288.1162(5) or s.
93 288.11621(3).
94 c. Beginning 30 days after notice by the Department of
95 Economic Opportunity to the Department of Revenue that an
96 applicant has been certified as the professional golf hall of
97 fame pursuant to s. 288.1168 and is open to the public, $166,667

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98 shall be distributed monthly, for up to 300 months, to the
99 applicant.
100 d. Beginning 30 days after notice by the Department of
101 Economic Opportunity to the Department of Revenue that the
102 applicant has been certified as the International Game Fish
103 Association World Center facility pursuant to s. 288.1169, and
104 the facility is open to the public, $83,333 shall be distributed
105 monthly, for up to 168 months, to the applicant. This
106 distribution is subject to reduction pursuant to s. 288.1169. A
107 lump sum payment of $999,996 shall be made, after certification
108 and before July 1, 2000.
109 e. The department shall distribute up to $83,333 ~~$55,555~~
110 monthly to each certified applicant as defined in s. 288.11631
111 for a facility used by a single spring training franchise, or up
112 to $166,667 ~~$111,110~~ monthly to each certified applicant as
113 defined in s. 288.11631 for a facility used by more than one
114 spring training franchise. Monthly distributions begin 60 days
115 after such certification or July 1, 2016, whichever is later,
116 and continue for not more than 20 ~~30~~ years to each certified
117 applicant as defined in s. 288.11631 for a facility used by a
118 single spring training franchise or not more than 25 years to
119 each certified applicant as defined in s. 288.11631 for a
120 facility used by more than one spring training franchise~~, except~~
121 ~~as otherwise provided in s. 288.11631~~. A certified applicant
122 identified in this sub-subparagraph may not receive more in
123 distributions than expended by the applicant for the public
124 purposes provided in s. 288.11631(3).
125 f. Beginning 45 days after notice by the Department of
126 Economic Opportunity to the Department of Revenue that an

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127 applicant has been approved by the Legislature and certified by
128 the Department of Economic Opportunity under s. 288.11625, the
129 department shall distribute each month an amount equal to one-
130 twelfth of the annual distribution amount certified by the
131 Department of Economic Opportunity for the applicant. The
132 department may not distribute more than $13 million annually
133 under this sub-subparagraph.
134 7. All other proceeds must remain in the General Revenue
135 Fund.
136 Section 2. Subsections (2) and (3) of section 218.64,
137 Florida Statutes, are amended to read:
138 218.64 Local government half-cent sales tax; uses;
139 limitations.—
140 (2) Municipalities shall expend their portions of the local
141 government half-cent sales tax only for municipality-wide
142 programs, for reimbursing the state as required by a contract
143 pursuant to s. 288.11625(7), or for municipality-wide property
144 tax or municipal utility tax relief. All utility tax rate
145 reductions afforded by participation in the local government
146 half-cent sales tax shall be applied uniformly across all types
147 of taxed utility services.
148 (3) Subject to ordinances enacted by the majority of the
149 members of the county governing authority and by the majority of
150 the members of the governing authorities of municipalities
151 representing at least 50 percent of the municipal population of
152 such county, counties may use up to $3 ~~$2~~ million annually of
153 the local government half-cent sales tax allocated to that
154 county for ~~funding for~~ any of the following purposes ~~applicants~~:
155 (a) Funding a certified applicant as a facility for a new

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156 or retained professional sports franchise under s. 288.1162 or a
157 certified applicant as defined in s. 288.11621 for a facility
158 for a spring training franchise. It is the Legislature’s intent
159 that the provisions of s. 288.1162, including, but not limited
160 to, the evaluation process by the Department of Economic
161 Opportunity except for the limitation on the number of certified
162 applicants or facilities as provided in that section and the
163 restrictions set forth in s. 288.1162(8), shall apply to an
164 applicant’s facility to be funded by local government as
165 provided in this subsection.
166 (b) Funding a certified applicant as a “motorsport
167 entertainment complex,” as provided for in s. 288.1171. Funding
168 for each franchise or motorsport complex shall begin 60 days
169 after certification and shall continue for not more than 30
170 years.
171 (c) Reimbursing the state as required by a contract entered
172 into under s. 288.11625(7).
173 Section 3. Paragraph (d) is added to subsection (2) of
174 section 288.0001, Florida Statutes, to read:
175 288.0001 Economic Development Programs Evaluation.—The
176 Office of Economic and Demographic Research and the Office of
177 Program Policy Analysis and Government Accountability (OPPAGA)
178 shall develop and present to the Governor, the President of the
179 Senate, the Speaker of the House of Representatives, and the
180 chairs of the legislative appropriations committees the Economic
181 Development Programs Evaluation.
182 (2) The Office of Economic and Demographic Research and
183 OPPAGA shall provide a detailed analysis of economic development
184 programs as provided in the following schedule:

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185 (d) Beginning January 1, 2018, and every 3 years
186 thereafter, an analysis of the Sports Development Program
187 established under s. 288.11625.
188 Section 4. Section 288.11625, Florida Statutes, is created
189 to read:
190 288.11625 Sports development.—
191 (1) ADMINISTRATION.—The department shall serve as the state
192 agency responsible for screening applicants for state funding
193 under s. 212.20(6)(d)6.f.
194 (2) DEFINITIONS.—As used in this section, the term:
195 (a) "Agreement" means a signed agreement between a unit of
196 local government and a beneficiary.
197 (b) "Applicant" means a unit of local government, as
198 defined in s. 218.369, which is responsible for the
199 construction, management, or operation of a facility; or an
200 entity that is responsible for the construction, management, or
201 operation of a facility if a unit of local government holds
202 title to the underlying property on which the facility is
203 located.
204 (c) "Beneficiary" means a professional sports franchise of
205 the National Football League, the National Hockey League, the
206 National Basketball Association, the National League or American
207 League of Major League Baseball, Major League Soccer, or the
208 promoter of a signature event sanctioned by the National
209 Association for Stock Car Auto Racing. A beneficiary may also be
210 an applicant under this section.
211 (d) "Facility" means a structure primarily used to host
212 games or events held by a beneficiary and does not include any
213 portion used to provide transient lodging.

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214 (e) "Project" means a proposed construction,
215 reconstruction, renovation, or improvement of a facility or the
216 proposed acquisition of land to construct a new facility and
217 construction of improvements to state-owned land necessary for
218 the efficient use of the facility.
219 (f) "Signature event" means a professional sports event
220 with significant export factor potential. For purposes of this
221 paragraph, the term "export factor" means the attraction of
222 economic activity or growth into the state which otherwise would
223 not have occurred. Examples of signature events may include, but
224 are not limited to:
225 1. National Football League Super Bowls.
226 2. Professional sports All-Star games.
227 3. International sporting events and tournaments.
228 4. Professional motorsports events.
229 5. The establishment of a new professional sports franchise
230 in this state.
231 (g) "State sales taxes generated by sales at the facility"
232 means state sales taxes imposed under chapter 212 generated by
233 admissions to the facility or by sales made by vendors at the
234 facility who are accessible only to persons attending events
235 occurring at the facility.
236 (3) PURPOSE.—The purpose of this section is to provide
237 applicants state funding under s. 212.20(6)(d)6.f. for the
238 public purpose of constructing, reconstructing, renovating, or
239 improving a facility.
240 (4) APPLICATION AND APPROVAL PROCESS.—
241 (a) The department shall establish the procedures and
242 application forms deemed necessary pursuant to the requirements

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243 of this section. The department may notify an applicant of any
244 additional required or incomplete information necessary to
245 evaluate an application.
246 (b) The annual application period is from June 1 through
247 November 1.
248 (c) Within 60 days after receipt of a completed
249 application, the department shall complete its evaluation of the
250 application as provided under subsection (5) and notify the
251 applicant in writing of the department's decision to recommend
252 approval of the applicant by the Legislature or to deny the
253 application.
254 (d) By each February 1, the department shall rank the
255 applicants and provide to the Legislature the list of the
256 recommended applicants in ranked order of projects most likely
257 to positively impact the state based on criteria established
258 under this section. The list must include the department's
259 evaluation of the applicant.
260 (e) A recommended applicant's request for funding must be
261 approved by the Legislature by general law.
262 1. An application by a unit of local government which is
263 approved by the Legislature and subsequently certified by the
264 department remains certified for the duration of the
265 beneficiary's agreement with the applicant or for 30 years,
266 whichever is less, provided the certified applicant has an
267 agreement with a beneficiary at the time of initial
268 certification by the department.
269 2. An application by a beneficiary or other applicant which
270 is approved by the Legislature and subsequently certified by the
271 department remains certified for the duration of the

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272 beneficiary’s agreement with the unit of local government that
273 owns the underlying property or for 30 years, whichever is less,
274 provided the certified applicant has an agreement with the unit
275 of local government at the time of initial certification by the
276 department.
277 3. An applicant that is previously certified pursuant to
278 this section does not need legislative approval each year to
279 receive state funding.
280 (f) An applicant that is recommended by the department but
281 not approved by the Legislature may reapply and shall update any
282 information in the original application as required by the
283 department.
284 (g) The department may recommend no more than one
285 distribution under this section for any applicant, facility, or
286 beneficiary at a time.
287 (5) EVALUATION PROCESS.—
288 (a) Before recommending an applicant to receive a state
289 distribution under s. 212.20(6)(d)6.f., the department must
290 verify that:
291 1. The applicant or beneficiary is responsible for the
292 construction, reconstruction, renovation, or improvement of a
293 facility and obtained at least three bids for the project.
294 2. If the applicant is not a unit of local government, a
295 unit of local government holds title to the property on which
296 the facility and project are located.
297 3. If the applicant is a unit of local government in whose
298 jurisdiction the facility will be located, the unit of local
299 government has an exclusive intent agreement to negotiate in
300 this state with the beneficiary.

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301 4. A unit of local government in whose jurisdiction the
302 facility will be located supports the application for state
303 funds. Such support must be verified by the adoption of a
304 resolution, after a public hearing, that the project serves a
305 public purpose.
306 5. The applicant or beneficiary has not previously
307 defaulted or failed to meet any statutory requirements of a
308 previous state-administered sports-related program under s.
309 288.1162, s. 288.11621, or s. 288.1168. Additionally, the
310 applicant or beneficiary is not currently receiving state
311 distributions under s. 212.20 or the facility that is the
312 subject of the application is not the subject of a distribution
313 under s. 212.20.
314 6. The applicant or beneficiary has sufficiently
315 demonstrated a commitment to employ residents of this state,
316 contract with Florida-based firms, and purchase locally
317 available building materials to the greatest extent possible.
318 7. If the applicant is a unit of local government, the
319 applicant has a certified copy of a signed agreement with a
320 beneficiary for the use of the facility. If the applicant is a
321 beneficiary, the beneficiary must enter into an agreement with
322 the department. The applicant's or beneficiary's agreement must
323 also require the following:
324 a. The beneficiary must reimburse the state for state funds
325 that have been distributed and will be distributed if the
326 beneficiary relocates before the agreement expires.
327 b. The beneficiary must pay for signage or advertising
328 within the facility. The signage or advertising must be placed
329 in a prominent location as close to the field of play or

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330 competition as is practicable, must be displayed consistent with
331 signage or advertising in the same location and of like value,
332 and must feature Florida advertising approved by the Florida
333 Tourism Industry Marketing Corporation.
334 8. The project will commence within 12 months after
335 receiving state funds or did not commence more than 16 months
336 before July 1, 2014.
337 (b) The department shall competitively evaluate and rank
338 applicants that timely submit applications for state funding
339 based on their ability to positively impact the state using the
340 following criteria:
341 1. The proposed use of state funds.
342 2. The length of time that a beneficiary has agreed to use
343 the facility.
344 3. The percentage of total project funds provided by the
345 applicant and the percentage of total project funds provided by
346 the beneficiary, with priority in the evaluation and ranking
347 given to applications with 50 percent or more of total project
348 funds provided by the applicant and beneficiary.
349 4. The number and type of signature events the facility is
350 likely to attract during the duration of the agreement with the
351 beneficiary.
352 5. The anticipated increase in average annual ticket sales
353 and attendance at the facility due to the project.
354 6. The potential to attract out-of-state visitors to the
355 facility.
356 7. The length of time a beneficiary has been in this state
357 or partnered with the unit of local government. In order to
358 encourage new franchises to locate in this state, an application

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359 for a new franchise shall be considered to have a significant
360 positive impact on the state and shall be given priority in the
361 evaluation and ranking by the department.
362 8. The multiuse capabilities of the facility.
363 9. The facility's projected employment of residents of this
364 state, contracts with Florida-based firms, and purchases of
365 locally available building materials.
366 10. The amount of private and local financial or in-kind
367 contributions to the project.
368 11. The amount of positive advertising or media coverage
369 the facility generates.
370 (6) DISTRIBUTION.—
371 (a) The department shall determine the annual distribution
372 amount an applicant may receive based on 80 percent of the
373 average annual new incremental state sales taxes generated by
374 sales at the facility as provided under subparagraph (b)2., up
375 to $3 million.
376 (b) At the time of initial evaluation and review by the
377 department pursuant to subsection (5), the applicant must
378 provide an analysis by an independent certified public
379 accountant which demonstrates:
380 1. The amount of state sales taxes generated by sales at
381 the facility during the 12-month period immediately before the
382 beginning of the application period. This amount is the
383 baseline.
384 2. The expected amount of average annual new incremental
385 state sales taxes generated by sales at the facility above the
386 baseline which will be generated as a result of the project.
387 3. The expected amount of average annual new incremental

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388 state sales taxes generated by sales at the facility must be at
389 least $500,000 above the baseline for the applicant to be
390 eligible to receive a distribution under this section.
391 (c) The independent analysis provided in paragraph (b)
392 shall be verified by the department.
393 (d) The Department of Revenue shall begin distributions
394 within 45 days after notification of initial certification from
395 the department.
396 (e) The department shall consult with the Department of
397 Revenue and the Office of Economic and Demographic Research to
398 develop a standard calculation for estimating the average annual
399 new incremental state sales taxes generated by sales at the
400 facility.
401 (f) In any 12-month period when total distributions for all
402 certified applicants reach $13 million, the department may not
403 certify new distributions for additional applicants.
404 (7) CONTRACT.—An applicant approved by the Legislature and
405 certified by the department must enter into a contract with the
406 department which:
407 (a) Specifies the terms of the state's investment.
408 (b) States the criteria that the certified applicant must
409 meet in order to remain certified.
410 (c) Requires the applicant to submit the independent
411 analysis required under subsection (6) and an annual independent
412 analysis.
413 1. The applicant must agree to submit to the department,
414 beginning 12 months after completion of a project or 12 months
415 after the first four annual distributions, whichever is earlier,
416 an annual analysis by an independent certified public accountant

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417 demonstrating the actual amount of new incremental state sales
418 taxes generated by sales at the facility during the previous 12-
419 month period. The applicant shall certify to the department a
420 comparison of the actual amount of state sales taxes generated
421 by sales at the facility during the previous 12-month period to
422 the baseline under subparagraph (6)(b)1.
423 2. The applicant must submit the certification within 60
424 days after the end of the previous 12-month period. The
425 department shall verify the analysis.
426 (d) Specifies information that the certified applicant must
427 report to the department.
428 (e) Requires the applicant to reimburse the state, after
429 all distributions have been made, an amount equal to the
430 difference between the actual new incremental state sales taxes
431 generated by sales at the facility during the contract and total
432 amount of distributions made under s. 212.20(6)(d)6.f. If any
433 reimbursement is due to the state, such reimbursement must be
434 made within 90 days after the last distribution under the
435 contract has been made. If the applicant is unable or unwilling
436 to reimburse the state in any year for such amount, the
437 department may place a lien on the applicant's facility.
438 1. If the applicant is a municipality or county, it may
439 reimburse the state from its half-cent sales tax allocation, as
440 provided in s. 218.64(3).
441 2. Reimbursements must be sent to the Department of Revenue
442 for deposit into the General Revenue Fund.
443 (f) Includes any provisions deemed prudent by the
444 department.
445 (8) USE OF FUNDS.—An applicant certified under this section

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446 may use state funds only for the following purposes:
447 (a) Constructing, reconstructing, renovating, or improving
448 a facility or reimbursing such costs.
449 (b) Paying or pledging for the payment of debt service on
450 bonds issued for the construction or renovation of such
451 facility.
452 (c) Funding debt service reserve funds, arbitrage rebate
453 obligations, or other amounts payable with respect thereto on
454 bonds issued for the construction or renovation of such
455 facility.
456 (d) Reimbursing the costs under paragraphs (b) and (c) or
457 the refinancing of bonds issued for the construction or
458 renovation of such facility.
459 (9) REPORTS.—
460 (a) On or before November 1 of each year, an applicant
461 certified under this section and approved to receive state funds
462 must submit to the department any information required by the
463 department. The department shall summarize this information for
464 inclusion in its annual report to the Legislature under
465 paragraph (4)(d).
466 (b) Every 5 years after an applicant receives its first
467 monthly distribution, the department must verify that the
468 applicant is meeting the program requirements. If the applicant
469 fails to meet these requirements, the department shall notify
470 the Governor and the Legislature in its next annual report under
471 paragraph (4)(d) that the requirements are not being met and
472 recommend future action. The department shall take into
473 consideration extenuating circumstances that may have prevented
474 the applicant from meeting the program requirements, such as

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475 force majeure events or a significant economic downturn.
476 (10) AUDITS.—The Auditor General may conduct audits
477 pursuant to s. 11.45 to verify the independent analysis required
478 under paragraphs (6)(b) and (7)(c) and to verify that the
479 distributions are expended as required. The Auditor General
480 shall report the findings to the department. If the Auditor
481 General determines that the distribution payments are not
482 expended as required, the Auditor General must notify the
483 Department of Revenue, which may pursue recovery of
484 distributions under the laws and rules that govern the
485 assessment of taxes.
486 (11) REPAYMENT OF DISTRIBUTIONS.—An applicant that is
487 certified under this section may be subject to repayment of
488 distributions upon the occurrence of any of the following:
489 (a) An applicant's beneficiary has broken the terms of its
490 agreement with the applicant and relocated from the facility.
491 The beneficiary must reimburse the state for state funds that
492 will be distributed if the beneficiary relocates before the
493 agreement expires.
494 (b) A determination by the department that an applicant has
495 submitted information or made a representation that is
496 determined to be false, misleading, deceptive, or otherwise
497 untrue. The applicant must reimburse the state for state funds
498 will be distributed if such determination is made.
499 (c) Repayment of distributions must be sent to the
500 Department of Revenue for deposit into the General Revenue Fund.
501 (12) HALTING OF PAYMENTS.—The applicant may request in
502 writing at least 20 days before the next monthly distribution
503 that the department halt future payments. The department shall

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504 immediately notify the Department of Revenue to halt future
505 payments.
506 (13) RULEMAKING.—The department may adopt rules to
507 implement this section.
508 Section 5. Paragraphs (a) and (c) of subsection (2) of
509 section 288.11631, Florida Statutes, are amended to read:
510 288.11631 Retention of Major League Baseball spring
511 training baseball franchises.—
512 (2) CERTIFICATION PROCESS.—
513 (a) Before certifying an applicant to receive state funding
514 for a facility for a spring training franchise, the department
515 must verify that:
516 1. The applicant is responsible for the construction or
517 renovation of the facility for a spring training franchise or
518 holds title to the property on which the facility for a spring
519 training franchise is located.
520 2. The applicant has a certified copy of a signed agreement
521 with a spring training franchise. The signed agreement with a
522 spring training franchise for the use of a facility must, at a
523 minimum, be equal to the length of the term of the bonds issued
524 for the public purpose of constructing or renovating a facility
525 for a spring training franchise. If no such bonds are issued for
526 the public purpose of constructing or renovating a facility for
527 a spring training franchise, the signed agreement with a spring
528 training franchise for the use of a facility must be for at
529 least 20 years. Any such agreement with a spring training
530 franchise for the use of a facility cannot be signed more than 4
531 years before the expiration of any existing agreement with a
532 spring training franchise for the use of a facility. However,

213492

533 any such agreement may be signed at any time before the
534 expiration of any existing agreement with a spring training
535 franchise for use of a facility if the applicant has never
536 received state funding for the facility as a spring training
537 facility under this section or s. 288.11621 and the facility was
538 constructed before January 1, 2000. The agreement must also
539 require the franchise to reimburse the state for state funds
540 expended by an applicant under this section if the franchise
541 relocates before the agreement expires; however, if bonds were
542 issued to construct or renovate a facility for a spring training
543 franchise, the required reimbursement must be equal to the total
544 amount of state distributions expected to be paid from the date
545 the franchise breaks its agreement with the applicant through
546 the final maturity of the bonds. The agreement may be contingent
547 on an award of funds under this section and other conditions
548 precedent.
549 3. The applicant has made a financial commitment to provide
550 50 percent or more of the funds required by an agreement for the
551 construction or renovation of the facility for a spring training
552 franchise. The commitment may be contingent upon an award of
553 funds under this section and other conditions precedent.
554 4. The applicant demonstrates that the facility for a
555 spring training franchise will attract a paid attendance of at
556 least 50,000 persons annually to the spring training games.
557 5. The facility for a spring training franchise is located
558 in a county that levies a tourist development tax under s.
559 125.0104.
560 (c) Each applicant certified on or after July 1, 2013,
561 shall enter into an agreement with the department which:

213492

562 1. Specifies the amount of the state incentive funding to
563 be distributed. The amount of state incentive funding per
564 certified applicant may not exceed $20 million. However, if a
565 certified applicant’s facility is used by more than one spring
566 training franchise, the maximum amount may not exceed $50
567 million, and the Department of Revenue shall make distributions
568 to the applicant pursuant to s. 212.20(6)(d)6.e. ~~for not more~~
569 ~~than 37 years and 6 months.~~
570 2. States the criteria that the certified applicant must
571 meet in order to remain certified. These criteria must include a
572 provision stating that the spring training franchise must
573 reimburse the state for any funds received if the franchise does
574 not comply with the terms of the contract. If bonds were issued
575 to construct or renovate a facility for a spring training
576 franchise, the required reimbursement must be equal to the total
577 amount of state distributions expected to be paid from the date
578 the franchise violates the agreement with the applicant through
579 the final maturity of the bonds.
580 3. States that the certified applicant is subject to
581 decertification if the certified applicant fails to comply with
582 this section or the agreement.
583 4. States that the department may recover state incentive
584 funds if the certified applicant is decertified.
585 5. Specifies the information that the certified applicant
586 must report to the department.
587 6. Includes any provision deemed prudent by the department.
588 Section 6. (1) The executive director of the Department of
589 Economic Opportunity is authorized, and all conditions are
590 deemed met, to adopt emergency rules pursuant to ss. 120.536(1)

213492

591 and 120.54(4), Florida Statutes, for the purpose of implementing
592 this act.
593 (2) Notwithstanding any provision of law, such emergency
594 rules shall remain in effect for 6 months after the date adopted
595 and may be renewed during the pendency of procedures to adopt
596 permanent rules addressing the subject of the emergency rules.
597 (3) This section expires July 1, 2015.
598 Section 7. This act shall take effect July 1, 2014.
599
600 ================ T I T L E A M E N D M E N T ================
601 And the title is amended as follows:
602 Delete everything before the enacting clause
603 and insert:
604 A bill to be entitled
605 An act relating to professional sports facilities;
606 amending s. 212.20, F.S.; revising the distribution of
607 moneys to certified applicants for a
608 facility used by a spring training franchise under s.
609 288.11631, F.S.; authorizing a distribution for an
610 applicant that has been approved by the Legislature
611 and certified by the Department of Economic
612 Opportunity under s. 288.11625, F.S.; providing a
613 limitation; amending s. 218.64, F.S.; providing for
614 municipalities and counties to expend an increased
615 portion of local government half-cent sales tax
616 revenues to reimburse the state as required by a
617 contract; amending s. 288.0001, F.S.; providing for an
618 evaluation; creating s. 288.11625, F.S.; requiring the
619 Department of Economic Opportunity to screen

213492

620 applicants for state funding for sports development;
621 defining terms; providing a purpose to provide funding
622 for applicants for constructing, reconstructing,
623 renovating, or improving a facility; providing an
624 application and approval process; providing for an
625 annual application period; providing for the
626 department to submit recommendations to the
627 Legislature by a certain date; requiring legislative
628 approval for state funding; providing evaluation
629 criteria for an applicant to receive state funding;
630 providing for evaluation and ranking of applicants
631 under certain criteria; requiring the department to
632 determine the annual distribution amount an applicant
633 may receive; requiring the applicant to provide an
634 analysis by a certified public accountant to the
635 department; requiring the Department of Revenue to
636 distribute funds within a certain timeframe after
637 notification by the department; requiring the
638 department to develop a calculation to estimate
639 certain taxes; limiting annual distributions to a
640 specified amount; providing for a contract between the
641 department and the applicant; limiting use of funds;
642 requiring an applicant to submit information to the
643 department annually; requiring a 5-year review;
644 authorizing the Auditor General to conduct audits;
645 providing for reimbursement of the state funding under
646 certain circumstances; providing for discontinuation
647 of distributions upon an applicant’s request;
648 authorizing the department to adopt rules; amending s.

213492

649 288.11631, F.S.; revising the requirements for an
650 applicant to be certified to receive state funding for
651 a facility for a spring training franchise;
652 authorizing the department to adopt emergency rules;
653 providing an effective date.

768724

LEGISLATIVE ACTION

Senate	.	House
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	.	
	.	

The Committee on Commerce and Tourism (Simpson) recommended the following:

1 **Senate Amendment to Amendment (213492)**
2
3 Delete line 207
4 and insert:
5 League of Major League Baseball, Major League Soccer, the North
6 American Soccer League, or the

582442

LEGISLATIVE ACTION

Senate	.	House
	.	
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The Committee on Commerce and Tourism (Ring) recommended the following:

1 **Senate Amendment to Amendment (213492)**
2
3 Delete line 313
4 and insert:
5 under s. 212.20, unless the applicant demonstrates that the
6 franchise that was the subject of the application under s.
7 212.20 is no longer associated with the facility that is the
8 subject of the application under this section.

335886

LEGISLATIVE ACTION

Senate	.	House
	.	
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	.	
	.	

The Committee on Commerce and Tourism (Ring) recommended the following:

1 **Senate Amendment to Amendment (213492) (with title**
2 **amendment)**
3
4 Between lines 587 and 588
5 insert:
6 (d) If a certified applicant has been certified under this
7 program for use of its facility by one spring training
8 franchise, the certified applicant may apply to amend its
9 certification for use of its facility by more than one spring
10 training franchise. The certified applicant must submit an

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11 application to amend its original certification that meets the
12 requirements of this section. The maximum amount of state
13 incentive funding to be distributed may not exceed $50 million
14 as provided in subparagraph (c)1. for a certified applicant with
15 a facility used by more than one spring training franchise,
16 including any distributions previously received by the certified
17 applicant under its original certification under the section.
18 Upon approval of an amended certification, the department shall
19 notify the Department of Revenue as provided in this section.
20
21 ================= T I T L E A M E N D M E N T ================
22 And the title is amended as follows:
23 Between lines 651 and 652
24 insert:
25 permitting a certified applicant to submit an
26 amendment to its original certification for use of the
27 facility by more than one spring training franchise;

318508

LEGISLATIVE ACTION

Senate	.	House
	.	
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The Committee on Commerce and Tourism (Detert) recommended the following:

1 **Senate Amendment to Amendment (213492) (with title**
2 **amendment)**
3
4 Between lines 587 and 588
5 insert:
6 (d) If a certified applicant has been certified under this
7 program for use of its facility by one spring training
8 franchise, the certified applicant may apply to amend its
9 certification for use of its facility by more than one spring
10 training franchise. Such amendment may only benefit a spring

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11 training franchise relocating to the facility from out of state.
12 The certified applicant must submit an application to amend its
13 original certification that meets the requirements of this
14 section. The maximum amount of state incentive funding to be
15 distributed may not exceed $50 million as provided in
16 subparagraph (c)1. for a certified applicant with a facility
17 used by more than one spring training franchise, including any
18 distributions previously received by the certified applicant
19 under its original certification under the section. Upon
20 approval of an amended certification, the department shall
21 notify the Department of Revenue as provided in this section.
22
23 ================= T I T L E A M E N D M E N T ================
24 And the title is amended as follows:
25 Between lines 651 and 652
26 insert:
27 permitting a certified applicant to submit an
28 amendment to its original certification for use of the
29 facility by more than one spring training franchise;

By Senator Latvala

1 A bill to be entitled
2 An act relating to professional sports facilities;
3 amending s. 212.20, F.S.; authorizing a distribution
4 for an applicant that has been approved by the
5 Legislature and certified by the Department of
6 Economic Opportunity under s. 288.11625, F.S.;
7 providing a limitation; amending s. 218.64, F.S.;
8 providing for municipalities and counties to expend an
9 increased portion of local government half-cent sales
10 tax revenues to reimburse the state as required by a
11 contract; amending s. 288.0001, F.S.; providing for an
12 evaluation; creating s. 288.11625, F.S.; requiring the
13 Department of Economic Opportunity to screen
14 applicants for state funding for sports development;
15 defining terms; providing a purpose to provide funding
16 for applicants for constructing, reconstructing,
17 renovating, or improving a facility; providing an
18 application and approval process; providing for an
19 annual application period; providing for the
20 department to submit recommendations to the
21 Legislature by a certain date; requiring legislative
22 approval for state funding; providing evaluation
23 criteria for an applicant to receive state funding;
24 providing for evaluation and ranking of applicants
25 under certain criteria; requiring the department to
26 determine the annual distribution amount an applicant
27 may receive based on the total cost of the project;
28 capping the distribution amount based on total project
29 costs; requiring the applicant to provide an analysis

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30 by a certified public accountant to the department;
31 requiring the Department of Revenue to distribute
32 funds within a certain timeframe after notification by
33 the department; requiring the department to develop a
34 calculation to estimate certain taxes; limiting annual
35 distributions to a specified amount; providing for a
36 contract between the department and the applicant;
37 limiting use of funds; requiring an applicant to
38 submit information to the department annually;
39 requiring a 5-year review; authorizing the Auditor
40 General to conduct audits; providing for reimbursement
41 of the state funding under certain circumstances;
42 providing for discontinuation of distributions upon an
43 applicant’s request; authorizing the department to
44 adopt rules; amending s. 288.11631, F.S.; revising the
45 requirements for an applicant to be certified to
46 receive state funding for a facility for a spring
47 training franchise; authorizing the department to
48 adopt emergency rules; providing an effective date.
49
50 Be It Enacted by the Legislature of the State of Florida:
51
52 Section 1. Paragraph (d) of subsection (6) of section
53 212.20, Florida Statutes, is amended to read:
54 212.20 Funds collected, disposition; additional powers of
55 department; operational expense; refund of taxes adjudicated
56 unconstitutionally collected.—
57 (6) Distribution of all proceeds under this chapter and s.
58 202.18(1)(b) and (2)(b) shall be as follows:

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59 (d) The proceeds of all other taxes and fees imposed
60 pursuant to this chapter or remitted pursuant to s. 202.18(1)(b)
61 and (2)(b) shall be distributed as follows:
62 1. In any fiscal year, the greater of $500 million, minus
63 an amount equal to 4.6 percent of the proceeds of the taxes
64 collected pursuant to chapter 201, or 5.2 percent of all other
65 taxes and fees imposed pursuant to this chapter or remitted
66 pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in
67 monthly installments into the General Revenue Fund.
68 2. After the distribution under subparagraph 1., 8.814
69 percent of the amount remitted by a sales tax dealer located
70 within a participating county pursuant to s. 218.61 shall be
71 transferred into the Local Government Half-cent Sales Tax
72 Clearing Trust Fund. Beginning July 1, 2003, the amount to be
73 transferred shall be reduced by 0.1 percent, and the department
74 shall distribute this amount to the Public Employees Relations
75 Commission Trust Fund less $5,000 each month, which shall be
76 added to the amount calculated in subparagraph 3. and
77 distributed accordingly.
78 3. After the distribution under subparagraphs 1. and 2.,
79 0.095 percent shall be transferred to the Local Government Half-
80 cent Sales Tax Clearing Trust Fund and distributed pursuant to
81 s. 218.65.
82 4. After the distributions under subparagraphs 1., 2., and
83 3., 2.0440 percent of the available proceeds shall be
84 transferred monthly to the Revenue Sharing Trust Fund for
85 Counties pursuant to s. 218.215.
86 5. After the distributions under subparagraphs 1., 2., and
87 3., 1.3409 percent of the available proceeds shall be

88 transferred monthly to the Revenue Sharing Trust Fund for
89 Municipalities pursuant to s. 218.215. If the total revenue to
90 be distributed pursuant to this subparagraph is at least as
91 great as the amount due from the Revenue Sharing Trust Fund for
92 Municipalities and the former Municipal Financial Assistance
93 Trust Fund in state fiscal year 1999-2000, no municipality shall
94 receive less than the amount due from the Revenue Sharing Trust
95 Fund for Municipalities and the former Municipal Financial
96 Assistance Trust Fund in state fiscal year 1999-2000. If the
97 total proceeds to be distributed are less than the amount
98 received in combination from the Revenue Sharing Trust Fund for
99 Municipalities and the former Municipal Financial Assistance
100 Trust Fund in state fiscal year 1999-2000, each municipality
101 shall receive an amount proportionate to the amount it was due
102 in state fiscal year 1999-2000.
103 6. Of the remaining proceeds:
104 a. In each fiscal year, the sum of $29,915,500 shall be
105 divided into as many equal parts as there are counties in the
106 state, and one part shall be distributed to each county. The
107 distribution among the several counties must begin each fiscal
108 year on or before January 5th and continue monthly for a total
109 of 4 months. If a local or special law required that any moneys
110 accruing to a county in fiscal year 1999-2000 under the then-
111 existing provisions of s. 550.135 be paid directly to the
112 district school board, special district, or a municipal
113 government, such payment must continue until the local or
114 special law is amended or repealed. The state covenants with
115 holders of bonds or other instruments of indebtedness issued by
116 local governments, special districts, or district school boards

117 before July 1, 2000, that it is not the intent of this
118 subparagraph to adversely affect the rights of those holders or
119 relieve local governments, special districts, or district school
120 boards of the duty to meet their obligations as a result of
121 previous pledges or assignments or trusts entered into which
122 obligated funds received from the distribution to county
123 governments under then-existing s. 550.135. This distribution
124 specifically is in lieu of funds distributed under s. 550.135
125 before July 1, 2000.
126 b. The department shall distribute $166,667 monthly
127 pursuant to s. 288.1162 to each applicant certified as a
128 facility for a new or retained professional sports franchise
129 pursuant to s. 288.1162. Up to $41,667 shall be distributed
130 monthly by the department to each certified applicant as defined
131 in s. 288.11621 for a facility for a spring training franchise.
132 However, not more than $416,670 may be distributed monthly in
133 the aggregate to all certified applicants for facilities for
134 spring training franchises. Distributions begin 60 days after
135 such certification and continue for not more than 30 years,
136 except as otherwise provided in s. 288.11621. A certified
137 applicant identified in this sub-subparagraph may not receive
138 more in distributions than expended by the applicant for the
139 public purposes provided for in s. 288.1162(5) or s.
140 288.11621(3).
141 c. Beginning 30 days after notice by the Department of
142 Economic Opportunity to the Department of Revenue that an
143 applicant has been certified as the professional golf hall of
144 fame pursuant to s. 288.1168 and is open to the public, $166,667
145 shall be distributed monthly, for up to 300 months, to the

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146 applicant.
147 d. Beginning 30 days after notice by the Department of
148 Economic Opportunity to the Department of Revenue that the
149 applicant has been certified as the International Game Fish
150 Association World Center facility pursuant to s. 288.1169, and
151 the facility is open to the public, $83,333 shall be distributed
152 monthly, for up to 168 months, to the applicant. This
153 distribution is subject to reduction pursuant to s. 288.1169. A
154 lump sum payment of $999,996 shall be made, after certification
155 and before July 1, 2000.
156 e. The department shall distribute up to $55,555 monthly to
157 each certified applicant as defined in s. 288.11631 for a
158 facility used by a single spring training franchise, or up to
159 $111,110 monthly to each certified applicant as defined in s.
160 288.11631 for a facility used by more than one spring training
161 franchise. Monthly distributions begin 60 days after such
162 certification or July 1, 2016, whichever is later, and continue
163 for not more than 30 years, except as otherwise provided in s.
164 288.11631. A certified applicant identified in this sub-
165 subparagraph may not receive more in distributions than expended
166 by the applicant for the public purposes provided in s.
167 288.11631(3).
168 f. Beginning 45 days after notice by the Department of
169 Economic Opportunity to the Department of Revenue that an
170 applicant has been approved by the Legislature and certified by
171 the Department of Economic Opportunity under s. 288.11625, the
172 department shall distribute each month an amount equal to one-
173 twelfth of the annual distribution amount certified by the
174 Department of Economic Opportunity for the applicant. The

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department may not distribute more than $13 million annually under this sub-subparagraph.

7. All other proceeds must remain in the General Revenue Fund.

Section 2. Subsections (2) and (3) of section 218.64, Florida Statutes, are amended to read:

218.64 Local government half-cent sales tax; uses; limitations.—

(2) Municipalities shall expend their portions of the local government half-cent sales tax only for municipality-wide programs, for reimbursing the state as required by a contract pursuant to s. 288.11625(7), or for municipality-wide property tax or municipal utility tax relief. All utility tax rate reductions afforded by participation in the local government half-cent sales tax shall be applied uniformly across all types of taxed utility services.

(3) Subject to ordinances enacted by the majority of the members of the county governing authority and by the majority of the members of the governing authorities of municipalities representing at least 50 percent of the municipal population of such county, counties may use up to $3 ~~$2~~ million annually of the local government half-cent sales tax allocated to that county for ~~funding for~~ any of the following purposes ~~applicants~~:

(a) Funding a certified applicant as a facility for a new or retained professional sports franchise under s. 288.1162 or a certified applicant as defined in s. 288.11621 for a facility for a spring training franchise. It is the Legislature's intent that the provisions of s. 288.1162, including, but not limited to, the evaluation process by the Department of Economic

Opportunity except for the limitation on the number of certified applicants or facilities as provided in that section and the restrictions set forth in s. 288.1162(8), shall apply to an applicant's facility to be funded by local government as provided in this subsection.

(b) Funding a certified applicant as a "motorsport entertainment complex," as provided for in s. 288.1171. Funding for each franchise or motorsport complex shall begin 60 days after certification and shall continue for not more than 30 years.

(c) Reimbursing the state as required by a contract entered into under s. 288.11625(7).

Section 3. Paragraph (d) is added to subsection (2) of section 288.0001, Florida Statutes, to read:

288.0001 Economic Development Programs Evaluation.—The Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability (OPPAGA) shall develop and present to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees the Economic Development Programs Evaluation.

(2) The Office of Economic and Demographic Research and OPPAGA shall provide a detailed analysis of economic development programs as provided in the following schedule:

(d) Beginning January 1, 2018, and every 3 years thereafter, an analysis of the Sports Development Program established under s. 288.11625.

Section 4. Section 288.11625, Florida Statutes, is created to read:

233 288.11625 Sports development.—
234 (1) ADMINISTRATION.—The department shall serve as the state
235 agency responsible for screening applicants for state funding
236 under s. 212.20(6)(d)6.f.
237 (2) DEFINITIONS.—As used in this section, the term:
238 (a) "Agreement" means a signed agreement between a unit of
239 local government and a beneficiary.
240 (b) "Applicant" means a unit of local government, as
241 defined in s. 218.369, which is responsible for the
242 construction, management, or operation of a facility; or an
243 entity that is responsible for the construction, management, or
244 operation of a facility if a unit of local government holds
245 title to the underlying property on which the facility is
246 located.
247 (c) "Beneficiary" means a professional sports franchise of
248 the National Football League, the National Hockey League, the
249 National Basketball Association, the National League or American
250 League of Major League Baseball, Major League Soccer, or the
251 National Association for Stock Car Auto Racing. A beneficiary
252 may also be an applicant under this section.
253 (d) "Facility" means a structure primarily used to host
254 games or events held by a beneficiary and does not include any
255 portion used to provide transient lodging.
256 (e) "Project" means a proposed construction,
257 reconstruction, renovation, or improvement of a facility or the
258 proposed acquisition of land to construct a new facility.
259 (f) "Signature event" means a professional sports event
260 with significant export factor potential. For purposes of this
261 paragraph, the term "export factor" means the attraction of

262 economic activity or growth into the state which otherwise would
263 not have occurred. Examples of signature events may include, but
264 are not limited to:
265 1. National Football League Super Bowls.
266 2. Professional sports All-Star games.
267 3. International sporting events and tournaments.
268 4. Professional automobile race championships or Formula 1
269 Grand Prix.
270 5. The establishment of a new professional sports franchise
271 in this state.
272 (g) "State sales taxes generated by sales at the facility"
273 means state sales taxes imposed under chapter 212 generated by
274 admissions to the facility or by sales made by vendors at the
275 facility who are accessible only to persons attending events
276 occurring at the facility.
277 (3) PURPOSE.—The purpose of this section is to provide
278 applicants state funding under s. 212.20(6)(d)6.f. for the
279 public purpose of constructing, reconstructing, renovating, or
280 improving a facility.
281 (4) APPLICATION AND APPROVAL PROCESS.—
282 (a) The department shall establish the procedures and
283 application forms deemed necessary pursuant to the requirements
284 of this section. The department may notify an applicant of any
285 additional required or incomplete information necessary to
286 evaluate an application.
287 (b) The annual application period is from June 1 through
288 November 1.
289 (c) Within 60 days after receipt of a completed
290 application, the department shall complete its evaluation of the

291 application as provided under subsection (5) and notify the
292 applicant in writing of the department's decision to recommend
293 approval of the applicant by the Legislature or to deny the
294 application.
295 (d) By each February 1, the department shall rank the
296 applicants and provide to the Legislature the list of the
297 recommended applicants in ranked order of projects most likely
298 to positively impact the state based on criteria established
299 under this section. The list must include the department's
300 evaluation of the applicant.
301 (e) A recommended applicant's request for funding must be
302 approved by the Legislature by general law.
303 1. An application by a unit of local government which is
304 approved by the Legislature and subsequently certified by the
305 department remains certified for the duration of the
306 beneficiary's agreement with the applicant or for 30 years,
307 whichever is less, provided the certified applicant has an
308 agreement with a beneficiary at the time of initial
309 certification by the department.
310 2. An application by a beneficiary which is approved by the
311 Legislature and subsequently certified by the department remains
312 certified for the duration of the beneficiary's agreement with
313 the unit of local government that owns the underlying property
314 or for 30 years, whichever is less, provided the certified
315 applicant has an agreement with the unit of local government at
316 the time of initial certification by the department.
317 3. An applicant that is previously certified pursuant to
318 this section does not need legislative approval each year to
319 receive state funding.

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320 (f) An applicant that is recommended by the department but
321 not approved by the Legislature may reapply and shall update any
322 information in the original application as required by the
323 department.
324 (g) The department may recommend no more than one
325 distribution under this section for any applicant, facility, or
326 beneficiary at a time.
327 (5) EVALUATION PROCESS.—
328 (a) Before recommending an applicant to receive a state
329 distribution under s. 212.20(6)(d)6.f., the department must
330 verify that:
331 1. The applicant or beneficiary is responsible for the
332 construction, reconstruction, renovation, or improvement of a
333 facility and obtained at least three bids for the project.
334 2. If the applicant is also the beneficiary, a unit of
335 local government holds title to the property on which the
336 facility and project are located.
337 3. If the applicant is a unit of local government in whose
338 jurisdiction the facility will be located, the unit of local
339 government has an exclusive intent agreement to negotiate in
340 this state with the beneficiary.
341 4. The unit of local government in whose jurisdiction the
342 facility will be located supports the application for state
343 funds. Such support must be verified by the adoption of a
344 resolution, after a public hearing, that the project serves a
345 public purpose.
346 5. The applicant or beneficiary has not previously
347 defaulted or failed to meet any statutory requirements of a
348 previous state-administered sports-related program under s.

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288.1162, s. 288.11621, or s. 288.1168. Additionally, the applicant or beneficiary is not currently receiving state distributions under s. 212.20 or the facility that is the subject of the application is not the subject of a distribution under s. 212.20.

6. The applicant or beneficiary has sufficiently demonstrated a commitment to employ residents of this state, contract with Florida-based firms, and purchase locally available building materials to the greatest extent possible.

7. If the applicant is a unit of local government, the applicant has a certified copy of a signed agreement with a beneficiary for the use of the facility. If the applicant is a beneficiary, the beneficiary must enter into an agreement with the department. The applicant’s or beneficiary’s agreement must also require the following:

a. The beneficiary must reimburse the state for state funds that have been distributed and will be distributed if the beneficiary relocates before the agreement expires.

b. The beneficiary must pay for signage or advertising within the facility. The signage or advertising must be placed in a prominent location as close to the field of play or competition as is practicable, must be displayed consistent with signage or advertising in the same location and of like value, and must feature Florida advertising approved by the Florida Tourism Industry Marketing Corporation.

8. The project will commence within 12 months after receiving state funds.

(b) The department shall competitively evaluate and rank applicants that timely submit applications for state funding

based on their ability to positively impact the state using the following criteria:

1. The proposed use of state funds.

2. The length of time that a beneficiary has agreed to use the facility.

3. The percentage of total project funds provided by the applicant and the percentage of total project funds provided by the beneficiary, with priority in the evaluation and ranking given to applications with 50 percent or more of total project funds provided by the applicant and beneficiary.

4. The number and type of signature events the facility is likely to attract during the duration of the agreement with the beneficiary.

5. The anticipated increase in average annual ticket sales and attendance at the facility due to the project.

6. The potential to attract out-of-state visitors to the facility.

7. The length of time a beneficiary has been in this state or partnered with the unit of local government. In order to encourage new franchises to locate in this state, an application for a new franchise shall be considered to have a significant positive impact on the state and shall be given priority in the evaluation and ranking by the department.

8. The multiuse capabilities of the facility.

9. The facility’s projected employment of residents of this state, contracts with Florida-based firms, and purchases of locally available building materials.

10. The amount of private and local financial or in-kind contributions to the project.

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407 11. The amount of positive advertising or media coverage
408 the facility generates.
409 (6) DISTRIBUTION.—
410 (a) The department shall determine the annual distribution
411 amount an applicant may receive based on the total cost of the
412 project.
413 1. If the total project cost is $200 million or greater,
414 the applicant may receive annual distributions equal to the new
415 incremental state sales taxes generated by sales at the facility
416 during 12 months as provided under subparagraph (b)2., up to $3
417 million.
418 2. If the total project cost is at least $100 million but
419 less than $200 million, the applicant may receive annual
420 distributions equal to the new incremental state sales taxes
421 generated by sales at the facility during 12 months as provided
422 under subparagraph (b)2., up to $2 million.
423 3. If the total project cost is less than $100 million, the
424 applicant may receive annual distributions equal to the new
425 incremental state sales taxes generated by sales at the facility
426 during 12 months as provided under subparagraph (b)2., up to $1
427 million.
428 (b) At the time of initial evaluation and review by the
429 department pursuant to subsection (5), the applicant must
430 provide an analysis by an independent certified public
431 accountant which demonstrates:
432 1. The amount of state sales taxes generated by sales at
433 the facility during the 12-month period immediately before the
434 beginning of the application period. This amount is the
435 baseline.

436 2. The expected amount of new incremental state sales taxes
437 generated by sales at the facility above the baseline which will
438 be generated as a result of the project.
439 (c) The independent analysis provided in paragraph (b)
440 shall be verified by the department.
441 (d) The Department of Revenue shall begin distributions
442 within 45 days after notification of initial certification from
443 the department.
444 (e) The department shall consult with the Department of
445 Revenue and the Office of Economic and Demographic Research to
446 develop a standard calculation for estimating new incremental
447 state sales taxes generated by sales at the facility and
448 adjustments to distributions.
449 (f) In any 12-month period when total distributions for all
450 certified applicants reach $13 million, the department may not
451 certify new distributions for additional applicants.
452 (7) CONTRACT.—An applicant approved by the Legislature and
453 certified by the department must enter into a contract with the
454 department which:
455 (a) Specifies the terms of the state’s investment.
456 (b) States the criteria that the certified applicant must
457 meet in order to remain certified.
458 (c) Requires the applicant to submit the independent
459 analysis required under subsection (6) and an annual independent
460 analysis.
461 1. The applicant must agree to submit to the department,
462 beginning 12 months after completion of a project or 12 months
463 after the first four annual distributions, whichever is earlier,
464 an annual analysis by an independent certified public accountant

465 demonstrating the actual amount of new incremental state sales
466 taxes generated by sales at the facility during the previous 12-
467 month period. The applicant shall certify to the department a
468 comparison of the actual amount of state sales taxes generated
469 by sales at the facility during the previous 12-month period to
470 the baseline under subparagraph (6)(b)1.
471 2. The applicant must submit the certification within 60
472 days after the end of the previous 12-month period. The
473 department shall verify the analysis.
474 (d) Specifies information that the certified applicant must
475 report to the department.
476 (e) Requires the applicant to reimburse the state for the
477 amount each year that the actual new incremental state sales
478 taxes generated by sales at the facility during the most recent
479 12-month period was less than the annual distribution under
480 paragraph (6)(a). This requirement applies 12 months after
481 completion of a project or 12 months after the first four annual
482 distributions, whichever is earlier.
483 1. If the applicant is unable or unwilling to reimburse the
484 state in any year for the amount equal to the difference between
485 the actual new incremental state sales taxes generated by sales
486 at the facility and the annual distribution under paragraph
487 (6)(a), the department may place a lien on the applicant's
488 facility.
489 2. If the applicant is a municipality or county, it may
490 reimburse the state from its half-cent sales tax allocation, as
491 provided in s. 218.64(3).
492 3. Reimbursements must be sent to the Department of Revenue
493 for deposit into the General Revenue Fund.

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494 (f) Includes any provisions deemed prudent by the
495 department.
496 (8) USE OF FUNDS.—An applicant certified under this section
497 may use state funds only for the following purposes:
498 (a) Constructing, reconstructing, renovating, or improving
499 a facility or reimbursing such costs.
500 (b) Paying or pledging for the payment of debt service on
501 bonds issued for the construction or renovation of such
502 facility.
503 (c) Funding debt service reserve funds, arbitrage rebate
504 obligations, or other amounts payable with respect thereto on
505 bonds issued for the construction or renovation of such
506 facility.
507 (d) Reimbursing the costs under paragraphs (b) and (c) or
508 the refinancing of bonds issued for the construction or
509 renovation of such facility.
510 (9) REPORTS.—
511 (a) On or before November 1 of each year, an applicant
512 certified under this section and approved to receive state funds
513 must submit to the department any information required by the
514 department. The department shall summarize this information for
515 inclusion in its annual report to the Legislature under
516 paragraph (4)(d).
517 (b) Every 5 years after an applicant receives its first
518 monthly distribution, the department must verify that the
519 applicant is meeting the program requirements. If the applicant
520 fails to meet these requirements, the department shall notify
521 the Governor and the Legislature in its next annual report under
522 paragraph (4)(d) that the requirements are not being met and

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523 recommend future action. The department shall take into
524 consideration extenuating circumstances that may have prevented
525 the applicant from meeting the program requirements, such as
526 force majeure events or a significant economic downturn.
527 (10) AUDITS.—The Auditor General may conduct audits
528 pursuant to s. 11.45 to verify the independent analysis required
529 under paragraphs (6)(b) and (7)(c) and to verify that the
530 distributions are expended as required. The Auditor General
531 shall report the findings to the department. If the Auditor
532 General determines that the distribution payments are not
533 expended as required, the Auditor General must notify the
534 Department of Revenue, which may pursue recovery of
535 distributions under the laws and rules that govern the
536 assessment of taxes.
537 (11) REPAYMENT OF DISTRIBUTIONS.—An applicant that is
538 certified under this section may be subject to repayment of
539 distributions upon the occurrence of any of the following:
540 (a) An applicant's beneficiary has broken the terms of its
541 agreement with the applicant and relocated from the facility.
542 The beneficiary must reimburse the state for state funds that
543 have been distributed and will be distributed if the beneficiary
544 relocates before the agreement expires.
545 (b) A determination by the department that an applicant has
546 submitted information or made a representation that is
547 determined to be false, misleading, deceptive, or otherwise
548 untrue. The applicant must reimburse the state for state funds
549 that have been distributed and will be distributed if such
550 determination is made.
551 (12) HALTING OF PAYMENTS.—The applicant may request in

552 writing at least 20 days before the next monthly distribution
553 that the department halt future payments. The department shall
554 immediately notify the Department of Revenue to halt future
555 payments.
556 (13) RULEMAKING.—The department may adopt rules to
557 implement this section.
558 Section 5. Paragraph (a) of subsection (2) of section
559 288.11631, Florida Statutes, is amended to read:
560 288.11631 Retention of Major League Baseball spring
561 training baseball franchises.—
562 (2) CERTIFICATION PROCESS.—
563 (a) Before certifying an applicant to receive state funding
564 for a facility for a spring training franchise, the department
565 must verify that:
566 1. The applicant is responsible for the construction or
567 renovation of the facility for a spring training franchise or
568 holds title to the property on which the facility for a spring
569 training franchise is located.
570 2. The applicant has a certified copy of a signed agreement
571 with a spring training franchise. The signed agreement with a
572 spring training franchise for the use of a facility must, at a
573 minimum, be equal to the length of the term of the bonds issued
574 for the public purpose of constructing or renovating a facility
575 for a spring training franchise. If no such bonds are issued for
576 the public purpose of constructing or renovating a facility for
577 a spring training franchise, the signed agreement with a spring
578 training franchise for the use of a facility must be for at
579 least 20 years. Any such agreement with a spring training
580 franchise for the use of a facility cannot be signed more than 4

581 years before the expiration of any existing agreement with a
582 spring training franchise for the use of a facility. However,
583 any such agreement may be signed at any time before the
584 expiration of any existing agreement with a spring training
585 franchise for use of a facility if the applicant has never
586 received state funding for the facility as a spring training
587 facility under this section or s. 288.11621 and the facility was
588 constructed before January 1, 2000. The agreement must also
589 require the franchise to reimburse the state for state funds
590 expended by an applicant under this section if the franchise
591 relocates before the agreement expires. The agreement may be
592 contingent on an award of funds under this section and other
593 conditions precedent.
594 3. The applicant has made a financial commitment to provide
595 50 percent or more of the funds required by an agreement for the
596 construction or renovation of the facility for a spring training
597 franchise. The commitment may be contingent upon an award of
598 funds under this section and other conditions precedent.
599 4. The applicant demonstrates that the facility for a
600 spring training franchise will attract a paid attendance of at
601 least 50,000 persons annually to the spring training games.
602 5. The facility for a spring training franchise is located
603 in a county that levies a tourist development tax under s.
604 125.0104.
605 Section 6. (1) The executive director of the Department of
606 Economic Opportunity is authorized, and all conditions are
607 deemed met, to adopt emergency rules pursuant to ss. 120.536(1)
608 and 120.54(4), Florida Statutes, for the purpose of implementing
609 this act.

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610 (2) Notwithstanding any provision of law, such emergency
611 rules shall remain in effect for 6 months after the date adopted
612 and may be renewed during the pendency of procedures to adopt
613 permanent rules addressing the subject of the emergency rules.
614 Section 7. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Community Affairs
Environmental Preservation and Conservation
Gaming
Judiciary
Rules

SENATOR JACK LATVALA
20th District

February 28, 2014

The Honorable Senator Nancy Detert, Chair
Senate Commerce and Tourism Committee
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Detert:

I respectfully request that Senate Bill 1216/Professional Sports Facilities be placed on the agenda of the Senate Committee on Commerce and Tourism at your earliest convenience.

This bill would create the *Professional Sports Facility Incentive Program* process to provide state funding for the public purpose of constructing, reconstructing, renovating, or improving a professional sports facility. Cities in Florida depend on the economic benefits provided by having professional and minor league baseball teams in their communities.

If you have any questions regarding this legislation, please contact me. Thank you for your consideration.

Sincerely,

Jack Latvala
State Senator
District 20

Cc: Jennifer Hrdicka, Staff Director

REPLY TO:
☐ 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
☐ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1480

INTRODUCER: Senator Benacquisto

SUBJECT: Microfinance

DATE: March 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Malcolm	Hrdlicka	CM	**Pre-meeting**
2.			ATD	
3.			AP	

I. Summary:

SB 1480 creates the Florida Microfinance Act to provide entrepreneurs and small businesses in Florida access to credit. The act consists of two programs: a loan program and a guarantee program.

Under the loan program, the Department of Economic Opportunity (DEO) will competitively award funds to up to three eligible lenders who will in-turn provide a 1:1 match to make short-term, microloans of up to $50,000 to entrepreneurs and small businesses. The borrower must participate in business training and technical assistance provided by the Florida Small Business Development Network.

Under the guarantee program, Enterprise Florida, Inc., (EFI) will utilize state funds to guarantee loans made by private lenders to entrepreneurs and small businesses in Florida. Loan guarantees may only be provided on loans between $50,000 and $250,000, and a guarantee cannot exceed 50 percent of the total loan amount.

Under both programs, eligibility is limited to borrowers who are entrepreneurs or small businesses with 25 or fewer employees and revenue up to $1.5 million per year.

The DEO and EFI must report annually on the programs.

Lastly, the Office of Program Policy Analysis and Government Accountability (OPPAGA) must prepare a report that analyzes, evaluates, and determines the economic benefits of the first 3 years of the programs. The OPPAGA is also required to evaluate the federal State Small Business Credit Initiative in Florida.

II. Present Situation:

Small Business Access to Credit

Growing businesses of all sizes need access to resources, particularly capital and credit. While access to credit is important to all businesses, it is significantly important to entrepreneurs and small businesses due to the unique circumstances inherent in their operations.[1] Not only is access to credit important for business growth, studies indicate there is a correlation between a small business owner's ability to get financing and his or her ability to hire.[2]

Despite the recognized necessity, importance, and employment benefits of access to credit, entrepreneurs and small businesses frequently cite the lack of access to capital and credit as impediments to growth.[3] Although nation-wide surveys appear to indicate credit is becoming more available to small businesses,[4] Florida-specific studies indicate lack of access to credit remains problematic for Florida small businesses. For example, a recent report issued by the OPPAGA indicates that economic development organizations and business associations report that access to capital was more of a barrier to small business growth than for larger businesses.[5] Similarly, surveys conducted by the Florida Chamber of Commerce indicate that access to capital is the top issue facing the state's small businesses.[6] As the survey indicated, the demand for credit by entrepreneurs and small businesses is outpacing its availability.[7]

This gap between the demand for credit by entrepreneurs and small businesses and the limited availability of such credit is due to the unique characteristics and challenges of entrepreneurship and small business operations, and the smaller the business the more pronounced the problems of accessing credit.[8] Many entrepreneurs and small businesses lack the assets necessary for a traditional bank loan, making them a riskier lending option for banks.[9] Additionally, entrepreneurs and small businesses generally have minimal, or in some instances no, credit history.[10] Lenders may also be reluctant to lend to entrepreneurs and small businesses with

[1] For example, a small business owner may need a small, short-term loan of $10,000 to cover a month's payroll while it waits for its first payment from a new, long-term client. Michelle A. Samaad, *Microloans Can Boost Loan Production Without Threatening Cap: Filene*, Credit Union Times (Sept. 24, 2013) *available at* http://www.cutimes.com/2013/09/24/microloans-can-boost-loan-production-without-threa?ref=hp&t=lending (last visited Mar. 8, 2014).

[2] National Small Business Association, *Small Business Access to Capital Survey*, 2 (July 2012) *available at* http://www.nsba.biz/wp-content/uploads/2012/07/Access-to-Capital-Survey.pdf (last visited Mar. 8, 2014).

[3] *See* Dave Grace, *Microloan Feasibility Study: Can Small Business Lending Become Big Business For Credit Unions*, Filene Research Institute, 15 (Sept. 6, 2013) (copy on file with the Committee on Commerce and Tourism).

[4] *See* National Small Business Association, *2013 Year-End Economic Report,* 10 (Feb. 28, 2014) *available at* http://www.nsba.biz/wp-content/uploads/2014/02/2013-Year-End-Economic-Report.pdf (last visited Mar. 15, 2014).

[5] OPPAGA, *Status of Florida's Efforts to Address Challenges to Business Establishment and Expansion*, Report No. 14-04, 3 (Jan. 2014) *available at* http://www.oppaga.state.fl.us/Summary.aspx?reportNum=14-04 (last visited Mar. 7, 2014).

[6] Florida Chamber of Commerce, *Florida Small Business Index: 2012-2013 Quarter 4 Survey Results*, 4, http://www.flchamber.com/wp-content/uploads/SBC-Index-Report_October-2013.pdf (last visited Mar. 7, 2014).

[7] Grace, *Microloan Feasibility Study* at 7.

[8] *Id*.

[9] *Small Business Access to Capital Survey* at 2.

[10] Congressional Research Service, *Small Business Access to Capital and Job Creation*, 1 (Feb. 18, 2014) *available at* https://www.fas.org/sgp/crs/misc/R40985.pdf (last visited Mar. 8, 2014).

innovative products because it might be difficult to collect enough reliable information to correctly estimate the risk for such products.[11]

Two common solutions used to address the lack of access to capital and credit to entrepreneurs and small businesses are through the use of microloans and loan guarantees.

Microloans

Unlike well-established medium and large businesses, early-stage entrepreneur and small business credit needs are generally met through low principal, short-term loans. These loans, frequently called "microloans" have principal amounts lower and repayment terms shorter than traditional business loans.[12] Such small, short-term loans are generally not profitable for lenders because of the originating, processing, and servicing costs associated with such loans. The small size of microloans means that lender fees do not provide sufficient profit to justify making these loans. Many microloan applicants also need considerable training and technical assistance to effectively manage and build the business. These ancillary costs further reduce the attractiveness of such loans to traditional lenders. Lastly, as noted above, borrowers of such loans generally have a limited amount of collateral available, which makes them riskier to lenders.[13]

One common solution to make credit available to entrepreneurs and small businesses is to make microloans more profitable for lenders by providing lenders with access to low-cost capital. In this situation, a lender is provided with low-cost capital and the lender in-turn mixes the low-cost capital with other sources of capital to provide the microloans. Providing low-cost capital to a lender reduces the lender's cost to make loans and reduces its overall risk exposure thus increasing the likelihood that it will provide loans to entrepreneurs and small businesses it would otherwise deny.

A frequent recommendation of small business development and finance experts is that successful microloan programs be tied to business development training and technical assistance.[14] Tying business development training and technical assistance to microloans ensures that borrowers develop the skills necessary to successfully manage and grow their businesses. Additional suggested practices for microloan programs include requiring personal guarantees in addition to traditional collateral requirements,[15] developing special underwriting criteria,[16] and implementing proactive loan referral efforts.[17]

[11] *Id.*
[12] U.S. Dep't. of Treasury, *Micro Enterprise Lending: Community Equity Investments, Inc.*, 2 (on file with the Committee on Commerce and Tourism); Grace, *Microloan Feasibility Study* at 5.
[13] *Id.*
[14] Grace, *Microloan Feasibility Study* at 22-23; Office of Program Policy Analysis and Government Accountability, *Legislature Should Consider Lessons Learned If It Wishes to Create a Microenterprise Development Program*, Report No. 06-77, 3, (Dec. 2006) *available at* http://www.oppaga.state.fl.us/Summary.aspx?reportNum=06-77 (last visited Mar. 7, 2014).
[15] Grace, *Microloan Feasibility Study* at 19-20.
[16] Grace, *Microloan Feasibility Study* at 23-24.
[17] Grace, *Microloan Feasibility Study* at 25.

Loan Guarantees

An additional solution designed to make credit available to entrepreneurs and small businesses is to provide a guarantee on all or a portion of a loan made by a third-party lender to an entrepreneur or small business. Under a guarantee, the guarantor (the entity providing the guarantee) agrees to protect the lender against all or part of the loss if a borrower defaults on the loan. Similar to microloan funding, a loan guarantee reduces the lender's overall risk exposure thus increasing the likelihood it will provide loans to entrepreneurs and small businesses it would otherwise deny.

Funds allocated to provide guarantees may be leveraged to allow more loans to be guaranteed thus encouraging greater loan-making. For example, a 3:1 leverage means that $1 million of allocated funds may guarantee $3 million in loans, which may be in one loan or multiple loans. The risk of leveraging is that an increase in the leverage ratio increases the exposure of the guarantee funds to cover defaulted loans due to the increased loan-making by lenders. However, steps can be taken to mitigate against this exposure, such as providing a leverage ceiling or requiring a set-aside of a percentage of all loan guarantees to protect against extraordinary losses.[18]

Small Business Finance Programs in Florida

Currently, the DEO and EFI administer a number of business financing programs including the Black Business Loan Program,[19] Economic Gardening Business Loan Pilot Program,[20] Rural Community Development Revolving Loan Fund,[21] and Florida Export Finance Corporation.[22] The DEO and EFI also administer the federal State Small Business Credit Initiative (SSBCI), which provides a number of business finance tools, including a loan guarantee program, to states to foster small business development.[23] These existing state small business finance programs and the SSBCI are generally intended to provide access to credit to small businesses with established credit records and sufficient collateral, rather than the smallest businesses and entrepreneurs for whom access to credit is an acute problem.

From 2002 to 2006, the former Department of Community Affairs administered the Florida Front Porch Microloan program, which provided microloans of up to approximately $35,000.[24] This program ended in 2006 due to underutilization.[25]

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[18] U.S. Dep't. of Treasury, SSBCI Program Profile: Loan Guarantee Program, 3 (May 17, 2011) *available at* http://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI_Program_Profile_Loan_Guarantee_FINAL_May_17.pdf (last visited Mar. 15, 2014).
[19] Section 288.7102, F.S.
[20] Section 288.1081, F.S.
[21] Section 288.065, F.S.
[22] Section 288.773, F.S.
[23] U.S. Dep't of Treasury, State Small Business Credit Initiative (SSBCI) (Jan. 22, 2014) *available at* http://www.treasury.gov/resource-center/sb-programs/Pages/ssbci.aspx (last visited Mar. 17, 2014).
[24] OPPAGA Report 06-77 at 2. The program was not codified in statute but was instead created and funded through the budget process. *See* Comm. on Community Affairs, The Florida Senate, *Department of Community Affairs - Review of the Front Porch Florida Initiative*, 1, 3 (Interim Report 2008-110) (Oct. 2007).
[25] *Id.*

In addition to small business finance programs, the Florida Small Business Development Center Network provides consulting and training to early-stage and small and medium-sized businesses in Florida.[26]

III. Effect of Proposed Changes:

Sections 1 and 2 create part XIV of ch. 288, F.S., entitled "Microfinance Programs" and cited as the "Florida Microfinance Act," consisting of ss. 288.993-288.9937, F.S., created in the bill.

Section 3 creates s. 288.9931, F.S., providing legislative findings regarding the lack of available credit to entrepreneurs and small businesses in this state. The bill states it is the Legislature's intent to address this difficulty through the creation of a program that provides access to credit in conjunction with training and technical assistance to entrepreneurs and small businesses.

Microfinance Loan Program

Section 6 creates s. 288.9934, F.S., the Microfinance Loan Program, which is established in the DEO to make short-term, fixed-rate microloans in conjunction with business training and technical assistance to entrepreneurs and small businesses.[27] Participation in the loan program is intended to enable entrepreneurs and small businesses to gain access to private financing upon completing the loan program.

Lender Eligibility

The DEO must competitively contract with up to three lenders to administer the loan program for 3 years. A qualified lender must:

- Be a corporation registered in this state;
- Not offer checking or savings accounts;
- Demonstrate that its board of directors and managers are experienced in microlending and small business finance and development;
- Demonstrate it has the resources and expertise to analyze and evaluate entrepreneurs and small businesses applying for microloans; underwrite and service microloans; and coordinate business training and technical assistance.
- Demonstrate that it has established partnerships with public and private funding sources, economic development agencies, and workforce development and job referral networks; and
- Demonstrates that it has a plan that includes proposed microlending activities under the loan program.

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[26] Section 288.001, F.S.

[27] "Entrepreneur" is defined in s. 822.9932, F.S., which is created in section 4 of the bill, as "an individual residing in this state who desires to assume the risk of organizing, managing, and operating a small business in this state." "Small business" is likewise defined in s. 822.9932, F.S., as "a business, regardless of corporate structure, domiciled in this state which employs 25 or fewer people and generated average annual gross revenues of $1.5 million or less per year for the preceding 2 years."

To ensure that prospective lenders meet these qualifications, a lender must submit the following information with its proposal:

- The types of entrepreneurs and small businesses it has made loans to in the past, including the average size and terms of loans;
- The microlending and small business finance and development experience of its directors and managers;
- Its underwriting and credit policies and procedures, monitoring policies and procedures, collection practices, and samples of loan documentation;
- The nonstate funding that will be used in conjunction with state funds;
- Its three most recent financial audits or, if no prior audits have been completed, its three most recent unaudited financial statements; and
- A conflict of interest statement certifying that no board member, employee, or other person affiliated with the lender will receive any compensation from an entrepreneur or small businesses that will receive state funds under the loan program.[28]

Lender Award Funding Conditions

A contracted lender will receive awarded funds from the DEO that must be repaid at the end of the 3-year contract. The DEO may charge interest on the awarded funds of up to 80 percent of the Federal Funds Rate, and the lender must provide an assignment of all notes receivable of its microloans made under the loan program as collateral to the DEO. The DEO must establish performance measures and objectives for the loan program and lenders to maximize state funds. The contract with the lender must specify any sanctions for the lender's failure to comply with the contract or the act. However, the DEO is prohibited from reviewing microloans made by a lender before it is approved by the lender.

Awarded funds may only be used by a lender to provide direct microloans to entrepreneurs and small businesses according to limitations and conditions described below (see *Borrower Eligibility and Conditions* below). Awarded funds may not exceed 50 percent of any microloan made by the lender, and with the exception of a one-time administrative servicing fee of 1 percent of the total award amount, funds may not be used to pay any costs associated with providing microloans, business training, or technical assistance. The lender may not recoup this fee, or charge any other fees or costs to borrowers except those expressly provided in the act. The lender must also reserve 10 percent of the awarded funds to provide microloans to certain ultra-small entrepreneurs and businesses that employ less than six people and generate annual gross revenue less than $250,000 per year.

Additionally, within 30 days of executing its contract with the DEO, the lender must enter into a memorandum of understanding with the Florida Small Business Development Network (SBDN) that requires the SBDN to provide business management and development training and technical assistance to entrepreneurs and small businesses receiving microloans under the loan program, and to promote the loan program to underserved entrepreneurs and small businesses. By September 1, 2014, the DEO must review industry best practices and determine the minimum business training and technical assistance that must be provided by the SBDN.

[28] The department may waive this requirement for good cause shown.

Borrower Eligibility and Conditions

To be eligible for a microloan, an entrepreneur or small business must be located in this state and submit an application along with an application fee of up to $50 to a contracted lender. Microloans may be up to $50,000 and up to 1 year in duration with interest rates up to the prime rate published in the Wall Street Journal, plus 1000 basis points.[29] A borrower may receive a maximum of $75,000 in total microloans per year and may receive a maximum of two microloans per year and five microloans in a 3-year period.

Proceeds from a microloan can only be used for startup costs, working capital, and to purchase materials, supplies, furniture, fixtures, and equipment. Microloans may not be made if the microloan proceeds will be used to:

- Pay off creditors;
- Provide funds, directly or indirectly, for payment, distribution, or as a microloan to owners, partners, or shareholders of the business, except as ordinary compensation for services rendered;
- Finance the purchase, construction, or improvement of real property held for sale or investment;
- Pay for lobbying activities; or
- Replenish funds used for any of the above purposes.

As a condition of receiving a microloan, the borrower must personally guarantee the microloan, participate in business training and technical assistance, and provide information regarding job creation and financial data to the lender. The lender may collect late payment fees that are consistent with standard business lending practices and may recover costs and fees incurred for any collection efforts due to the borrower's default.

Funding and Implementation by the DEO

A lender must meet the requirements of the act, the terms of its contract with the DEO, and any other applicable laws to be eligible to receive funds. If the loan program is appropriated funding, the DEO must distribute funds to the lenders within 30 days of the execution of the contracts with the lenders. The total amount of funding awarded to lenders in a fiscal year may not exceed the amount appropriate for that fiscal year. If the funds appropriated to the loan program exceed the amount of funds awarded to the lenders, the excess funds will revert back to the General Revenue Fund.

With the exception of funds appropriated to the loan program, the credit of the state may not be pledged. The state is not liable or obligated for claims on the loan program or against a lender or the DEO.

In implementing the loan program, the DEO must be guided by the 5-year statewide strategic plan adopted pursuant to s. 20.60(5), F.S. The DEO must also promote and advertise the loan

[29] 1 basis point equals 0.01 percent. As of March 10, 2014, the Wall Street Journal prime rate was 3.25. The Wall Street Journal, *Market Media Center* (Mar. 7, 2014) *available at* http://online.wsj.com/mdc/public/page/2_3020-moneyrate.html?mod=topnav_2_3010 (last visited Mar. 10, 2014).

program by cooperating with public and private organizations to organize, host, or participate in events for entrepreneur and small business development.

The DEO must implement a study by December 31, 2014, to identify best practices to increase access to credit to entrepreneurs and small businesses in this state. The study must explore the ability and limitations of Florida nonprofit organizations and private financial institutions to expand access to credit to entrepreneurs and small businesses in this state.

Lender Repayment of Award Funds

After collecting interest and permitted fees or costs in satisfaction of all microloans, a lender must remit to the DEO the microloan principal collected from all microloans made by the lender with awarded funds. Repayment of microloan principal may be deferred up to 6 months; however, the lender may not provide a microloan after its contract with the DEO expires.

If a lender is unable to make repayments to the DEO in accordance with its contract, the DEO may accelerate maturity of the awarded funds and demand repayment in full. In this event, or if a lender violates the act or the terms of its contract, the lender must surrender possession of all collateral to the DEO. Any loss or deficiency greater than the value of the collateral may be recovered by the DEO from the lender. In the event of a lender's default, termination of the contract, or violation of the act, the state may, in addition to any other remedy provided by law, bring suit to enforce its interest. Additionally, a microloan borrower's default does not relieve a lender of its obligation to repay any awarded funds to the DEO.

Contract Termination

A lender's contract with the DEO may be terminated upon a finding by the DEO that the lender:
- Has, within the previous 5 years, participated in a state-funded economic development program in any state and failed to comply with the requirements of that program;
- Is currently in material noncompliance with any statute, rule, or program administered by the DEO;
- Has members of its board, officers, partners, managers, or shareholders that have pled no contest or been found guilty of any crime involving fraud, misrepresentation, or dishonesty;
- Failed to meet or agree to the terms of its contract with the DEO or failed to comply with the act; or
- Provided fraudulent or misleading information to the DEO.

If the contract is terminated for any of the above reasons, the lender must immediately return all awarded state funds, including any fees it would otherwise be entitled to retain.

The lender's contract may be terminated at any time for any reason upon 30 days' notice by the DEO. In such case, the lender must return all awarded funds to the DEO within 60 days of the termination. However, the lender may retain any administrative fees it has collected. The lender's contract may also be terminated by the lender at any time for any reason upon 30 days' notice by the lender. In such case, the lender must return all awarded funds to the DEO, including any fees it has retained or would otherwise be entitled to retain, within 30 days of the termination.

Lender Auditing

A lender must submit quarterly reports to the DEO (see *Lender Quarterly Reports* below) and must also make its books and records related to the loan program available to the DEO or its designee for inspection upon reasonable notice. Additionally, a lender must submit an annual financial audit performed by an independent certified public accountant and an operational performance audit for the most recently completed fiscal year to the DEO. Both audits must indicate whether any material weakness or instances of material noncompliance are indicated in the audit.

Lender Quarterly Reports

Lenders must submit reports on at least a quarterly basis that include information required by the DEO in its annual Microfinance Loan Program report (see *Annual Report of the Microfinance Loan Program* below) (Section 8, creating s. 285.9936, F.S.). The lenders' reports must also include the number of microloan applications received, the number of microloans made, the amount and interest rate of each microloan made, the amount of technical assistance or business training provided, the number of full-time equivalent jobs created as a result of the microloans, the amount of wages paid to employees in the newly created jobs, industry data regarding the borrower's business, and the borrower's locations.

Annual Report of the Microfinance Loan Program

Section 8 creates s. 288.9936, F.S., requiring the DEO to provide a detailed report of the Microfinance Loan Program in its annual departmental report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include:

- A description of the loan program, including an evaluation of application and funding activities, recommendations for change, and identification of any overlapping state programs;
- The financial institutions, organizations, and individuals participating in the loan program;
- An assessment of the availability of and access to credit for entrepreneurs and small businesses in this state;
- A summary of the financial and employment results of the entities receiving microloans;
- The number of full-time equivalent jobs created as a result of the microloans and the amount of wages paid to employees in the newly created jobs;
- The number and location of prospective lenders that responded to the DEO's request for proposals;
- The amount of funds awarded to lenders;
- The number of microloan applications received by lenders;
- The number, duration, and location of microloans made by lenders;
- The number and amount of microloans outstanding, with payments overdue, or in default, if any;
- The repayment history of the microloans made;
- The repayment history and performance of funding awards;
- An evaluation of the loan program's ability to meet the financial performance measures and objectives established by the DEO; and
- A description and evaluation of the technical assistance and business training provided by the SBDN.

Microfinance Guarantee Program

Section 7 creates s. 288.9935, F.S., the Microfinance Guarantee Program, which is established in the DEO to provide targeted guarantees for loans made to entrepreneurs and small businesses. Funds appropriated to the guarantee program must be reinvested and maintained as a long-term and stable source of funding for the guarantee program.

Loan Guarantee Administration

The DEO must enter into a contract with EFI to administer the guarantee program. In administering the guarantee program, EFI must:
- Establish lender[30] and borrower eligibility requirements in addition to those provided in the bill;
- Determine a reasonable leverage ratio of loan amounts guaranteed to state funds; the leverage ratio may not exceed 3 to 1;
- Establish reasonable fees and interest;
- Promote the guarantee program to financial institutions that provide loans to entrepreneurs and small businesses;
- Enter into a memorandum of understanding with the SBDN to promote the guarantee program;
- Establish limits on the total amount of loan guarantees a single lender can receive;
- Establish an average loan guarantee amount;
- Establish a risk-sharing strategy to be used in the event of a loan failure; and
- Establish financial performance measures and objectives for the guarantee program.

Loan Guarantee Eligibility and Limitations

To be eligible to receive a loan guarantee, a borrower must be an entrepreneur or small business located in this state, employ 25 or fewer people, generate average annual gross revenues up to $1.5 million per year for the last 2 years, and meet any other requirements established by EFI.

Loan guarantees may only be provided on loans between $50,000 and $250,000 and may not exceed 50 percent of the total loan amount. EFI may not guarantee a loan if the loan proceeds will be used to:
- Pay off the borrower's creditors;
- Provide funds, directly or indirectly, for payment, distribution, or as a loan to owners, partners, or shareholders of the borrower, except as ordinary compensation for services rendered;
- Finance the purchase, construction, or improvement, of real property held for sale or investment;
- Pay for lobbying activities; or
- Replenish funds used for any of the above purposes.

[30] A "lender" for purposes of the guarantee program is defined in section 7 of the bill as "a financial institution defined in s. 655.005."

The credit of the state or EFI, may not be pledged except for funds appropriated to the guarantee program. The state is not liable or obligated for claims on the guarantee program or against EFI or the DEO.

EFI Annual Loan Guarantee Report

By October 1 of each year, EFI must submit an annual report to the DEO for inclusion in its annual departmental report. EFI's report must include:

- A description of the guarantee program, including an evaluation of its application and guarantee activities, recommendations for change, and identification of any overlapping state programs;
- An assessment of the current availability of and access to credit for entrepreneurs and small businesses in this state;
- A summary of the financial and employment results of the entrepreneurs and small businesses receiving loan guarantees;
- Industry data about the borrowers;
- The name and location of lenders receiving loan guarantees;
- The amount of state funds received by EFI;
- The number of loan guarantee applications received;
- The number, duration, location, and amount of guarantees made;
- The number and amount of guaranteed loans outstanding, with payments overdue, and in default, if any;
- The repayment history of the guaranteed loans made; and
- An evaluation of the guarantee program's ability to meet the financial performance measures and objectives established by EFI.

OPPAGA Evaluation of the Microfinance Loan and Microfinance Guarantee Programs

Section 9 creates s. 288.9937, F.S., requiring the OPPAGA prepare a report that analyzes, evaluates, and determines the economic benefits[31] of the first 3 years of the Microfinance Loan Program and the Microfinance Guarantee Program. The analysis must also evaluate the number of jobs created, the effect on personal income, and the impact on state gross domestic product from the state's investment in the programs. The analysis must also identify any inefficiencies in the programs and provide recommendations for changes. The report must be provided to the President of the Senate and the Speaker of the House of Representatives by January 1, 2018. This section expires January 31, 2018.

Additionally, the OPPAGA is directed to evaluate the effectiveness and return on investment of the State Small Business Credit Initiative[32] operated in this state (Section 8, creating s. 288.9936, F.S.). The report must be provided to the President of the Senate and the Speaker of the House of Representatives by January 1, 2015.

Section 4 creates s. 288.9932, F.S., to define terms used in the act.

[31] "Economic benefits" are defined in s. 288.005, F.S., as "the direct, indirect, and induced gains in state revenues as a percentage of the state's investment."
[32] 12 U.S.C. ss. 5701 et seq.

Section 5 authorizes the DEO to adopt rules to implement the act.

Section 10 permits the DEO to adopt emergency rules in order to implement the act until October 1, 2015. Emergency rules will remain in effect for 6 months and may be renewed until permanent rules addressing the subject of the emergency rules are adopted.

Section 11 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Approximately 300,000 businesses in Florida employ 25 or fewer employees and generate less than $1.5 million in annual revenue. The microloan and loan guarantee programs created in the act may benefit these businesses.

C. Government Sector Impact:

According to the DEO, it will need at least one additional FTE to administer the programs. It estimates the cost for a new FTE will be $85,000.[33]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorize the DEO to adopt rules to implement the act. The bill also grants the DEO emergency rulemaking authority.

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[33] DEO, *Agency Analysis: SB 1480*, 6 (on file with the Committee on Commerce and Tourism).

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 288.993, 288.9931, 288.9932, 288.9933, 288.9934, 288.9935, 288.9936, and 288.9937.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Commerce and Tourism (Richter) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Part XIV of chapter 288, Florida Statutes,
6 consisting of ss. 288.993-288.9937, is created and entitled
7 "Microfinance Programs."
8 Section 2. Section 288.993, Florida Statutes, is created to
9 read:
10 288.993 Short title.—This part may be cited as the "Florida

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11 Microfinance Act.”
12 Section 3. Section 288.9931, Florida Statutes, is created
13 to read:
14 288.9931 Legislative findings and intent.—The Legislature
15 finds that the ability of entrepreneurs and small businesses to
16 access capital is vital to the overall health and growth of this
17 state’s economy; however, access to capital is limited by the
18 lack of available credit for entrepreneurs and small businesses
19 in this state. The Legislature further finds that entrepreneurs
20 and small businesses could be assisted through the creation of a
21 program that will provide an avenue for entrepreneurs and small
22 businesses in this state to access credit. Additionally, the
23 Legislature finds that business management training, business
24 development training, and technical assistance are necessary to
25 ensure that entrepreneurs and small businesses that receive
26 credit develop the skills necessary to grow and achieve long-
27 term financial stability. The Legislature intends to expand job
28 opportunities for this state’s workforce by expanding access to
29 credit to entrepreneurs and small businesses. Furthermore, the
30 Legislature intends to avoid duplicating existing programs and
31 to coordinate, assist, augment, and improve access to those
32 programs for entrepreneurs and small businesses in this state.
33 Section 4. Section 288.9932, Florida Statutes, is created
34 to read:
35 288.9932 Definitions.—As used in this part, the term:
36 (1) “Applicant” means an entrepreneur or small business
37 that applies to a lender for a microloan.
38 (2) “Domiciled in this state” means authorized to do
39 business in this state and located in this state.

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40 (3) "Entrepreneur" means an individual residing in this
41 state who desires to assume the risk of organizing, managing,
42 and operating a small business in this state.
43 (4) "Network" means the Florida Small Business Development
44 Center Network.
45 (5) "Small business" means a business, regardless of
46 corporate structure, domiciled in this state which employs 25 or
47 fewer people and generated average annual gross revenues of $1.5
48 million or less per year for the preceding 2 years. For the
49 purposes of this part, the identity of a small business is not
50 affected by name changes or changes in personnel.
51 Section 5. Section 288.9933, Florida Statutes, is created
52 to read:
53 288.9933 Rulemaking authority.—The department may adopt
54 rules to implement this part.
55 Section 6. Section 288.9934, Florida Statutes, is created
56 to read:
57 288.9934 Microfinance Loan Program.—
58 (1) PURPOSE.—The Microfinance Loan Program is established
59 in the department to make short-term, fixed-rate microloans in
60 conjunction with business management training, business
61 development training, and technical assistance to entrepreneurs
62 and newly established or growing small businesses for start-up
63 costs, working capital, and the acquisition of materials,
64 supplies, furniture, fixtures, and equipment. Participation in
65 the loan program is intended to enable entrepreneurs and small
66 businesses to access private financing upon completing the loan
67 program.
68 (2) DEFINITION.—As used in this section, the term "loan

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69 administrator" means an entity that enters into a contract with
70 the department pursuant to this section to administer the loan
71 program.
72 (3) REQUEST FOR PROPOSAL.—
73 (a) By December 1, 2014, the department shall contract with
74 at least one but not more than three entities to administer the
75 loan program for a term of 3 years. The department shall award
76 the contract in accordance with the request for proposal
77 requirements in s. 287.057 to an entity that:
78 1. Is a corporation registered in this state;
79 2. Does not offer checking accounts or savings accounts;
80 3. Demonstrates that its board of directors and managers
81 are experienced in microlending and small business finance and
82 development;
83 4. Demonstrates that it has the technical skills and
84 sufficient resources and expertise to:
85 a. Analyze and evaluate applications by entrepreneurs and
86 small businesses applying for microloans;
87 b. Underwrite and service microloans provided pursuant to
88 this part; and
89 c. Coordinate the provision of such business management
90 training, business development training, and technical
91 assistance as required by this part.
92 5. Demonstrates that it has established viable, existing
93 partnerships with public and private, nonstate funding sources,
94 economic development agencies, and workforce development and job
95 referral networks; and
96 6. Demonstrates that it has a plan that includes proposed
97 microlending activities under the loan program, including, but

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98 not limited to, the types of entrepreneurs and businesses to be
99 assisted and the size and range of loans the loan administrator
100 intends to make.
101 (b) To ensure that prospective loan administrators meet the
102 requirements of subparagraphs (a)2.-6., the request for proposal
103 must require submission of the following information:
104 1. A description of the types of entrepreneurs and small
105 businesses the loan administrator has assisted in the past, and
106 the average size and terms of loans made in the past to such
107 entities;
108 2. A description of the experience of members of the board
109 of directors and managers in the areas of microlending and small
110 business finance and development;
111 3. A description of the loan administrator's underwriting
112 and credit policies and procedures, credit decisionmaking
113 process, monitoring policies and procedures, and collection
114 practices, and samples of any currently used loan documentation;
115 4. A description of the nonstate funding sources that will
116 be used by the loan administrator in conjunction with the state
117 funds to make microloans pursuant to this section;
118 5. The loan administrator's three most recent financial
119 audits or, if no prior audits have been completed, the loan
120 administrator's three most recent unaudited financial
121 statements; and
122 6. A conflict of interest statement from the loan
123 administrator's board of directors certifying that a board
124 member, employee, or agent, or an immediate family member
125 thereof, or any other person connected to or affiliated with the
126 loan administrator, is not receiving or will not receive any

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127 type of compensation or remuneration from an entrepreneur or
128 small business that has received or will receive funds from the
129 loan program. The department may waive this requirement for good
130 cause shown. As used in this subparagraph, the term "immediate
131 family" means a parent, child, or spouse, or any other relative
132 by blood, marriage, or adoption, of a board member, employee, or
133 agent of the loan administrator.
134 (4) CONTRACT AND AWARD OF FUNDS.—
135 (a) The selected loan administrator must enter into a
136 contract with the department for a term of 3 years to receive
137 state funds for the loan program. Funds appropriated to the
138 program must be reinvested and maintained as a long-term and
139 stable source of funding for the program. The amount of state
140 funds used in any microloan made pursuant to this part may not
141 exceed 50 percent of the total microloan amount. The department
142 shall establish financial performance measures and objectives
143 for the loan program and for the loan administrator in order to
144 maximize the state funds awarded.
145 (b) State funds may be used only to provide direct
146 microloans to entrepreneurs and small businesses according to
147 the limitations, terms, and conditions provided in this part.
148 Except as provided in subsection (5), state funds may not be
149 used to pay administrative costs, underwriting costs, servicing
150 costs, or any other costs associated with providing microloans,
151 business management training, business development training, or
152 technical assistance.
153 (c) The loan administrator shall reserve 10 percent of the
154 total award amount from the department to provide microloans
155 pursuant to this part to entrepreneurs and small businesses that

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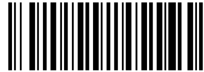
156 employ no more than five people and generate annual gross
157 revenues averaging no more than $250,000 per year for the last 2
158 years.
159 (d)1. If the loan program is appropriated funding in a
160 fiscal year, the department shall distribute such funds to the
161 loan administrator within 30 days of the execution of the
162 contract by the department and the loan administrator.
163 2. The total amount of funding allocated to the loan
164 administrator in a fiscal year may not exceed the amount
165 appropriated for the loan program in the same fiscal year. If
166 the funds appropriated to the loan program in a fiscal year
167 exceed the amount of state funds received by the loan
168 administrator, such excess funds shall revert to the General
169 Revenue Fund.
170 (e) Within 30 days of executing its contract with the
171 department, the loan administrator must enter into a memorandum
172 of understanding with the network:
173 1. For the provision of business management training,
174 business development training, and technical assistance to
175 entrepreneurs and small businesses that receive microloans under
176 this part; and
177 2. To promote the program to underserved entrepreneurs and
178 small businesses.
179 (f) By September 1, 2014, the department shall review
180 industry best practices and determine the minimum business
181 management training, business development training, and
182 technical assistance that must be provided by the network to
183 achieve the goals of this part.
184 (g) The loan administrator must meet the requirements of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185 this section, the terms of its contract with the department, and
186 any other applicable state or federal laws to be eligible to
187 receive funds in any fiscal year. The contract with the loan
188 administrator must specify any sanctions for the loan
189 administrator's failure to comply with the contract or this
190 part.
191 (5) FEES.—
192 (a) Except as provided in this section, the department may
193 not charge fees or interest or require collateral from the loan
194 administrator. The department may charge an annual fee or
195 interest of up to 80 percent of the Federal Funds Rate as of the
196 date specified in the contract for state funds received under
197 the loan program. The department shall require as collateral an
198 assignment of the notes receivable of the microloans made by the
199 loan administrator under the loan program.
200 (b) The loan administrator is entitled to retain a one-time
201 administrative servicing fee of 1 percent of the total award
202 amount to offset the administrative costs of underwriting and
203 servicing microloans made pursuant to this part. This fee may
204 not be charged to or paid by microloan borrowers participating
205 in the loan program. Except as provided in subsection (7)(c),
206 the loan administrator may not be required to return this fee to
207 the department.
208 (c) The loan administrator may not charge interest, fees,
209 or costs except as authorized in subsection (9).
210 (d) Except as provided in subsection (7), the loan
211 administrator is not required to return the interest, fees, or
212 costs authorized under subsection (9).
213 (6) REPAYMENT OF AWARD FUNDS.—

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214 (a) After collecting interest and any fees or costs
215 permitted under this section in satisfaction of all microloans
216 made pursuant to this part, the loan administrator shall remit
217 to the department the microloan principal collected from all
218 microloans made with state funds received under this part.
219 Repayment of microloan principal to the department may be
220 deferred by the department for a period not to exceed 6 months;
221 however, the loan administrator may not provide a microloan
222 under this part after the contract with the department expires.
223 (b) If for any reason the loan administrator is unable to
224 make repayments to the department in accordance with the
225 contract, the department may accelerate maturity of the state
226 funds awarded and demand repayment in full. In this event, or if
227 a loan administrator violates this part or the terms of its
228 contract, the loan administrator shall surrender to the
229 department possession of all collateral required pursuant to
230 subsection (5). Any loss or deficiency greater than the value of
231 the collateral may be recovered by the department from the loan
232 administrator.
233 (c) In the event of a default as specified in the contract,
234 termination of the contract, or violation of this section, the
235 state may, in addition to any other remedy provided by law,
236 bring suit to enforce its interest.
237 (d) A microloan borrower's default does not relieve the
238 loan administrator of its obligation to repay an award to the
239 department.
240 (7) CONTRACT TERMINATION.—
241 (a) The loan administrator's contract with the department
242 may be terminated by the department, and the loan administrator

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243 required to immediately return all state funds awarded,
244 including any fees it would otherwise be entitled to retain
245 pursuant to subsection (5) for that fiscal year, upon a finding
246 by the department that:
247 1. The loan administrator has, within the previous 5 years,
248 participated in a state-funded economic development program in
249 this or any other state and was found to have failed to comply
250 with the requirements of that program;
251 2. The loan administrator is currently in material
252 noncompliance with any statute, rule, or program administered by
253 the department;
254 3. The loan administrator or any member of its board of
255 directors, officers, partners, managers, or shareholders has
256 pled no contest or been found guilty, regardless of whether
257 adjudication was withheld, of any felony or any misdemeanor
258 involving fraud, misrepresentation, or dishonesty;
259 4. The loan administrator failed to meet or agree to the
260 terms of the contract with the department or failed to meet this
261 part; or
262 5. The department finds that the loan administrator
263 provided fraudulent or misleading information to the department.
264 (b) The loan administrator's contract with the department
265 may be terminated by the department at any time for any reason
266 upon 30 days' notice by the department. In such a circumstance,
267 the loan administrator shall return all awarded state funds to
268 the department within 60 days of the termination. However, the
269 loan administrator may retain any fees it has collected pursuant
270 to subsection (5).
271 (c) The loan administrator's contract with the department

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272 may be terminated by the loan administrator at any time for any
273 reason upon 30 days' notice by the loan administrator. In such a
274 circumstance, the loan administrator shall return all awarded
275 state funds to the department, including any fees it has
276 retained or would otherwise be entitled to retain pursuant to
277 subsection (5), within 30 days of the termination.
278 (8) AUDITS AND REPORTING.—
279 (a) The loan administrator shall annually submit to the
280 department a financial audit performed by an independent
281 certified public accountant and an operational performance audit
282 for the most recently completed fiscal year. Both audits must
283 indicate whether any material weakness or instances of material
284 noncompliance are indicated in the audit.
285 (b) The loan administrator shall submit quarterly reports
286 to the department as required by s. 288.9936(3).
287 (c) The loan administrator shall make its books and records
288 related to the loan program available to the department or its
289 designee for inspection upon reasonable notice.
290 (9) ELIGIBILITY AND APPLICATION.—
291 (a) To be eligible for a microloan, an applicant must, at a
292 minimum, be an entrepreneur or small business located in this
293 state.
294 (b) Microloans may not be made if the direct or indirect
295 purpose or result of granting the microloan would be to:
296 1. Pay off any creditors of the applicant, including the
297 refund of a debt owed to a small business investment company
298 organized pursuant to 15 U.S.C. s. 681;
299 2. Provide funds, directly or indirectly, for payment,
300 distribution, or as a microloan to owners, partners, or

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301 shareholders of the applicant’s business, except as ordinary
302 compensation for services rendered;
303 3. Finance the acquisition, construction, improvement, or
304 operation of real property which is, or will be, held primarily
305 for sale or investment;
306 4. Pay for lobbying activities; or
307 5. Replenish funds used for any of the purposes specified
308 in subparagraphs 1.-4.
309 (c) A microloan applicant shall submit a written
310 application in the format prescribed by the loan administrator
311 and shall pay an application fee not to exceed $50 to the loan
312 administrator.
313 (d) The following minimum terms apply to a microloan made
314 by the loan administrator:
315 1. The amount of a microloan may not exceed $50,000;
316 2. A borrower may not receive more than $75,000 per year in
317 total microloans;
318 3. A borrower may not receive more than two microloans per
319 year and may not receive more than five microloans in any 3-year
320 period;
321 4. The proceeds of the microloan may be used only for
322 startup costs, working capital, and the acquisition of
323 materials, supplies, furniture, fixtures, and equipment;
324 5. The period of any microloan may not exceed 1 year;
325 6. The interest rate may not exceed the prime rate
326 published in the Wall Street Journal as of the date specified in
327 the microloan, plus 1000 basis points;
328 7. All microloans must be personally guaranteed;
329 8. The borrower must participate in business management

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330 training, business development training, and technical
331 assistance as determined by the loan administrator in the
332 microloan agreement;
333 9. The borrower shall provide such information as required
334 by the loan administrator, including monthly job creation and
335 financial data, in the manner prescribed by the loan
336 administrator; and
337 10. The loan administrator may collect fees for late
338 payments which are consistent with standard business lending
339 practices and may recover costs and fees incurred for any
340 collection efforts necessitated by a borrower's default.
341 (e) The department may not review microloans made by the
342 loan administrator pursuant to this part before approval of the
343 loan by the loan administrator.
344 (10) STATEWIDE STRATEGIC PLAN.—In implementing this
345 section, the department shall be guided by the 5-year statewide
346 strategic plan adopted pursuant to s. 20.60(5). The department
347 shall promote and advertise the loan program by, among other
348 things, cooperating with government, nonprofit, and private
349 industry to organize, host, or participate in seminars and other
350 forums for entrepreneurs and small businesses.
351 (11) STUDY.—By December 31, 2014, the department shall
352 commence or commission a study to identify methods and best
353 practices that will increase access to credit to entrepreneurs
354 and small businesses in this state. The study must also explore
355 the ability of, and limitations on, Florida nonprofit
356 organizations and private financial institutions to expand
357 access to credit to entrepreneurs and small businesses in this
358 state.

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359 (12) CREDIT OF THE STATE.—With the exception of funds
360 appropriated to the loan program by the Legislature, the credit
361 of the state may not be pledged. The state is not liable or
362 obligated in any way for claims on the loan program or against
363 the loan administrator or the department.
364 Section 7. Section 288.9935, Florida Statutes, is created
365 to read:
366 288.9935 Microfinance Guarantee Program.—
367 (1) The Microfinance Guarantee Program is established in
368 the department. The purpose of the program is to stimulate
369 access to credit for entrepreneurs and small businesses in this
370 state by providing targeted guarantees to loans made to such
371 entrepreneurs and small businesses. Funds appropriated to the
372 program must be reinvested and maintained as a long-term and
373 stable source of funding for the program.
374 (2) As used in this section, the term "lender" means a
375 financial institution as defined in s. 655.005.
376 (3) The department must enter into a contract with
377 Enterprise Florida, Inc., to administer the Microfinance
378 Guarantee Program. In administering the program, Enterprise
379 Florida, Inc., must, at a minimum:
380 (a) Establish lender and borrower eligibility requirements
381 in addition to those provided in this section;
382 (b) Determine a reasonable leverage ratio of loan amounts
383 guaranteed to state funds; however, the leverage ratio may not
384 exceed 3 to 1;
385 (c) Establish reasonable fees and interest;
386 (d) Promote the program to financial institutions that
387 provide loans to entrepreneurs and small businesses in order to

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388 maximize the number of lenders throughout the state which
389 participate in the program;
390 (e) Enter into a memorandum of understanding with the
391 network to promote the program to underserved entrepreneurs and
392 small businesses;
393 (f) Establish limits on the total amount of loan guarantees
394 a single lender can receive;
395 (g) Establish an average loan guarantee amount for loans
396 guaranteed under this section;
397 (h) Establish a risk-sharing strategy to be employed in the
398 event of a loan failure; and
399 (i) Establish financial performance measures and objectives
400 for the program in order to maximize the state funds.
401 (4) Enterprise Florida, Inc., is limited to providing loan
402 guarantees for loans with total loan amounts of at least $50,000
403 and not more than $250,000. A loan guarantee may not exceed 50
404 percent of the total loan amount.
405 (5) Enterprise Florida, Inc., may not guarantee a loan if
406 the direct or indirect purpose or result of the loan would be
407 to:
408 (a) Pay off any creditors of the applicant, including the
409 refund of a debt owed to a small business investment company
410 organized pursuant to 15 U.S.C. s. 681;
411 (b) Provide funds, directly or indirectly, for payment,
412 distribution, or as a loan to owners, partners, or shareholders
413 of the applicant's business, except as ordinary compensation for
414 services rendered;
415 (c) Finance the acquisition, construction, improvement, or
416 operation of real property which is, or will be, held primarily

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417 for sale or investment;
418 (d) Pay for lobbying activities; or
419 (e) Replenish funds used for any of the purposes specified
420 in paragraphs (a) through (d).
421 (6) Enterprise Florida, Inc., may not use funds
422 appropriated from the state for costs associated with
423 administering the guarantee program.
424 (7) To be eligible to receive a loan guarantee under the
425 Microfinance Guarantee Program, a borrower must, at a minimum:
426 (a) Be an entrepreneur or small business located in this
427 state;
428 (b) Employ 25 or fewer people;
429 (c) Generate average annual gross revenues of $1.5 million
430 or less per year for the last 2 years; and
431 (d) Meet any additional requirements established by
432 Enterprise Florida, Inc.
433 (8) By October 1 of each year, Enterprise Florida, Inc.,
434 shall submit a complete and detailed annual report to the
435 department for inclusion in the department's report required
436 under s. 20.60(10). The report must, at a minimum, provide:
437 (a) A comprehensive description of the program, including
438 an evaluation of its application and guarantee activities,
439 recommendations for change, and identification of any other
440 state programs that overlap with the program;
441 (b) An assessment of the current availability of and access
442 to credit for entrepreneurs and small businesses in this state;
443 (c) A summary of the financial and employment results of
444 the entrepreneurs and small businesses receiving loan
445 guarantees, including the number of full-time equivalent jobs

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446 created as a result of the guaranteed loans and the amount of
447 wages paid to employees in the newly created jobs;
448 (d) Industry data about the borrowers, including the six-
449 digit North American Industry Classification System (NAICS)
450 code;
451 (e) The name and location of lenders that receive loan
452 guarantees;
453 (f) The amount of state funds received by Enterprise
454 Florida, Inc.;
455 (g) The number of loan guarantee applications received;
456 (h) The number, duration, location, and amount of
457 guarantees made;
458 (i) The number and amount of guaranteed loans outstanding,
459 if any;
460 (j) The number and amount of guaranteed loans with payments
461 overdue, if any;
462 (k) The number and amount of guaranteed loans in default,
463 if any;
464 (l) The repayment history of the guaranteed loans made; and
465 (m) An evaluation of the program's ability to meet the
466 financial performance measures and objectives specified in
467 subsection (3).
468 (9) The credit of the state or Enterprise Florida, Inc.,
469 may not be pledged except for funds appropriated by law to the
470 Microfinance Guarantee Program. The state is not liable or
471 obligated in any way for claims on the program or against
472 Enterprise Florida, Inc., or the department.
473 Section 8. Section 288.9936, Florida Statutes, is created
474 to read:

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475 288.9936 Annual report of the Microfinance Loan Program.—
476 (1) The department shall include in the report required by
477 s. 20.60(10) a complete and detailed annual report on the
478 Microfinance Loan Program. The report must include:
479 (a) A comprehensive description of the program, including
480 an evaluation of its application and funding activities,
481 recommendations for change, and identification of any other
482 state programs that overlap with the program;
483 (b) The financial institutions and the public and private
484 organizations and individuals participating in the program;
485 (c) An assessment of the current availability of and access
486 to credit for entrepreneurs and small businesses in this state;
487 (d) A summary of the financial and employment results of
488 the entities receiving microloans;
489 (e) The number of full-time equivalent jobs created as a
490 result of the guaranteed loans and the amount of wages paid to
491 employees in the newly created jobs;
492 (f) The number and location of prospective lenders that
493 responded to the department request for proposals;
494 (g) The amount of state funds received by the lender;
495 (h) The number of microloan applications received by the
496 lender;
497 (i) The number, duration, and location of microloans made
498 by the lender;
499 (j) The number and amount of microloans outstanding, if
500 any;
501 (k) The number and amount of microloans with payments
502 overdue, if any;
503 (l) The number and amount of microloans in default, if any;

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504 (m) The repayment history of the microloans made;
505 (n) The repayment history and performance of funding
506 awards;
507 (o) An evaluation of the program's ability to meet the
508 financial performance measures and objectives specified in s.
509 288.9934; and
510 (p) A description and evaluation of the technical
511 assistance and business management and development training
512 provided by the network pursuant to its memorandum of
513 understanding with the lender.
514 (2) The department shall submit the report provided to the
515 department from Enterprise Florida, Inc., pursuant to
516 288.9935(7) for inclusion in the department's annual report
517 required under s. 20.60(10).
518 (3) The department shall require at least quarterly reports
519 from the lender. The lender's report must include, at a minimum,
520 the number of microloan applications received, the number of
521 microloans made, the amount and interest rate of each microloan
522 made, the amount of technical assistance or business development
523 and management training provided, the number of full-time
524 equivalent jobs created as a result of the microloans, the
525 amount of wages paid to employees in the newly created jobs, the
526 six-digit North American Industry Classification System (NAICS)
527 code associated with the borrower's business, and the borrower's
528 locations.
529 (4) The Office of Program Policy Analysis and Government
530 Accountability shall conduct a study to evaluate the
531 effectiveness and return on investment of the State Small
532 Business Credit Initiative operated in this state pursuant to 12

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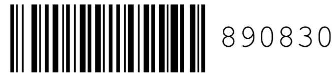
533 U.S.C. ss. 5701 et seq. The office shall submit a report to the
534 President of the Senate and the Speaker of the House of
535 Representatives by January 1, 2015.
536 Section 9. Section 288.9937, Florida Statutes, is created
537 to read:
538 288.9937 Evaluation of programs.—The Office of Program
539 Policy Analysis and Government Accountability shall analyze,
540 evaluate, and determine the economic benefits, as defined in s.
541 288.005, of the first 3 years of the Microfinance Loan Program
542 and the Microfinance Guarantee Program. The analysis must also
543 evaluate the number of jobs created, the increase or decrease in
544 personal income, and the impact on state gross domestic product
545 from the direct, indirect, and induced effects of the state's
546 investment. The analysis must also identify any inefficiencies
547 in the programs and provide recommendations for changes to the
548 programs. The office shall submit a report to the President of
549 the Senate and the Speaker of the House of Representatives by
550 January 1, 2018. This section expires January 31, 2018.
551 Section 10. (1) The executive director of the Department of
552 Economic Opportunity is authorized, and all conditions are
553 deemed to be met, to adopt emergency rules pursuant to ss.
554 120.536(1) and 120.54(4), Florida Statutes, for the purpose of
555 implementing this act.
556 (2) Notwithstanding any other provision of law, the
557 emergency rules adopted pursuant to subsection (1) remain in
558 effect for 6 months after adoption and may be renewed during the
559 pendency of procedures to adopt permanent rules addressing the
560 subject of the emergency rules.
561 (3) This section shall expire October 1, 2015.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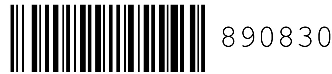
562 Section 11. For the 2014-2015 fiscal year, the sum of $10
563 million in nonrecurring funds from the General Revenue Fund is
564 appropriated to the Department of Economic Opportunity to
565 implement this act. From these nonrecurring funds, the
566 Department of Economic Opportunity and Enterprise Florida, Inc.,
567 may spend up to $100,000 to market and promote the Microfinance
568 Loan Program. For the 2014-2015 fiscal year, one full-time
569 equivalent position is authorized with $55,000 of salary rate,
570 and $64,759 of recurring funds and $3,018 of nonrecurring funds
571 from the State Economic Enhancement and Development Trust Fund,
572 $12,931 of recurring funds and $604 of nonrecurring funds from
573 the Tourism Promotional Trust Fund, and $3,233 of recurring
574 funds and $151 of nonrecurring funds from the Florida
575 International Trade and Promotion Trust Fund are appropriated to
576 the Department of Economic Opportunity to implement this act.
577 Section 12. This act shall take effect July 1, 2014.
578
579 ================ T I T L E A M E N D M E N T ================
580 And the title is amended as follows:
581 Delete everything before the enacting clause
582 and insert:
583 A bill to be entitled
584 An act relating to microfinance; creating Part XIV of
585 ch. 288, F.S., consisting of ss. 288.993-288.9937,
586 F.S., relating to microfinance programs; creating s.
587 288.993, F.S.; providing a short title; creating s.
588 288.9931, F.S.; providing legislative findings and
589 intent; creating s. 288.9932, F.S.; defining terms;
590 creating s. 288.9933, F.S.; authorizing the Department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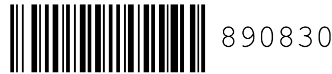
591 of Economic Opportunity to adopt rules to implement
592 this part; creating s. 288.9934, F.S.; establishing
593 the Microfinance Loan Program; providing a purpose;
594 defining the term “loan administrator”; requiring the
595 Department of Economic Opportunity to contract with at
596 least one entity to administer the program; requiring
597 the loan administrator to contract with the department
598 to receive an award of funds; providing other terms
599 and conditions to receiving funds; specifying fees
600 authorized to be charged by the department and the
601 loan administrator; requiring the loan administrator
602 to remit the microloan principal collected from all
603 microloans made with state funds received by the loan
604 administrator; providing for contract termination;
605 providing for auditing and reporting; requiring
606 applicants for funds from the Microfinance Loan
607 Program to meet certain qualifications; requiring the
608 department to be guided by the 5-year statewide
609 strategic plan and to advertise and promote the loan
610 program; requiring the department to perform a study
611 on methods and best practices to increase the
612 availability of and access to credit in this state;
613 prohibiting the pledging of the credit of the state;
614 authorizing the department to adopt rules; creating s.
615 288.9935, F.S.; establishing the Microfinance
616 Guarantee Program; defining the term “lender”;
617 requiring the department to contract with Enterprise
618 Florida, Inc., to administer the program; prohibiting
619 Enterprise Florida, Inc., from guaranteeing certain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620 loans; requiring borrowers to meet certain conditions
621 before receiving a loan guarantee; requiring
622 Enterprise Florida, Inc., to submit an annual report
623 to the department; prohibiting the pledging of the
624 credit of the state or Enterprise Florida, Inc.;
625 creating s. 288.9936, F.S.; requiring the department
626 to report annually on the Microfinance Loan Program;
627 requiring the Office of Program Policy Analysis and
628 Government Accountability to report on the
629 effectiveness of the State Small Business Credit
630 Initiative; creating s. 288.9937, F.S.; requiring the
631 Office of Program Policy Analysis and Government
632 Accountability to evaluate and report on the
633 Microfinance Loan Program and the Microfinance
634 Guarantee Program by a specified date; authorizing the
635 executive director of the Department of Economic
636 Opportunity to adopt emergency rules; providing an
637 appropriation to the Department of Economic
638 Opportunity; authorizing the Department of Economic
639 Opportunity and Enterprise Florida, Inc., to spend a
640 specified amount for marketing and promotional
641 purposes; authorizing and providing an appropriation
642 for one full-time equivalent position; providing an
643 effective date.

By Senator Benacquisto

1 A bill to be entitled
2 An act relating to microfinance; creating Part XIV of
3 ch. 288, F.S., consisting of ss. 288.993-288.9937,
4 relating to microfinance programs; creating s.
5 288.993, F.S.; providing a short title; creating s.
6 288.9931, F.S.; providing legislative findings and
7 intent; creating s. 288.9932, F.S.; defining terms;
8 creating s. 288.9933, F.S.; authorizing the Department
9 of Economic Opportunity to adopt rules to implement
10 this part; creating s. 288.9934, F.S.; establishing
11 the Microfinance Loan Program; providing a purpose;
12 defining the term "lender"; requiring the Department
13 of Economic Opportunity to contract with at least one
14 entity to administer the program; requiring the lender
15 to contract with the department to receive an award of
16 funds; providing other terms and conditions to
17 receiving funds; specifying fees authorized to be
18 charged by the department and the lender; requiring
19 the lender to remit the microloan principal collected
20 from all microloans made with funds awarded to the
21 lender; providing for contract termination; providing
22 for auditing and reporting; requiring applicants for
23 funds from the Microfinance Loan Program to meet
24 certain qualifications; requiring the department to be
25 guided by the 5-year statewide strategic plan and to
26 advertise and promote the loan program; requiring the
27 department to perform a study on methods and best
28 practices to increase the availability of and access
29 to credit in this state; prohibiting the pledging of

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30 the credit of the state; authorizing the department to
31 adopt rules; creating s. 288.9935, F.S.; establishing
32 the Microfinance Guarantee Program; defining the term
33 "lender"; requiring the department to contract with
34 Enterprise Florida, Inc., to administer the program;
35 prohibiting Enterprise Florida, Inc., from
36 guaranteeing certain loans; requiring borrowers to
37 meet certain conditions before receiving a loan
38 guarantee; requiring Enterprise Florida, Inc., to
39 submit an annual report to the department; prohibiting
40 the pledging of the credit of the state or Enterprise
41 Florida, Inc.; creating s. 288.9936, F.S.; requiring
42 the department to report annually on the Microfinance
43 Loan Program; requiring the Office of Program Policy
44 Analysis and Government Accountability to report on
45 the effectiveness of the State Small Business Credit
46 Initiative; creating s. 288.9937, F.S.; requiring the
47 Office of Program Policy Analysis and Government
48 Accountability to evaluate and report on the
49 Microfinance Loan Program and the Microfinance
50 Guarantee Program by a specified date; authorizing the
51 executive director of the Department of Economic
52 Opportunity to adopt emergency rules; providing an
53 effective date.
54
55 Be It Enacted by the Legislature of the State of Florida:
56
57 Section 1. Part XIV of ch. 288, Florida Statutes,
58 consisting of ss. 288.993-288.9937, is created and entitled

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"Microfinance Programs."

Section 2. Section 288.993, Florida Statutes, is created to read:

288.993 Short title.—This part may be cited as the "Florida Microfinance Act."

Section 3. Section 288.9931, Florida Statutes, is created to read:

288.9931 Legislative findings and intent.—The Legislature finds that the ability of entrepreneurs and small businesses to access capital is vital to the overall health and growth of this state's economy; however, access to capital is limited by the lack of available credit for entrepreneurs and small businesses in this state. The Legislature further finds that entrepreneurs and small businesses could be assisted through the creation of a program that will provide an avenue for entrepreneurs and small businesses in this state to access credit. Additionally, the Legislature finds that business management training, business development training, and technical assistance are necessary to ensure that entrepreneurs and small businesses that receive credit develop the skills necessary to grow and achieve long-term financial stability. The Legislature intends to expand job opportunities for this state's workforce by expanding access to credit to entrepreneurs and small businesses. Furthermore, the Legislature intends to avoid duplicating existing programs and to coordinate, assist, augment, and improve access to those programs for entrepreneurs and small businesses in this state.

Section 4. Section 288.9932, Florida Statutes, is created to read:

288.9932 Definitions.—As used in this part, the term:

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(1) "Applicant" means an entrepreneur or small business requesting the assistance of a lender for services through the microloan program.

(2) "Domiciled in this state" means authorized to do business in this state and located in this state.

(3) "Entrepreneur" means an individual residing in this state who desires to assume the risk of organizing, managing, and operating a small business in this state.

(4) "Network" means the Florida Small Business Development Center Network.

(5) "Small business" means a business, regardless of corporate structure, domiciled in this state which employs 25 or fewer people and generated average annual gross revenues of $1.5 million or less per year for the preceding 2 years. For the purposes of this part, the identity of a small business is not affected by name changes or changes in personnel.

Section 5. Section 288.9933, Florida Statutes, is created to read:

288.9933 Rulemaking authority.—The department may adopt rules to implement this part.

Section 6. Section 288.9934, Florida Statutes, is created to read:

288.9934 Microfinance Loan Program.—

(1) PURPOSE.—The Microfinance Loan Program is established in the department to make short-term, fixed-rate microloans in conjunction with business management training, business development training, and technical assistance to entrepreneurs and newly established or growing small businesses for start-up costs, working capital, and the acquisition of materials,

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117 supplies, furniture, fixtures, and equipment. Participation in
118 the loan program is intended to enable entrepreneurs and small
119 businesses to access private financing upon completing the loan
120 program.
121 (2) DEFINITION.—As used in this section, the term "lender"
122 means an entity that enters into a contract with the department
123 pursuant to this section to administer the loan program.
124 (3) REQUEST FOR PROPOSAL.—
125 (a) By December 1, 2014, the department shall contract with
126 at least one but not more than three entities to administer the
127 loan program for a term of 3 years. The department shall award
128 the contract in accordance with the request for proposal
129 requirements in s. 287.057 to an entity that:
130 1. Is a corporation registered in this state;
131 2. Does not offer checking accounts or savings accounts;
132 3. Demonstrates that its board of directors and managers
133 are experienced in microlending and small business finance and
134 development;
135 4. Demonstrates that it has the technical skills and
136 sufficient resources and expertise to:
137 a. Analyze and evaluate applications by entrepreneurs and
138 small businesses applying for microloans;
139 b. Underwrite and service microloans provided pursuant to
140 this part; and
141 c. Coordinate the provision of such business management
142 training, business development training, and technical
143 assistance as required by this part.
144 5. Demonstrates that it has established viable, existing
145 partnerships with public and private, nonstate funding sources,

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146 economic development agencies, and workforce development and job
147 referral networks; and
148 6. Demonstrates that it has a plan that includes proposed
149 microlending activities under the loan program, including, but
150 not limited to, the types of entrepreneurs and businesses to be
151 assisted and the size and range of loans the lender intends to
152 make.
153 (b) To ensure that prospective lenders meet the
154 requirements of subparagraphs (a)2.-6., the request for proposal
155 must require submission of the following information:
156 1. A description of the types of entrepreneurs and small
157 businesses the lender has assisted in the past, and the average
158 size and terms of loans made in the past to such entities;
159 2. A description of the experience of members of the board
160 of directors and managers in the areas of microlending and small
161 business finance and development;
162 3. A description of the lender's underwriting and credit
163 policies and procedures, credit decisionmaking process,
164 monitoring policies and procedures, and collection practices,
165 and samples of any currently used loan documentation;
166 4. A description of the nonstate funding sources that will
167 be used by the lender in conjunction with the awarded funds to
168 make microloans pursuant to this section;
169 5. The lender's three most recent financial audits or, if
170 no prior audits have been completed, the lender's three most
171 recent unaudited financial statements; and
172 6. A conflict of interest statement from the lender's
173 governing board certifying that no board member, employee,
174 agent, or other person connected to or affiliated with the

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175 lender is receiving or will receive any type of compensation or
176 remuneration from an entrepreneur or small business that has
177 received or will receive funds from the loan program. The
178 department may waive this requirement for good cause shown.
179 (4) CONTRACT AND AWARD OF FUNDS.—
180 (a) The selected lender must enter into a contract with the
181 department for a term of 3 years to receive loan program funds.
182 The amount of state funds used in any microloan made pursuant to
183 this part may not exceed 50 percent of the total microloan
184 amount. The department shall establish financial performance
185 measures and objectives for the loan program and for the lender
186 in order to maximize state funds.
187 (b) Funds awarded may be used only to provide direct
188 microloans to entrepreneurs and small businesses according to
189 the limitations, terms, and conditions provided in this part.
190 Except as provided in subsection (5), funds awarded may not be
191 used to pay administrative costs, underwriting costs, servicing
192 costs, or any other costs associated with providing microloans,
193 business management training, business development training, or
194 technical assistance.
195 (c) The lender shall reserve 10 percent of the total award
196 amount from the department to provide microloans pursuant to
197 this part to entrepreneurs and small businesses that employ no
198 more than five people and generate annual gross revenues
199 averaging no more than $250,000 per year for the last 2 years.
200 (d)1. If the loan program is appropriated funding in a
201 fiscal year, the department shall distribute such funds to the
202 lender within 30 days of the execution of the contract by the
203 department and the lender.

204 2. The total amount of funding allocated to the lender in a
205 fiscal year may not exceed the amount appropriated for the loan
206 program in the same fiscal year. If the funds appropriated to
207 the loan program in a fiscal year exceed the amount of funds
208 awarded to the lender, such excess funds shall revert to the
209 General Revenue Fund.
210 (e) Within 30 days of executing its contract with the
211 department, the lender must enter into a memorandum of
212 understanding with the network:
213 1. For the provision of business management training,
214 business development training, and technical assistance to
215 entrepreneurs and small businesses that receive microloans under
216 this part; and
217 2. To promote the program to underserved entrepreneurs and
218 small businesses.
219 (f) By September 1, 2014, the department shall review
220 industry best practices and determine the minimum business
221 management training, business development training, and
222 technical assistance that must be provided by the network to
223 achieve the goals of this part.
224 (g) The lender must meet the requirements of this section,
225 the terms of its contract with the department, and any other
226 applicable state or federal laws to be eligible to receive funds
227 in any fiscal year. The contract with the lender must specify
228 any sanctions for the lender’s failure to comply with the
229 contract or this part.
230 (5) FEES.—
231 (a) Except as provided in this section, the department may
232 not charge fees or interest or require collateral from the

233 lender. The department may charge a fee or interest of no
234 greater than 80 percent of the Federal Funds Rate as of the date
235 specified in the contract for funds awarded under the loan
236 program. The department shall require as collateral an
237 assignment of the notes receivable of the microloans made by the
238 lender under the loan program.
239 (b) The lender is entitled to retain a one-time
240 administrative servicing fee of 1 percent of the total award
241 amount to offset the administrative costs of underwriting and
242 servicing microloans made pursuant to this part. This fee may
243 not be charged to or paid by microloan borrowers participating
244 in the loan program. Except as provided in subsection (7)(c),
245 the lender may not be required to return this fee to the
246 department. The lender may not charge fees or costs except as
247 authorized in this paragraph.
248 (6) REPAYMENT OF AWARD FUNDS.—
249 (a) After collecting interest and any fees or costs
250 permitted under this part in satisfaction of all microloans made
251 pursuant to this part, the lender shall remit to the department
252 the microloan principal collected from all microloans made with
253 funds awarded under this part. Repayment of microloan principal
254 to the department may be deferred by the department for a period
255 not to exceed 6 months; however, the lender may not provide a
256 microloan under this part after the contract with the department
257 expires.
258 (b) If for any reason the lender is unable to make
259 repayments to the department in accordance with the contract,
260 the department may accelerate maturity of the awarded funds and
261 demand repayment in full. In this event, or if a lender violates

262 this part or the terms of its contract, the lender shall
263 surrender to the department possession of all collateral
264 required pursuant to subsection (5). Any loss or deficiency
265 greater than the value of the collateral may be recovered by the
266 department from the lender.
267 (c) In the event of a default as specified in the contract,
268 termination of the contract, or violation of this section, the
269 state may, in addition to any other remedy provided by law,
270 bring suit to enforce its interest.
271 (d) A microloan borrower’s default does not relieve the
272 lender of its obligation to repay an award to the department.
273 (7) CONTRACT TERMINATION.—
274 (a) The lender’s contract with the department may be
275 terminated by the department, and the lender required to
276 immediately return all state funds, including any fees it would
277 otherwise be entitled to retain pursuant to subsection (5) for
278 that fiscal year, upon a finding by the department that:
279 1. The lender has, within the previous 5 years,
280 participated in a state-funded economic development program in
281 this or any other state and was found to have failed to comply
282 with the requirements of that program;
283 2. The lender is currently in material noncompliance with
284 any statute, rule, or program administered by the department;
285 3. The lender or any member of its board of directors,
286 officers, partners, managers, or shareholders has pled no
287 contest or been found guilty, regardless of whether adjudication
288 was withheld, of any felony or any misdemeanor involving fraud,
289 misrepresentation, or dishonesty;
290 4. The lender failed to meet or agree to the terms of the

291 contract with the department or failed to meet this part; or
292 5. The department finds that the lender provided fraudulent
293 or misleading information to the department.
294 (b) The lender's contract with the department may be
295 terminated by the department at any time for any reason upon 30
296 days' notice by the department. In such a circumstance, the
297 lender shall return all awarded funds to the department within
298 60 days of the termination. However, the lender may retain any
299 fees it has collected pursuant to subsection (5).
300 (c) The lender's contract with the department may be
301 terminated by the lender at any time for any reason upon 30
302 days' notice by the lender. In such a circumstance, the lender
303 shall return all awarded funds to the department, including any
304 fees it has retained or would otherwise be entitled to retain
305 pursuant to subsection (5), within 30 days of the termination.
306 (8) AUDITS AND REPORTING.—
307 (a) The lender shall annually submit to the department a
308 financial audit performed by an independent certified public
309 accountant and an operational performance audit for the most
310 recently completed fiscal year. Both audits must indicate
311 whether any material weakness or instances of material
312 noncompliance are indicated in the audit.
313 (b) The lender shall submit quarterly reports to the
314 department as required by s. 288.9935(3).
315 (c) The lender shall make its books and records related to
316 the loan program available to the department or its designee for
317 inspection upon reasonable notice.
318 (9) ELIGIBILITY AND APPLICATION.—
319 (a) To be eligible for a microloan, an applicant must, at a

320 minimum, be an entrepreneur or small business located in this
321 state.
322 (b) Microloans may not be made if the direct or indirect
323 purpose or result of granting the microloan would be to:
324 1. Pay off any creditors of the applicant, including the
325 refund of a debt owed to a small business investment company
326 organized pursuant to 15 U.S.C. s. 681;
327 2. Provide funds, directly or indirectly, for payment,
328 distribution, or as a microloan to owners, partners, or
329 shareholders of the applicant's business, except as ordinary
330 compensation for services rendered;
331 3. Finance the acquisition, construction, improvement, or
332 operation of real property which is, or will be, held primarily
333 for sale or investment;
334 4. Pay for lobbying activities; or
335 5. Replenish funds used for any of the purposes specified
336 in subparagraphs 1.-4.
337 (c) A microloan applicant shall submit a written
338 application in the format prescribed by the lender and shall pay
339 an application fee not to exceed $50 to the lender.
340 (d) The following minimum terms apply to a microloan made
341 by the lender:
342 1. The amount of a microloan may not exceed $50,000;
343 2. A borrower may not receive more than $75,000 per year in
344 total microloans;
345 3. A borrower may not receive more than two microloans per
346 year and may not receive more than five microloans in any 3-year
347 period;
348 4. The proceeds of the microloan may be used only for

349 startup costs, working capital, and the acquisition of
350 materials, supplies, furniture, fixtures, and equipment;
351 5. The period of any microloan may not exceed 1 year;
352 6. The interest rate may not exceed the prime rate
353 published in the Wall Street Journal as of the date specified in
354 the microloan, plus 1000 basis points;
355 7. All microloans must be personally guaranteed;
356 8. The borrower must participate in business management
357 training, business development training, and technical
358 assistance as determined by the lender in the microloan
359 agreement;
360 9. The borrower shall provide such information as required
361 by the lender, including monthly job creation and financial
362 data, in the manner prescribed by the lender; and
363 10. The lender may collect fees for late payments which are
364 consistent with standard business lending practices and may
365 recover costs and fees incurred for any collection efforts
366 necessitated by a borrower’s default.
367 (e) The department may not review microloans made by the
368 lender pursuant to this part prior to approval by the lender.
369 (10) STATEWIDE STRATEGIC PLAN.—In implementing this
370 section, the department shall be guided by the 5-year statewide
371 strategic plan adopted pursuant to s. 20.60(5). The department
372 shall promote and advertise the loan program by, among other
373 things, cooperating with government, nonprofit, and private
374 industry to organize, host, or participate in seminars and other
375 forums for entrepreneurs and small businesses.
376 (11) STUDY.—By December 31, 2014, the department shall
377 commence or commission a study to identify methods and best

378 practices that will increase access to credit to entrepreneurs
379 and small businesses in this state. The study must also explore
380 the ability of, and limitations on, Florida nonprofit
381 organizations and private financial institutions to expand
382 access to credit to entrepreneurs and small businesses in this
383 state.
384 (12) CREDIT OF THE STATE.—With the exception of funds
385 appropriated to the loan program by the Legislature, the credit
386 of the state may not be pledged. The state is not liable or
387 obligated in any way for claims on the loan program or against
388 the lender or the department.
389 Section 7. Section 288.9935, Florida Statutes, is created
390 to read:
391 288.9935 Microfinance Guarantee Program.—
392 (1) The Microfinance Guarantee Program is established in
393 the department. The purpose of the program is to stimulate
394 access to credit for entrepreneurs and small businesses in this
395 state by providing targeted guarantees to loans made to such
396 entrepreneurs and small businesses. Funds appropriated to the
397 program must be reinvested and maintained as a long-term and
398 stable source of funding for the program.
399 (2) As used in this section, the term “lender” means a
400 financial institution as defined in s. 655.005.
401 (3) The department must enter into a contract with
402 Enterprise Florida, Inc., to administer the Microfinance
403 Guarantee Program. In administering the program, Enterprise
404 Florida, Inc., must, at a minimum:
405 (a) Establish lender and borrower eligibility requirements
406 in addition to those provided in this section;

407 (b) Determine a reasonable leverage ratio of loan amounts
408 guaranteed to state funds; however, the leverage ratio may not
409 exceed 3 to 1;
410 (c) Establish reasonable fees and interest;
411 (d) Promote the program to financial institutions that
412 provide loans to entrepreneurs and small businesses in order to
413 maximize the number of lenders throughout the state which
414 participate in the program;
415 (e) Enter into a memorandum of understanding with the
416 network to promote the program to underserved entrepreneurs and
417 small businesses;
418 (f) Establish limits on the total amount of loan guarantees
419 a single lender can receive;
420 (g) Establish an average loan guarantee amount for loans
421 guaranteed under this section;
422 (h) Establish a risk-sharing strategy to be employed in the
423 event of a loan failure; and
424 (i) Establish financial performance measures and objectives
425 for the program in order to maximize state funds.
426 (4) Enterprise Florida, Inc., is limited to providing loan
427 guarantees for loans with total loan amounts of at least $50,000
428 and not more than $250,000. A loan guarantee may not exceed 50
429 percent of the total loan amount.
430 (5) Enterprise Florida, Inc., may not guarantee a loan if
431 the direct or indirect purpose or result of the loan would be
432 to:
433 (a) Pay off any creditors of the applicant, including the
434 refund of a debt owed to a small business investment company
435 organized pursuant to 15 U.S.C. s. 681;

436 (b) Provide funds, directly or indirectly, for payment,
437 distribution, or as a loan to owners, partners, or shareholders
438 of the applicant's business, except as ordinary compensation for
439 services rendered;
440 (c) Finance the acquisition, construction, improvement, or
441 operation of real property which is, or will be, held primarily
442 for sale or investment;
443 (d) Pay for lobbying activities; or
444 (e) Replenish funds used for any of the purposes specified
445 in paragraphs (a) through (d).
446 (6) To be eligible to receive a loan guarantee under the
447 Microfinance Guarantee Program, a borrower must, at a minimum:
448 (a) Be an entrepreneur or small business located in this
449 state;
450 (b) Employ 25 or fewer people;
451 (c) Generate average annual gross revenues of $1.5 million
452 or less per year for the last 2 years; and
453 (d) Meet any additional requirements established by
454 Enterprise Florida, Inc.
455 (7) By October 1 of each year, Enterprise Florida, Inc.,
456 shall submit a complete and detailed annual report to the
457 department for inclusion in the department's report required
458 under s. 288.9935. The report must, at a minimum, provide:
459 (a) A comprehensive description of the program, including
460 an evaluation of its application and guarantee activities,
461 recommendations for change, and identification of any other
462 state programs that overlap with the program;
463 (b) An assessment of the current availability of and access
464 to credit for entrepreneurs and small businesses in this state;

465 (c) A summary of the financial and employment results of
466 the entrepreneurs and small businesses receiving loan
467 guarantees, including the number of full-time equivalent jobs
468 created as a result of the guaranteed loans and the amount of
469 wages paid to employees in the newly created jobs;
470 (d) Industry data about the borrowers, including the six-
471 digit North American Industry Classification System (NAICS)
472 code;
473 (e) The name and location of lenders that receive loan
474 guarantees;
475 (f) The amount of state funds received by Enterprise
476 Florida, Inc.;
477 (g) The number of loan guarantee applications received;
478 (h) The number, duration, location, and amount of
479 guarantees made;
480 (i) The number and amount of guaranteed loans outstanding,
481 if any;
482 (j) The number and amount of guaranteed loans with payments
483 overdue, if any;
484 (k) The number and amount of guaranteed loans in default,
485 if any;
486 (l) The repayment history of the guaranteed loans made; and
487 (m) An evaluation of the program's ability to meet the
488 financial performance measures and objectives specified in
489 subsection (3).
490 (8) The credit of the state or Enterprise Florida, Inc.,
491 may not be pledged except for funds appropriated by law to the
492 Microfinance Guarantee Program. The state is not liable or
493 obligated in any way for claims on the program or against

494 Enterprise Florida, Inc., or the department.
495 Section 8. Section 288.9936, Florida Statutes, is created
496 to read:
497 288.9936 Annual report of the Microfinance Loan Program.—
498 (1) The department shall include in the report required by
499 s. 20.60(10) a complete and detailed annual report on the
500 Microfinance Loan Program. The report must include:
501 (a) A comprehensive description of the program, including
502 an evaluation of its application and funding activities,
503 recommendations for change, and identification of any other
504 state programs that overlap with the program;
505 (b) The financial institutions and the public and private
506 organizations and individuals participating in the program;
507 (c) An assessment of the current availability of and access
508 to credit for entrepreneurs and small businesses in this state;
509 (d) A summary of the financial and employment results of
510 the entities receiving microloans;
511 (e) The number of full-time equivalent jobs created as a
512 result of the guaranteed loans and the amount of wages paid to
513 employees in the newly created jobs;
514 (f) The number and location of prospective lenders that
515 responded to the department request for proposals;
516 (g) The amount of funds awarded to the lender;
517 (h) The number of microloan applications received by the
518 lender;
519 (i) The number, duration, and location of microloans made
520 by the lender;
521 (j) The number and amount of microloans outstanding, if
522 any;

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523 (k) The number and amount of microloans with payments
524 overdue, if any;
525 (l) The number and amount of microloans in default, if any;
526 (m) The repayment history of the microloans made;
527 (n) The repayment history and performance of funding
528 awards;
529 (o) An evaluation of the program's ability to meet the
530 financial performance measures and objectives specified in s.
531 288.9934; and
532 (p) A description and evaluation of the technical
533 assistance and business management and development training
534 provided by the network pursuant to its memorandum of
535 understanding with the lender.
536 (2) The department shall submit the report provided to the
537 department from Enterprise Florida, Inc., pursuant to
538 288.9935(7) for inclusion in the department's annual report
539 required under s. 20.60(10).
540 (3) The department shall require at least quarterly reports
541 from the lender. The lender's report must include, at a minimum,
542 information required by the department as specified in
543 subsection (1). The report must also include the number of
544 microloan applications received, the number of microloans made,
545 the amount and interest rate of each microloan made, the amount
546 of technical assistance or business development and management
547 training provided, the number of full-time equivalent jobs
548 created as a result of the microloans, the amount of wages paid
549 to employees in the newly created jobs, the six-digit North
550 American Industry Classification System (NAICS) code associated
551 with the borrower's business, and the borrower's locations.

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552 (4) The Office of Program Policy Analysis and Government
553 Accountability shall conduct a study to evaluate the
554 effectiveness and return on investment of the State Small
555 Business Credit Initiative operated in this state pursuant to 12
556 U.S.C. ss. 5701 et seq. The office shall submit a report to the
557 President of the Senate and the Speaker of the House of
558 Representatives by January 1, 2015.
559 Section 9. Section 288.9937, Florida Statutes, is created
560 to read:
561 288.9937 Evaluation of programs.—The Office of Program
562 Policy Analysis and Government Accountability shall analyze,
563 evaluate, and determine the economic benefits, as defined in s.
564 288.005, of the first 3 years of the Microfinance Loan Program
565 and the Microfinance Guarantee Program. The analysis must also
566 evaluate the number of jobs created, the increase or decrease in
567 personal income, and the impact on state gross domestic product
568 from the direct, indirect, and induced effects of the state's
569 investment. The analysis must also identify any inefficiencies
570 in the programs and provide recommendations for changes to the
571 programs. The office shall submit a report to the President of
572 the Senate and the Speaker of the House of Representatives by
573 January 1, 2018. This section expires January 31, 2018.
574 Section 10. (1) The executive director of the Department of
575 Economic Opportunity is authorized, and all conditions are
576 deemed to be met, to adopt emergency rules pursuant to ss.
577 120.536(1) and 120.54(4), Florida Statutes, for the purpose of
578 implementing this act.
579 (2) Notwithstanding any other provision of law, the
580 emergency rules adopted pursuant to subsection (1) remain in

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

581 effect for 6 months after adoption and may be renewed during the
582 pendency of procedures to adopt permanent rules addressing the
583 subject of the emergency rules.
584 (3) This section shall expire October 1, 2015.
585 Section 11. This act shall take effect July 1, 2014.

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 Commerce and Tourism

BILL: SB 1524

INTRODUCER: Senator Thrasher

SUBJECT: Security of Confidential Personal Information

DATE: March 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Hrdlicka	CM	**Pre-meeting**
2.			RC	

I. Summary:

SB 1524 creates the "Florida Information Protection Act of 2014." The bill requires notice be given to affected customers and the Department of Legal Affairs (DLA) when a breach of security of personal information occurs. The bill requires such notice to be given within 30 days of the discovery of the breach, unless delayed at the request of law enforcement for investigative purposes. The bill provides enforcement authority to the DLA under the Florida Deceptive and Unfair Trade Practices Act to civilly prosecute violations. A violator of the bill's provisions may also be subject to civil penalties, similar to current law, if breach notification is not provided timely. State governmental entities are required to provide notification of security breaches to the DLA, but are not liable for civil penalties for failure to timely report the security breaches.

The bill requires the DLA to submit an annual report to the Legislature, by February 1 of each year, detailing any reported breaches of security by governmental entities or their third-party agents for the preceding year, along with any recommendations for security improvement. The report must also identify any governmental entity that has violated the breach notification provisions.

The bill requires customer records, both physical and electronic, to be disposed in a manner that protects personal information from being disclosed. This provision does not apply to governmental entities.

The bill repeals s. 817.5681, F.S., which contains the current law requirements for breach notification.

II. Present Situation:

Data breaches may be caused by computer hacking, malware, physical loss of portable devices, or inadvertent exposure of confidential data on websites or in e-mail.[1] There have been a number of high profile data breaches in the last few years.[2] In 2013, nationwide, there were more than 600 data breaches compromising more than 91 million consumer records.[3] Most states, including Florida, have laws that require disclosure to consumers when a breach of security occurs.[4]

Current Florida Law on Data Breaches

Current law provides that any person[5] doing business in this state who also maintains computerized data in a system that includes personal information must adhere to certain procedures if there is a breach of the system.[6]

A notification of the breach[7] must be provided to any resident of this state whose unencrypted personal information[8] was, or is reasonably believed to have been, acquired by an unauthorized person.[9] The notification must be made without unreasonable delay but no later than 45 days following the determination of the breach. Notification of the breach may be delayed upon request of a law enforcement agency if such agency determines that notification will impede the

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[1] Gina Stevens, Cong. Research Serv., *Data Security Breach Notification Laws*, R42475 (Apr. 10, 2012), *available at* https://www.fas.org/sgp/crs/misc/R42475.pdf (last visited Mar. 10, 2014).
[2] Target suffered a data breach that affected more than 40 million customers. *See* http://www.washingtonpost.com/business/economy/target-data-breach-what-you-should-know/2013/12/19/e00e3326-68e2-11e3-ae56-22de072140a2_story.html (last visited Mar. 10, 2014); Adobe Acrobat's breach affected 2.9 million customers. *See* http://www.usatoday.com/story/cybertruth/2013/10/03/adobe-loses-29-mil-customer-records-source-code/2919229/ (last visited Mar. 10, 2014); Neiman-Marcus recently had a data breach and indicated that it may ultimately affect more than 100 million customers. *See* http://www.nytimes.com/2014/01/24/business/neiman-marcus-breach-affected-1-1-million-cards.html?_r=0 (last visited Mar. 10, 2014).
[3] Identity Theft Resource Center, Data Breach Category Summary (Feb. 20, 2014), *available at* http://www.idtheftcenter.org/ITRC-Surveys-Studies/2013-data-breaches.html (last visited Mar. 7, 2014). This includes data breaches in several industries, including financial, business, educational, government, and health care sectors.
[4] National Conference of State Legislatures, "State Security Breach Notification Laws," (Jan. 21, 2014), *available at* http://www.ncsl.org/research/telecommunications-and-information-technology/security-breach-notification-laws.aspx (last visited Mar. 7, 2014). Alabama, Kentucky, New Mexico, and South Dakota do not have their own data breach notification laws.
[5] "Person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. *See* s. 1.01(3), F.S. The law also applies to a governmental agency or subdivision.
[6] *See generally* s. 817.5681, F.S...
[7] Section 817.5681(4), F.S., defines "breach" as an unlawful and unauthorized acquisition of computerized data that materially compromises the security, confidentiality, or integrity of personal information.
[8] Section 817.5681(5), F.S., defines "personal information" as an individual's first name, first initial and last name, or any middle name and last name, in combination with one or more of the following, when not encrypted: social security number, driver's license number or Florida Identification Card number, and account number, credit card number, or debit card number, in combination with any required security code or password that would permit access to an individual's financial account. This does not include publicly available information that is lawfully made available from government records or widely distributed media.
[9] Section 817.5681(7), F.S., defines "unauthorized person" as any person who does not have permission from, or a password issued by, the person who stores the computerized data to acquire such data, but does not include any individual to whom the personal information pertains.

investigation.[10] Notification is not required if, after an appropriate investigation or consultation with relevant governmental law enforcement agencies, it is determined that the breach has not and will not likely result in harm to the individuals whose personal information has been compromised.[11]

A person is deemed to be in compliance with this law if the person's provides notification pursuant to the person's own breach notification procedures that are consistent with this law or if the person provides notification in accordance with the rules, regulations, procedures, or guidelines established by the person's primary or functional federal regulator.

A person who fails to provide timely notification, as required by statute, is liable for an administrative fine of up to $500,000, as follows:[12]

- $1,000 per day, each day the breach goes undisclosed for up 30 days, and thereafter $50,000 for each 30-day period or portion thereof for up to 180 days.
- If notification is not made within 180 days, a person who failed to make a required disclosure of a breach is subject to an administrative fine of up to $500,000.

A person, who maintains computerized personal information on behalf of another entity, must notify that business within 10 days of discovery of a data breach. The two parties may come to an agreement on who will provide notice to the affected individuals. However, if no agreement is reached, then the entity having the direct relationship with the affected individuals will be responsible for complying with the notification procedures required by law. If a person fails to notify a business entity of a breach within 10 days, that person will be subject to administrative sanctions similar to those discussed above.[13]

Notice may be written, or it may be provided electronically if the notice that is provided is consistent with applicable federal law, including the consumer's affirmative consent to electronic records.[14] Substitute notice maybe given if a person demonstrates that the cost of providing notice would exceed $250,000, more than 500,000 individuals require notification of the breach, or there is a lack of sufficient contact information. Substitute notice must include an email or email notice, conspicuous posting on the business owner's web page, and notification to major statewide media.

Finally, current law provides that in the event that more than 1,000 individuals require notification at a single time, the person must also notify all consumer reporting agencies that

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[10] Section 817.5681(3), F.S. The notification time period required under law begins when the law enforcement agency notifies the person maintaining the database that notification will not compromise the investigation.
[11] Section 817.5681(10), F.S. The determination must be documented in writing and maintained for 5 years.
[12] Sections 817.5681(1)(b)-(d), F.S. The administrative sanctions apply per breach and not per individual affected by the breach. These provisions do not apply to a governmental entity, unless it has entered into a contract with a contractor or third-party administrator to provide governmental services. In that case, the provisions would apply to the contractor or third-party administrator.
[13] Section 817.5681(2), F.S. Administrative sanctions include $1,000 for each day the breach goes unreported for up to 30 days and; thereafter, $50,000 for each 30-day period or portion thereof for up to 180 days; and after 180 days, an administrative fine of up to $500,000.
[14] Section 817.5681(6), F.S. 15 U.S.C. s. 7001, provides the guidelines for electronic records and signatures in commerce, including consumer disclosures, consumer consent guidelines, and retention of records.

compile and maintains files on consumers on a nationwide basis of the timing, distribution, and content of the notices.[15]

Federal Law

There is no single federal law that governs notification of a data or security breach.[16] There are regulations that govern federal governmental agencies, such as the Federal Information Security Management Act of 2002,[17] which provides security requirements for all applicable federal government agencies. Additionally, federal agencies must comply with a memorandum that directed the agencies to develop a breach notification policy and provided the necessary elements of such policies.[18]

With regard to the private sector, industry-specific regulations have been implemented.[19] For example, the Health Insurance Portability and Accountability Act of 1996 (HIPAA)[20] requires certain covered entities[21] to comply with privacy and security standards to protect individually identifiable health information.[22] The Health Information Technology for Economic and Clinical Health Act[23] extended the privacy and security standards of HIPAA to the business associates of HIPAA-covered entities.[24] It also directed the Department of Health and Human Services to issue regulations to covered entities that provide for notification in cases of breaches of unsecured protected health information, and the Federal Trade Commission was directed to issue regulations to certain web-based businesses to notify customers when the security of their health information is breached.

Under the Gramm-Leach-Bliley Act,[25] financial institutions are required to secure and protect consumers' nonpublic personal information. The act required banking agencies to develop guidelines for the security, integrity, and confidentiality of customer information. One of the guidelines recommends that financial institutions implement a risk-based response system, including breach notification procedures. The guidelines prohibit delaying or forgoing customer notification because of embarrassment or inconvenience.[26]

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[15] Section 817.5681(12), F.S.
[16] Stevens, *supra* note 1, at 7.
[17] 44 U.S.C. s. 3541, et seq.
[18] Memorandum from Clay Johnson III, Deputy Director for Management, Office of Management and Budget, Executive Office of the White House, to the Heads of Executive Departments and Agencies, "Safeguarding Against and Responding to the Breach of Personally Identifiable Information," M-07-16 (May 22, 2007), *available at* http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf (last visited Mar. 17, 2014).
[19] Stevens, *supra* note 1, at 7.
[20] Pub. Law 104-191 (Aug. 21, 1996).
[21] Covered entities include health plans, health care clearinghouses, and health care providers who transmit financial and administrative transactions electronically.
[22] Stevens, *supra* note 1, at 11-13.
[23] Pub. Law No. 111-5 s. 13400 (Feb. 17, 2009).
[24] Stevens, *supra* note 1, at 13-17.
[25] Pub. Law No. 106-102 (Nov. 12, 1999).
[26] Stevens, *supra* note 1, at 17-20.

The Data Security Act of 2014 was introduced in the U.S. Senate in January 2014. The bill provides breach notification procedures, enforcement, and preemption of state laws with regard to the security of consumer information.[27]

III. Effect of Proposed Changes:

Section 1 provides that the bill may be cited as the "Florida Information Protection Act of 2014."

Section 2 repeals s. 817.5681, F.S., which outlines the current procedures for notification when a breach of security involving personal information occurs. The substance of this section has been moved to the newly created s. 501.171, F.S.

Section 3 creates s. 501.171, F.S., to provide the procedure for protection and security of sensitive personal information[28] in the possession of covered entities.[29] Covered entities, governmental entities, and third-party agents are required to take reasonable measures to protect and secure electronic data containing personal information. When the security of a data system is breached, a covered entity must provide notice to the DLA and effected individuals unless otherwise provided in the bill. If a covered entity fails to provide the required notices, it may face civil penalties.

Notice to the Department of Legal Affairs

The bill provides that entities subject to the provisions of the bill must provide written notice of any breach of security to the DLA within 30 days after the determination of the breach or reason to believe a breach had occurred. Notice to the DLA is not required in current law. The notice must include:

- A synopsis of the events surrounding the breach;
- A police report, incident report, or computer forensics report;
- The number of individuals in this state who were or potentially have been affected by the breach;

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[27] S. 1927 (113th Congress). This bill was referred to the Committee on Banking, Housing, and Urban Affairs Subcommittee on National Security and International Trade and Finance, and a hearing was held by that committee on Feb. 3, 2014. *See also* Alina Selyukh, "U.S. Retailers at Senate Hearing: Hackers Have Upper Hand," Reuters, (Feb. 4, 2014), *available at* http://www.reuters.com/article/2014/02/04/us-usa-hacking-congress-idUSBREA121I620140204 (last visited Mar. 10, 2014).

[28] The bill expands the definition of "personal information." "Personal information" means an individual's first name or first initial and last name in combination with one of the following: a social security number; driver license or identification card number, passport number, military identification number, or other number issued by a governmental entity used to verify identity; a financial account number or credit or debit card number, in combination with any required security code, access code, or password needed to permit access to the financial account; an individual's medical history, mental or physical condition, or medical treatment or diagnosis; an individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer; or any other information from or about an individual that could be used to personally identify that person. A user name or e-mail address, in combination with a password or security question and answer is also considered "personal information." Information that is publicly available from a federal, state, or local governmental entity or information that is encrypted, secured, or modified by a method or technology that removes personally identifiable information is not considered "personal information."

[29] A "covered entity" is a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information. For the provisions of this bill detailing the requirements for notification when there is a breach of security, disposal of customer records, and enforcement, this term also includes governmental entities.

- A copy of the policies in place regarding breaches;
- Any steps that have been taken to rectify the breach;
- Any services being offered by the covered entity to individuals, without charge, and instructions as to how to use such services;
- A copy of the notice sent to individuals affected or potentially affected by the breach;
- The name, address, telephone number, and e-mail address of the employee of the covered entity from whom additional information may be obtained about the breach; and
- Whether the notice to individuals is being made pursuant to federal law or pursuant to state law.

For breaches of security occurring within the judicial branch, the Executive Office of the Governor, the Department of Financial Services, and the Department of Agriculture and Consumer Services, the notice of the breach of security may be posted to an agency-managed website in lieu of the written notice to the DLA.

Notice to Individuals

A covered entity must provide notice to each individual in Florida whose personal information was, or is reasonably believed to have been, accessed as a result of a breach. Notice must be provided as quickly as possible, taking into account the time needed to determine the scope of the breach of security, to identify affected individuals, and to restore reasonable integrity of the data system that was breached. However, notice must be provided within 30 days of determination of the breach unless:

- Notice is delayed upon the written request of a federal or state law enforcement agency for a reasonably necessary period, if the agency determines that notice to individuals would interfere with a criminal investigation; or
- Notice is waived after an appropriate investigation and written consultation with relevant federal and state law enforcement agencies, if the covered entity reasonably determines that the breach has not and will not likely result in identity theft or any other financial harm. Such a determination must be documented in writing and maintained for at least 5 years and must be provided to the DLA within 30 days of such a determination.

The bill shortens the amount of time a covered entity has to notify affected individuals of the breach from 45 days to 30 days.

The notice to affected individuals must be made by either written notice sent to the individual's mailing address or by e-mail sent to the individual's e-mail address. The notice must include:

- The date, estimated date, or estimated date range of the breach of security;
- A description of the personal information that was accessed or reasonably believed to have been accessed as a part of the breach of security; and
- Information that the individual can use to contact the covered entity about the breach of security and the individual's personal information maintained by the covered entity.

Similar to current law, this notice may be substituted in lieu of direct notice to the individual if the cost of providing notice will exceed $250,000, the number of affected individuals exceeds 500,000, or the covered entity does not have an e-mail address or mailing address for the affected

individuals. The substitute notice must include a conspicuous notice on the Internet website of the covered entity, if the entity maintains a website, and notice in print and broadcast media, including major media in urban and rural areas where the affected individuals reside.

If a covered entity is in compliance with a federal law that requires the entity to provide notification to individuals following a breach of security, the covered entity is deemed to comply with the notice requirements of this bill.

The bill provides that in the event that more than 1,000 individuals require notification at a single time, the person must also notify all consumer reporting agencies that compile and maintains files on consumers on a nationwide basis of the timing, distribution, and content of the notices. This requirement is similar to current law.

Notice by Third-Party Agents[30]

If the data system is maintained by a third-party agent, the third party agent must promptly notify the covered entity in the event of a breach of security.[31] The covered entity is responsible for providing notice to affected individuals in the same manner as required if the breach had been to its own system.

Annual Report

The DLA is required to submit a report, by February 1 of each year, to the President of the Senate and the Speaker of the House of Representatives describing the nature of any reported breaches of security by governmental entities or their third-party agents in the preceding calendar year, along with any recommendations for security improvements. The report must identify any governmental entity that has violated the provisions of this bill.

Disposal of Records

Each covered entity or third-party agent must take all responsible measures to dispose or arrange for the disposal of customer records[32] containing personal information within its custody and control when such records are no longer to be retained. This requirement applies to both electronic and physical customer records.

Enforcement

A violation of the provisions of the bill will be treated as unfair or deceptive trade practice in any action brought by the DLA.[33] A covered entity or third-party agent that fails to comply with the

[30] A "third-party agent" is an entity that has been contracted to maintain, store, or process personal information on behalf of a covered entity or governmental entity.

[31] Current law requires notification to the covered entity within 10 days.

[32] "Customer records" means any material, regardless of the physical form, on which personal information is recorded or preserved by any means, including, but not limited to, written or spoken words, graphically depicted, printed, or electromagnetically transmitted that are provided by an individual in this state to a covered entity for the purpose of purchasing or leasing a product or obtaining a service.

[33] Section 501.207, F.S., provides that the DLA may bring an action to obtain declaratory judgment that an act or practice violates the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), an action to enjoin a person who has violated or is

breach notification provisions of this bill may also be liable for a civil penalty, not to exceed $500,000, as follows:

- $1,000 per day, each day the breach goes undisclosed for up 30 days, and thereafter $50,000 for each 30-day period or portion thereof for up to 180 days.
- If notification is not made within 180 days, a covered entity who failed to make a required disclosure of a breach is subject to civil penalties not to exceed $500,000.

The civil penalties apply per breach and not per affected individual. The civil penalties are the same as the administrative fines that are in current law. The penalties collected will be deposited into the General Revenue Fund.

This bill does not create a private cause of action.

Sections 4 and 5 amend ss. 282.0041 and 282.318, F.S., to update cross references.

Section 6 provides that the act shall take effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact on the private sector is expected be minimal. The provisions related to notification of a security breach to affected individuals is similar to the notification required by current law. However, the time frame for the notification has been reduced from 45 days in current law to 30 days in the bill. The notification to the DLA is a new requirement, but the cost is expected to be minimal.[34]

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likely to violate FDUTPA, or an action on behalf of consumers or governmental entities for actual damages caused by a violation of FDUTPA.

[34] Department of Legal Affairs, *Senate Bill 1524 Analysis*, (Mar. 17, 2014) (on file with the Senate Commerce and Tourism Committee).

The bill contains civil penalties for noncompliance with its provisions. The civil penalty amounts remain at the same level as current law. It is unknown how often businesses may be subject to the civil penalties for noncompliance.

The bill mandates that businesses properly dispose of customer records containing personal information. The fiscal impact of this requirement is unknown. However, many businesses may already be required to properly dispose of customer records under other laws, such as the HIPAA and the Gramm-Leach-Bliley Act.

C. Government Sector Impact:

The bill may have an unknown positive impact on state revenues to the extent the DLA enforces civil penalties against violations of the act.

The bill requires the DLA to enforce the bill's provisions, collect reports of breaches of security information from covered entities, and produce an annual report to the Legislature. However, the DLA indicates that any costs and expenditures can be absorbed into its current appropriations.[35]

The Department of Agriculture and Consumer Services does not to expect the bill to have an impact on its agency.[36]

The Department of Highway Safety and Motor Vehicles indicates that there will be an indeterminate fiscal impact in the event of a security breach for the mailing and media notification costs. Additionally, approximately 40 hours of programming will be needed to implement changes made by this bill. The cost is estimated to be $1,600.[37]

The bill may have an indeterminate fiscal impact on the State Courts System. However, any increase in judicial workload will likely by absorbed within existing resources. There may be a slight increase in revenues to the State Courts System's trust fund from civil filing fees for enforcement actions by the DLA.[38]

VI. Technical Deficiencies:

None.

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[35] *Id.*

[36] Department of Agriculture and Consumer Services, *Senate Bill 1524 Analysis*, (Mar. 11, 2014) (on file with the Senate Commerce and Tourism Committee).

[37] Department of Highway Safety and Motor Vehicles, *2014 Agency Bill Analysis, Senate Bill 1524*, (Mar. 4, 2014) (on file with the Senate Commerce and Tourism Committee). The cost estimate is based on 40 hours of programming at a rate of $40 per hour.

[38] Office of the State Courts Administrator, *2014 Judicial Impact Statement, Senate Bill 1524*, (Mar. 20, 2014) (on file with the Senate Commerce and Tourism Committee).

VII. Related Issues:

Although the bill does not specifically provide that the covered entity must be conducting business in this state, the Florida Long-Arm statute[39] may provide courts with the authority to assert personal jurisdiction over a nonresident covered entity. The statute enumerates a number of actions that a person or his or her representative may take that would submit that person to the jurisdiction of Florida courts. Those actions include, among other things, operating, conducting, engaging in, or carrying on a business venture in this state or having an office or agency in this state; committing a tortious act within this state; or breaching a contract in this state by failing to perform acts required by the contract to be performed in this state. A person may also become subject to the jurisdiction of a Florida court if the person is engaged in substantial and not isolated activity within Florida.

VIII. Statutes Affected:

This bill repeals section 817.5681 of the Florida Statutes.

This bill creates section 501.171 of the Florida Statutes.

This bill amends the following sections of the Florida Statutes: 282.0041 and 282.318.

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.

[39] Section 48.193, F.S.

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Commerce and Tourism (Bean) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. This act may be cited as the “Florida
6 Information Protection Act of 2014.”
7 Section 2. Section 817.5681, Florida Statutes, is repealed.
8 Section 3. Section 501.171, Florida Statutes, is created to
9 read:
10 501.171 Security of confidential personal information.—

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11 (1) DEFINITIONS.—As used in this section, the term:
12 (a) "Breach of security" or "breach" means unauthorized
13 access of data in electronic form containing personal
14 information. Good faith access of personal information by an
15 employee or agent of a covered entity does not constitute a
16 breach of security, provided that the information is not used
17 for a purpose unrelated to the business or subject to further
18 unauthorized use.
19 (b) "Covered entity" means a sole proprietorship,
20 partnership, corporation, trust, estate, cooperative,
21 association, or other commercial entity that acquires,
22 maintains, stores, or uses personal information. For purposes of
23 the notice requirements in subsections (3)-(6), the term
24 includes a governmental entity.
25 (c) "Customer records" means any material, regardless of
26 the physical form, on which personal information is recorded or
27 preserved by any means, including, but not limited to, written
28 or spoken words, graphically depicted, printed, or
29 electromagnetically transmitted that are provided by an
30 individual in this state to a covered entity for the purpose of
31 purchasing or leasing a product or obtaining a service.
32 (d) "Data in electronic form" means any data stored
33 electronically or digitally on any computer system or other
34 database and includes recordable tapes and other mass storage
35 devices.
36 (e) "Department" means the Department of Legal Affairs.
37 (f) "Governmental entity" means any department, division,
38 bureau, commission, regional planning agency, board, district,
39 authority, agency, or other instrumentality of this state that

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40 acquires, maintains, stores, or uses data in electronic form
41 containing personal information.
42 (g)1. "Personal information" means either of the following:
43 a. An individual's first name or first initial and last
44 name in combination with any one or more of the following data
45 elements for that individual:
46 (I) A social security number.
47 (II) A driver license or identification card number,
48 passport number, military identification number, or other
49 similar number issued on a government document used to verify
50 identity.
51 (III) A financial account number or credit or debit card
52 number, in combination with any required security code, access
53 code, or password that is necessary to permit access to an
54 individual's financial account.
55 (IV) Any information regarding an individual's medical
56 history, mental or physical condition, or medical treatment or
57 diagnosis by a health care professional; or
58 (V) An individual's health insurance policy number or
59 subscriber identification number and any unique identifier used
60 by a health insurer to identify the individual.
61 b. A user name or e-mail address, in combination with a
62 password or security question and answer that would permit
63 access to an online account.
64 2. The term does not include information about an
65 individual that has been made publicly available by a federal,
66 state, or local governmental entity or information that is
67 encrypted, secured, or modified by any other method or
68 technology that removes elements that personally identify an

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69 individual or that otherwise renders the information unusable.
70 (h) "Third-party agent" means an entity that has been
71 contracted to maintain, store, or process personal information
72 on behalf of a covered entity or governmental entity.
73 (2) REQUIREMENTS FOR DATA SECURITY.—Each covered entity,
74 governmental entity, or third-party agent shall take reasonable
75 measures to protect and secure data in electronic form
76 containing personal information.
77 (3) NOTICE TO DEPARTMENT OF SECURITY BREACH.—
78 (a) A covered entity shall give notice to the department of
79 any breach of security, as expeditiously as practicable, but no
80 later than 30 days after the determination of the breach or
81 reason to believe a breach had occurred.
82 (b) The written notice to the department must include:
83 1. A synopsis of the events surrounding the breach.
84 2. The number of individuals in this state who were or
85 potentially have been affected by the breach.
86 3. Any services related to the breach being offered,
87 without charge, by the covered entity to individuals, and
88 instructions as to how to use such services.
89 4. A copy of the notice required under subsection (4) or an
90 explanation of the other actions taken pursuant to subsection
91 (4).
92 5. The name, address, telephone number, and e-mail address
93 of the employee of the covered entity from whom additional
94 information may be obtained about the breach, and the steps
95 taken to rectify the breach and prevent similar breaches.
96 (c) The covered entity must provide the following
97 information to the department upon its request:

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98 1. A police report, incident report, or computer forensics
99 report.
100 2. A copy of the policies in place regarding breaches.
101 3. Any steps that have been taken to rectify the breach.
102 (d) For a covered entity that is the judicial branch, the
103 Executive Office of the Governor, the Department of Financial
104 Services, or the Department of Agriculture and Consumer
105 Services, in lieu of providing the written notice to the
106 department, the covered entity may post the information
107 described in subparagraphs (b)1.-4. on an agency-managed
108 website.
109 (4) NOTICE TO INDIVIDUALS OF SECURITY BREACH.—
110 (a) A covered entity shall give notice to each individual
111 in this state whose personal information was, or the covered
112 entity reasonably believes to have been, accessed as a result of
113 the breach. Notice to individuals shall be made as expeditiously
114 as practicable and without unreasonable delay, taking into
115 account the time necessary to allow the covered entity to
116 determine the scope of the breach of security, to identify
117 individuals affected by the breach, and to restore the
118 reasonable integrity of the data system that was breached, but
119 no later than 30 days after the determination of a breach unless
120 subject to a delay authorized under paragraph (b) or waiver
121 under paragraph (c).
122 (b) If a federal, state, or local law enforcement agency
123 determines that notice to individuals required under this
124 subsection would interfere with a criminal investigation, the
125 notice shall be delayed upon the written request of the law
126 enforcement agency for a specified period that the law

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127 enforcement agency determines is reasonably necessary. A law
128 enforcement agency may, by a subsequent written request, revoke
129 such delay as of a specified date or extend the period set forth
130 in the original request made under this paragraph to a specified
131 date if further delay is necessary.
132 (c) Notwithstanding paragraph (a), notice to the affected
133 individuals is not required if, after an appropriate
134 investigation and consultation with relevant federal, state, and
135 local law enforcement agencies, the covered entity reasonably
136 determines that the breach has not and will not likely result in
137 identity theft or any other financial harm to the individuals
138 whose personal information has been accessed. Such a
139 determination must be documented in writing and maintained for
140 at least 5 years. The covered entity shall provide the written
141 determination to the department within 30 days after the
142 determination.
143 (d) The notice to an affected individual shall be by one of
144 the following methods:
145 1. Written notice sent to the mailing address of the
146 individual in the records of the covered entity; or
147 2. E-mail notice sent to the e-mail address of the
148 individual in the records of the covered entity.
149 (e) The notice to an individual with respect to a breach of
150 security shall include, at a minimum:
151 1. The date, estimated date, or estimated date range of the
152 breach of security.
153 2. A description of the personal information that was
154 accessed or reasonably believed to have been accessed as a part
155 of the breach of security.

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156 3. Information that the individual can use to contact the
157 covered entity to inquire about the breach of security and the
158 personal information that the covered entity maintained about
159 the individual.
160 (f) A covered entity required to provide notice to an
161 individual may provide substitute notice in lieu of direct
162 notice if such direct notice is not feasible because the cost of
163 providing notice would exceed $250,000, because the affected
164 individuals exceed 500,000 persons, or because the covered
165 entity does not have an e-mail address or mailing address for
166 the affected individuals. Such substitute notice shall include
167 the following:
168 1. A conspicuous notice on the Internet website of the
169 covered entity if the covered entity maintains a website; and
170 2. Notice in print and to broadcast media, including major
171 media in urban and rural areas where the affected individuals
172 reside.
173 (g) Notice provided pursuant to rules, regulations,
174 procedures, or guidelines established by the covered entity's
175 primary or functional federal regulator is deemed to be in
176 compliance with the notice requirement in this subsection if the
177 covered entity notifies individuals in accordance with any
178 rules, regulations, procedures, or guidelines established by the
179 primary or functional federal regulator in the event of a breach
180 of security. Under this paragraph, the covered entity must
181 provide notice to the department under subsection (3).
182 (5) NOTICE TO CREDIT REPORTING AGENCIES.—If a covered
183 entity discovers circumstances requiring notice pursuant to this
184 section of more than 1,000 individuals at a single time, the

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185 covered entity shall also notify, without unreasonable delay,
186 all consumer reporting agencies that compile and maintain files
187 on consumers on a nationwide basis, as defined in the Fair
188 Credit Reporting Act, 15 U.S.C. s. 1681a(p), of the timing,
189 distribution, and content of the notices.
190 (6) NOTICE BY THIRD-PARTY AGENTS; DUTIES OF THIRD-PARTY
191 AGENTS.—In the event of a breach of security of a system
192 maintained by a third-party agent, such third-party agent shall
193 notify the covered entity of the breach of security as
194 expeditiously as practicable, but no later than 10 days
195 following the determination of the breach of security. Upon
196 receiving notice from a third-party agent, a covered entity
197 shall provide notices required under subsections (3) and (4). A
198 third-party agent shall provide a covered entity with all
199 information that the covered entity needs to comply with its
200 notice requirements.
201 (7) ANNUAL REPORT.—By February 1 of each year, the
202 department shall submit a report to the President of the Senate
203 and the Speaker of the House of Representatives describing the
204 nature of any reported breaches of security by governmental
205 entities or third-party agents of governmental entities in the
206 preceding calendar year along with recommendations for security
207 improvements. The report shall identify any governmental entity
208 that has violated any of the applicable requirements in
209 subsections (2)-(6) in the preceding calendar year.
210 (8) REQUIREMENTS FOR DISPOSAL OF CUSTOMER RECORDS.—Each
211 covered entity or third-party agent shall take all reasonable
212 measures to dispose, or arrange for the disposal, of customer
213 records containing personal information within its custody or

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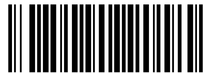
214 control when the records are no longer to be retained. Such
215 disposal shall involve shredding, erasing, or otherwise
216 modifying the personal information in the records to make it
217 unreadable or undecipherable through any means.
218 (9) ENFORCEMENT.—
219 (a) A violation of this section shall be treated as an
220 unfair or deceptive trade practice in any action brought by the
221 department under s. 501.207 against a covered entity or third-
222 party agent.
223 (b) In addition to the remedies provided for in paragraph
224 (a), a covered entity that violates subsection (3) or subsection
225 (4) shall be liable for a civil penalty not to exceed $500,000,
226 as follows:
227 1. In the amount of $1,000 for each day up to the first 30
228 days following any violation of subsection (3) or subsection (4)
229 and, thereafter, $50,000 for each subsequent 30-day period or
230 portion thereof for up to 180 days.
231 2. If the violation continues for more than 180 days, in an
232 amount not to exceed $500,000.
233
234 The civil penalties for failure to notify provided in this
235 paragraph apply per breach and not per individual affected by
236 the breach.
237 (c) All penalties collected pursuant to this subsection
238 shall be deposited into the General Revenue Fund.
239 (10) NO PRIVATE CAUSE OF ACTION.—This section does not
240 establish a private cause of action.
241 Section 4. Subsection (5) of section 282.0041, Florida
242 Statutes, is amended to read: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243 282.0041 Definitions.—As used in this chapter, the term:
244 (5) “Breach” has the same meaning as the term “breach of
245 security” as defined in s. 501.171 ~~in s. 817.5681(4)~~.
246 Section 5. Paragraph (i) of subsection (4) of section
247 282.318, Florida Statutes, is amended to read:
248 282.318 Enterprise security of data and information
249 technology.—
250 (4) To assist the Agency for Enterprise Information
251 Technology in carrying out its responsibilities, each agency
252 head shall, at a minimum:
253 (i) Develop a process for detecting, reporting, and
254 responding to suspected or confirmed security incidents,
255 including suspected or confirmed breaches consistent with the
256 security rules and guidelines established by the Agency for
257 Enterprise Information Technology.
258 1. Suspected or confirmed information security incidents
259 and breaches must be immediately reported to the Agency for
260 Enterprise Information Technology.
261 2. For incidents involving breaches, agencies shall provide
262 notice in accordance with s. 501.171 ~~s. 817.5681~~ and to the
263 Agency for Enterprise Information Technology in accordance with
264 this subsection.
265 Section 6. This act shall take effect July 1, 2014.
266
267 ================= T I T L E A M E N D M E N T ================
268 And the title is amended as follows:
269 Delete everything before the enacting clause
270 and insert:
271 A bill to be entitled

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272 An act relating to security of confidential personal
273 information; providing a short title; repealing s.
274 817.5681, F.S., relating to a breach of security
275 concerning confidential personal information in third-
276 party possession; creating s. 501.171, F.S.; providing
277 definitions; requiring specified entities to take
278 reasonable measures to protect and secure data
279 containing personal information in electronic form;
280 requiring specified entities to notify the Department
281 of Legal Affairs of data security breaches; requiring
282 notice to individuals of data security breaches under
283 certain circumstances; providing exceptions to notice
284 requirements under certain circumstances; specifying
285 contents and methods of notice; requiring notice to
286 credit reporting agencies under certain circumstances;
287 requiring the department to report annually to the
288 Legislature; specifying report requirements; providing
289 requirements for disposal of customer records;
290 providing for enforcement actions by the department;
291 providing civil penalties; specifying that no private
292 cause of action is created; amending ss. 282.0041 and
293 282.318, F.S.; conforming cross-references to changes
294 made by the act; providing an effective date.

By Senator Thrasher

6-01033A-14 20141524__

1 A bill to be entitled
2 An act relating to security of confidential personal
3 information; providing a short title; repealing s.
4 817.5681, F.S., relating to a breach of security
5 concerning confidential personal information in third-
6 party possession; creating s. 501.171, F.S.; providing
7 definitions; requiring specified entities to take
8 reasonable measures to protect and secure data
9 containing personal information in electronic form;
10 requiring specified entities to notify the Department
11 of Legal Affairs of data security breaches; requiring
12 notice to individuals of data security breaches in
13 certain circumstances; providing exceptions to notice
14 requirements in certain circumstances; specifying
15 contents of notice; requiring notice to credit
16 reporting agencies in certain circumstances; requiring
17 the department to report annually to the Legislature;
18 specifying report requirements; providing requirements
19 for disposal of customer records; providing for
20 enforcement actions by the department; providing civil
21 penalties; specifying that no private cause of action
22 is created; amending ss. 282.0041 and 282.318, F.S.;
23 conforming cross-references to changes made by the
24 act; providing an effective date.
25
26 Be It Enacted by the Legislature of the State of Florida:
27
28 Section 1. This act may be cited as the “Florida
29 Information Protection Act of 2014.”

6-01033A-14 20141524__

30 Section 2. Section 817.5681, Florida Statutes, is repealed.
31 Section 3. Section 501.171, Florida Statutes, is created to
32 read:
33 501.171 Security of confidential personal information.—
34 (1) DEFINITIONS.—As used in this section, the term:
35 (a) “Breach of security” or “breach” means unauthorized
36 access of data in electronic form containing personal
37 information.
38 (b) “Covered entity” means a sole proprietorship,
39 partnership, corporation, trust, estate, cooperative,
40 association, or other commercial entity that acquires,
41 maintains, stores, or uses personal information. For purposes of
42 the notice requirements of subsections (3)-(6), the term
43 includes a governmental entity.
44 (c) “Customer records” means any material, regardless of
45 the physical form, on which personal information is recorded or
46 preserved by any means, including, but not limited to, written
47 or spoken words, graphically depicted, printed, or
48 electromagnetically transmitted that are provided by an
49 individual in this state to a covered entity for the purpose of
50 purchasing or leasing a product or obtaining a service.
51 (d) “Data in electronic form” means any data stored
52 electronically or digitally on any computer system or other
53 database and includes recordable tapes and other mass storage
54 devices.
55 (e) “Department” means the Department of Legal Affairs.
56 (f) “Governmental entity” means any department, division,
57 bureau, commission, regional planning agency, board, district,
58 authority, agency, or other instrumentality of this state that

59 acquires, maintains, stores, or uses data in electronic form
60 containing personal information.
61 (g)1. "Personal information" means either of the following:
62 a. An individual's first name or first initial and last
63 name in combination with any one or more of the following data
64 elements for that individual:
65 (I) A social security number.
66 (II) A driver license or identification card number,
67 passport number, military identification number, or other
68 similar number issued on a government document used to verify
69 identity.
70 (III) A financial account number or credit or debit card
71 number, in combination with any required security code, access
72 code, or password that is necessary to permit access to an
73 individual's financial account.
74 (IV) Any information regarding an individual's medical
75 history, mental or physical condition, or medical treatment or
76 diagnosis by a health care professional.
77 (V) An individual's health insurance policy number or
78 subscriber identification number and any unique identifier used
79 by a health insurer to identify the individual.
80 (VI) Any other information from or about an individual that
81 could be used to personally identify that person; or
82 b. A user name or e-mail address, in combination with a
83 password or security question and answer that would permit
84 access to an online account.
85 2. The term does not include information about an
86 individual that has been made publicly available by a federal,
87 state, or local governmental entity or information that is

88 encrypted, secured, or modified by any other method or
89 technology that removes elements that personally identify an
90 individual or that otherwise renders the information unusable.
91 (h) "Third-party agent" means an entity that has been
92 contracted to maintain, store, or process personal information
93 on behalf of a covered entity or governmental entity.
94 (2) REQUIREMENTS FOR DATA SECURITY.—Each covered entity,
95 governmental entity, or third-party agent shall take reasonable
96 measures to protect and secure data in electronic form
97 containing personal information and prevent a breach of
98 security.
99 (3) NOTICE TO DEPARTMENT OF SECURITY BREACH.—
100 (a) A covered entity shall give notice to the department of
101 any breach of security following discovery by the covered
102 entity. Notice to the department must be made within 30 days
103 after the determination of the breach or reason to believe a
104 breach had occurred.
105 (b) The written notice to the department must include:
106 1. A synopsis of the events surrounding the breach.
107 2. A police report, incident report, or computer forensics
108 report.
109 3. The number of individuals in this state who were or
110 potentially have been affected by the breach.
111 4. A copy of the policies in place regarding breaches.
112 5. Any steps that have been taken to rectify the breach.
113 6. Any services being offered by the covered entity to
114 individuals, without charge, and instructions as to how to use
115 such services.
116 7. A copy of the notice sent to the individuals.

117 8. The name, address, telephone number, and e-mail address
118 of the employee of the covered entity from whom additional
119 information may be obtained about the breach and the steps taken
120 to rectify the breach and prevent similar breaches.
121 9. Whether notice to individuals is being made pursuant to
122 federal law or pursuant to the requirements of subsection (4).
123 (c) For a covered entity that is the judicial branch, the
124 Executive Office of the Governor, the Department of Financial
125 Services, and the Department of Agriculture and Consumer
126 Services, in lieu of providing the written notice to the
127 department, the covered entity may post the information
128 described in subparagraphs (b)1.-7. on an agency-managed
129 website.
130 (4) NOTICE TO INDIVIDUALS OF SECURITY BREACH.—
131 (a) A covered entity shall give notice to each individual
132 in this state whose personal information was, or the covered
133 entity reasonably believes to have been, accessed as a result of
134 the breach. Notice to individuals shall be made as expeditiously
135 as practicable and without unreasonable delay, taking into
136 account the time necessary to allow the covered entity to
137 determine the scope of the breach of security, to identify
138 individuals affected by the breach, and to restore the
139 reasonable integrity of the data system that was breached, but
140 no later than 30 days after the determination of a breach unless
141 subject to a delay authorized under paragraph (b) or waiver
142 under paragraph (c).
143 (b) If a federal or state law enforcement agency determines
144 that notice to individuals required under this subsection would
145 interfere with a criminal investigation, the notice shall be

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

146 delayed upon the written request of the law enforcement agency
147 for any period that the law enforcement agency determines is
148 reasonably necessary. A law enforcement agency may, by a
149 subsequent written request, revoke such delay or extend the
150 period set forth in the original request made under this
151 paragraph by a subsequent request if further delay is necessary.
152 (c) Notwithstanding paragraph (a), notice to the affected
153 individuals is not required if, after an appropriate
154 investigation and written consultation with relevant federal and
155 state law enforcement agencies, the covered entity reasonably
156 determines that the breach has not and will not likely result in
157 identity theft or any other financial harm to the individuals
158 whose personal information has been accessed. Such a
159 determination must be documented in writing and maintained for
160 at least 5 years. The covered entity shall provide the written
161 determination to the department within 30 days after the
162 determination.
163 (d) The notice to an affected individual shall be by one of
164 the following methods:
165 1. Written notice sent to the mailing address of the
166 individual in the records of the covered entity; or
167 2. E-mail notice sent to the e-mail address of the
168 individual in the records of the covered entity.
169 (e) The notice to an individual with respect to a breach of
170 security shall include, at a minimum:
171 1. The date, estimated date, or estimated date range of the
172 breach of security.
173 2. A description of the personal information that was
174 accessed or reasonably believed to have been accessed as a part

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

175 of the breach of security.
176 3. Information that the individual can use to contact the
177 covered entity to inquire about the breach of security and the
178 personal information that the covered entity maintained about
179 the individual.
180 (f) A covered entity required to provide notice to an
181 individual may provide substitute notice in lieu of direct
182 notice if such direct notice is not feasible because the cost of
183 providing notice would exceed $250,000, the affected individuals
184 exceed 500,000 persons, or the covered entity does not have an
185 e-mail address or mailing address for the affected individuals.
186 Such substitute notice shall include the following:
187 1. A conspicuous notice on the Internet website of the
188 covered entity, if such covered entity maintains a website; and
189 2. Notice in print and to broadcast media, including major
190 media in urban and rural areas where the affected individuals
191 reside.
192 (g) A covered entity that is in compliance with any federal
193 law that requires such covered entity to provide notice to
194 individuals following a breach of security is deemed to comply
195 with the notice requirements of this subsection if the covered
196 entity has promptly provided the notice to the department under
197 subsection (3).
198 (5) NOTICE TO CREDIT REPORTING AGENCIES.—If a covered
199 entity discovers circumstances requiring notice pursuant to this
200 section of more than 1,000 individuals at a single time, the
201 covered entity shall also notify, without unreasonable delay,
202 all consumer reporting agencies that compile and maintain files
203 on consumers on a nationwide basis, as defined in the Fair

204 Credit Reporting Act, 15 U.S.C. s. 1681a(p), of the timing,
205 distribution, and content of the notices.
206 (6) NOTICE BY THIRD-PARTY AGENTS; DUTIES OF THIRD-PARTY
207 AGENTS.—In the event of a breach of security of a system
208 maintained by a third-party agent, such third-party agent shall
209 promptly notify the covered entity of the breach of security.
210 Upon receiving notice from a third-party agent, a covered entity
211 shall provide notices required under subsections (3) and (4). A
212 third-party agent shall provide a covered entity with all
213 information that the covered entity needs to comply with its
214 notice requirements.
215 (7) ANNUAL REPORT.—By February 1 of each year, the
216 department shall submit a report to the President of the Senate
217 and the Speaker of the House of Representatives describing the
218 nature of any reported breaches of security by governmental
219 entities or third-party agents of governmental entities in the
220 preceding calendar year along with recommendations for security
221 improvements. The report shall identify any governmental entity
222 that has violated any of the applicable requirements in
223 subsections (2)-(6) in the preceding calendar year.
224 (8) REQUIREMENTS FOR DISPOSAL OF CUSTOMER RECORDS.—Each
225 covered entity or third-party agent shall take all reasonable
226 measures to dispose, or arrange for the disposal, of customer
227 records containing personal information within its custody or
228 control when the records are no longer to be retained. Such
229 disposal shall involve shredding, erasing, or otherwise
230 modifying the personal information in the records to make it
231 unreadable or undecipherable through any means.
232 (9) ENFORCEMENT.—

233 (a) A violation of this section shall be treated as an
234 unfair or deceptive trade practice in any action brought by the
235 department under s. 501.207 against a covered entity or third-
236 party agent.
237 (b) In addition to the remedies provided for in paragraph
238 (a), a covered entity that violates subsection (3) or subsection
239 (4) shall be liable for a civil penalty not to exceed $500,000,
240 as follows:
241 1. In the amount of $1,000 for each day the breach goes
242 undisclosed for up to 30 days and, thereafter, $50,000 for each
243 30-day period or portion thereof for up to 180 days.
244 2. If notice is not made within 180 days, in an amount not
245 to exceed $500,000.
246
247 The civil penalties for failure to notify provided in this
248 paragraph shall apply per breach and not per individual affected
249 by the breach.
250 (c) All penalties collected pursuant to this subsection
251 shall be deposited into the General Revenue Fund.
252 (10) NO PRIVATE CAUSE OF ACTION.—This section does not
253 establish a private cause of action.
254 Section 4. Subsection (5) of section 282.0041, Florida
255 Statutes, is amended to read:
256 282.0041 Definitions.—As used in this chapter, the term:
257 (5) “Breach” has the same meaning as the term “breach of
258 security” as provided in s. 501.171 ~~in s. 817.5681(4)~~.
259 Section 5. Paragraph (i) of subsection (4) of section
260 282.318, Florida Statutes, is amended to read:
261 282.318 Enterprise security of data and information

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262 technology.—
263 (4) To assist the Agency for Enterprise Information
264 Technology in carrying out its responsibilities, each agency
265 head shall, at a minimum:
266 (i) Develop a process for detecting, reporting, and
267 responding to suspected or confirmed security incidents,
268 including suspected or confirmed breaches consistent with the
269 security rules and guidelines established by the Agency for
270 Enterprise Information Technology.
271 1. Suspected or confirmed information security incidents
272 and breaches must be immediately reported to the Agency for
273 Enterprise Information Technology.
274 2. For incidents involving breaches, agencies shall provide
275 notice in accordance with s. 501.171 ~~s. 817.5681~~ and to the
276 Agency for Enterprise Information Technology in accordance with
277 this subsection.
278 Section 6. This act shall take effect July 1, 2014.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JOHN THRASHER
6th District

COMMITTEES:
Rules, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Community Affairs
Ethics and Elections
Gaming
Judiciary
Regulated Industries

JOINT COMMITTEE:
Joint Legislative Budget Commission

March 5, 2014

MEMORANDUM

To: Senator Nancy Detert, Chairman
Senate Commerce and Tourism Committee

Fm: Senator John Thrasher

Re: Senate Bill 1524, relating to security of confidential personal information

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It will be appreciated if you will agenda my Senate Bill 1524 for a hearing by the Senate Commerce and Tourism Committee at your earliest convenience.

Thank you for your consideration of this request.

REPLY TO:
❒ 113 Nature Walk Parkway, Suite 106, St. Augustine, Florida 32092 (904) 287-4222 FAX: 1-888-263-3475
❒ 400 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1010

INTRODUCER: Senator Richter

SUBJECT: Cable and Video Services

DATE: March 21, 2014 REVISED: ___ ___ ___ ___

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	CU	**Favorable**
2.	Baye	Hrdlicka	CM	**Pre-meeting**

I. Summary:

SB 1010 repeals s. 610.119, F.S., which provides for the Office of Program Policy Analysis and Government Accountability to submit a report on the status of competition in the cable and video service industry. The law includes specifics about what the report should contain. Section 610.199(2), F.S., provides that the Department of Agriculture and Consumer Services shall make recommendations regarding the workload and staffing requirements associated with consumer complaints related to video and cable certificate holders.

II. Present Situation:

In 2007, the Legislature created s. 610.119(1), F.S., to require the Office of Program Policy Analysis and Government Accountability (OPPAGA) to submit a report to the President of the Senate, the Speaker of the House of Representatives, and the majority and minority leaders of the Senate and House of Representatives, by December 1, 2009, and December 1, 2014, "on the status of competition in the cable and video service industry, including, by each municipality and county, the number of cable and video service providers, the number of cable and video subscribers served, the number of areas served by fewer than two cable or video service providers, the trend in cable and video service prices, and the identification of any patterns of serve as they impact demographic and income groups."

OPPAGA issued the first report in October 2009. The report identified two barriers preventing a comprehensive assessment:

- Providers reluctance to share data, and
- Insufficient information provided in statewide franchise documents.[1]

[1] Office of Program Policy Analysis & Government Accountability, *Benefits from Statewide Cable and Video Franchise Reform Remain Uncertain*, available at http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0935rpt.pdf (last visited Mar. 14, 2014). *See also* s.7, ch. 2001-29, L.O.F.

The report addressed the future required 2014 study, recommending that the Legislature may wish to consider amending s. 610.119(1), F.S., "to require providers to submit information on aggregate numbers of subscribers by census block level and to provide that these data are not subject to public records disclosure," or "modify the study requirements to no longer direct OPPAGA to analyze the effect of statewide franchising on availability of video services to subscribers throughout the state and the level of competition within the industry."[2]

Section 610.119(2), F.S., required the Department of Agriculture and Consumer Services to make recommendations to the President of the Senate, the Speaker of the House of Representatives, and the majority and minority leaders of the Senate and House of Representatives regarding the workload and staffing requirements associated with consumer complaints related to video and cable certificate holders. The department indicates that this obligation was fulfilled in 2008.[3]

III. Effect of Proposed Changes:

SB 1010 repeals s. 610.119, F.S. OPPAGA will not be required to submit the report due later this year, and the requirement for the Department of Agriculture and Consumer Services report is obsolete.

This bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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[2] *Id.*
[3] Department of Agriculture and Consumer Services, *Senate Bill 1010 Agency Analysis* (Feb. 21, 2014).

C. Government Sector Impact:

OPPAGA would not have to develop the required report. While the Legislature would not receive the benefit of the report, the barriers indicated by OPPAGA's October 2009 report would likely result in a report wanting for detail.

VI. Technical Deficiencies:

None.

VII. Related Issues:

As required by federal law, the Federal Communications Commission prepares and publishes an annual report concerning the status of competition in the market for delivery of video programming.[4] The report is intended to measure progress toward the goals of increasing competition and diversity in multichannel video programming distribution, increasing the availability of satellite delivered programming, and spurring the development of communications technologies.[5] Among other things, the report addresses the number of service subscribers and market share among various market segments and participants, including a comparison of competition in rural versus urban areas.[6] The report also addresses programming and consumer behavior patterns.

VIII. Statutes Affected:

This bill repeals section 610.119 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.

[4] 47 U.S.C. s. 548(g)

[5] See Federal Communications Commission, *Fifteenth Report*, released July 22, 2013, MB Docket No. 12-203, In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-99A1.pdf (last visited Mar. 19, 2014).

[6] *Id.* at 157.

By Senator Richter

23-00730-14 20141010__

1 A bill to be entitled
2 An act relating to cable and video services; repealing
3 s. 610.119, F.S., relating to reports required to be
4 submitted to the Legislature by the Office of Program
5 Policy Analysis and Government Accountability and the
6 Department of Agricultural and Consumer Services on
7 the status of competition in the cable and video
8 service industry and the staffing requirements
9 associated with consumer complaints related to video
10 and cable certificateholders, respectively; providing
11 an effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Section 610.119, Florida Statutes, is repealed.
16 Section 2. This act shall take effect July 1, 2014.

The Florida Senate

Committee Agenda Request

To: Senator Nancy Detert, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: March 11, 2014

I respectfully request that **Senate Bill #1010**, relating to Cable and Video Services, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Garrett Richter
Florida Senate, District 23

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 374

INTRODUCER: Senator Detert

SUBJECT: Growth Management

DATE: March 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	**Favorable**
2.	Askey	Hrdlicka	CM	**Pre-meeting**
3.			RC	

I. Summary:

SB 374 removes the prohibition against some local initiative and referendum processes related to comprehensive plan amendments and map amendments. Current law allows local initiatives and referendums if they:

- Were in effect on June 1, 2011;
- Affect more than five parcels of land; and
- Were expressly authorized for comprehensive plan or map amendments in a local government charter.

The bill removes the requirement that the initiative or referendum affect more than five parcels of land.

II. Present Situation:

Growth Management

The Local Government Comprehensive Planning and Land Development Regulation Act,[1] also known as Florida's Growth Management Act, was adopted in 1985. The act requires all counties and municipalities to adopt local government comprehensive plans that guide future growth and development.[2] Comprehensive plans contain chapters or "elements" that address topics including future land use, housing, transportation, conservation, and capital improvements, among others.[3] The state land planning agency that administers these provisions is the Department of Economic Opportunity.[4]

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[1] *See* ch. 163, part II, F.S.
[2] Section 163.3167, F.S.
[3] Section 163.3177, F.S.
[4] Section 163.3221(14), F.S.

Local Initiatives and Referenda on Land Use Changes

In 2006, voters in St. Pete Beach amended the city's charter to require voter referenda on all future changes to comprehensive plans, redevelopment plans, and building height regulations.[5] This process, often called "Hometown Democracy," caused delay in the local development process.[6] In November 2010, Florida voters decided against implementing Hometown Democracy statewide with a 67.1 percent 'no' vote on Amendment 4.[7] Shortly thereafter, in March 2011, voters in St. Pete Beach repealed the town's Hometown Democracy provisions by 54.07 percent.[8]

The 2011 Legislature passed HB 7207, known as the "Community Planning Act." Section 7 of the bill, amending s. 163.3167, F.S., prohibited local governments from adopting initiative or referendum processes for any development orders, comprehensive plan amendments, or map amendments, irrespective of the number of parcels affected.[9]

At the time, very few local governments had a land use referendum or initiative process in place.[10] One of these affected governments, The Town of Yankeetown (Yankeetown), had a charter provision which specifically authorized a referendum vote on comprehensive plan amendments affecting more than five parcels of land.[11] Following the enactment of HB 7207 (2011), Yankeetown filed a complaint seeking to maintain its ability to hold referenda on growth management issues. The suit led to an agreement with the Department of Community Affairs (now the Department of Economic Opportunity) that called for the two parties to jointly seek passage of a proposed amendment to the Community Planning Act.[12]

The resulting bill, CS/HB 7081 (2012), was designed to allow charter provisions like that of Yankeetown to remain valid. The bill was intended to have a limited impact, protecting only those local government charter provisions that: 1) were in effect as of June 1, 2011, and 2) authorized an initiative or referendum process for development orders, comprehensive plan amendments, or map amendments.[13] The Legislature passed the bill on March 7, 2012, and the Governor signed CS/HB 7081 (2012) into law on April 6, 2012.

In October 2012, a Palm Beach County Circuit Court interpreted CS/HB 7081 as extending the "grandfather" exception to include all local government charter provisions related to *general*

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[5] "Is St. Pete Beach a Valid Case Study for Amendment 4?" *St. Petersburg Times*, March 19, 2010. Available at: http://www.politifact.com/florida/statements/2010/mar/19/citizens-lower-taxes-and-stronger-economy/st-pete-beach-amendment-4-hometown-democracy/ (last visited March 18, 2014).
[6] *Id.*
[7] *See*, November 2, 2010 General Election Official Results provided by the Florida Department of State. Available at: https://doe.dos.state.fl.us/elections/resultsarchive/Index.asp?ElectionDate=11/2/2010&DATAMODE= (last visited March 18, 2014).
[8] *See,* 2011 Municipal Election Results provided by the Pinellas County Supervisor of Elections. Available at: http://www.votepinellas.com/index.php?id=1789 (last visited March 18, 2014).
[9] *See,* "The Community Planning Act," s.7, ch. 2011-139, L.O.F., 2011 HB 7207.
[10] Longboat Key, Key West, Miami Beach, and the Town of Yankeetown.
[11] *See, Town of Yankeetown, FL v. Dep't of Econ. Opportunity, et. al.,* No. 37 2011-CA-002036 (Fla. 2d Cir. Ct. 2011), Town of Yankeetown's Amended Complaint for Declaratory Judgment, p. 3 (Aug. 9, 2011).
[12] Settlement Letter between the Department of Community Affairs and St. Pete Beach and Yankeetown, Re: Case No. 37 2011-CA-002036 (9/28/2011).
[13] Section 1, ch. 2012-99, L.O.F.

referendum or initiative processes in effect as of June 1, 2011.[14] As a result, the Legislature revisited the issue again in 2013. The bill, CS/CS/HB 537, was intended to clarify that the grandfathering provision only applied to local government charter provisions enabling initiatives or referenda that were specifically related to comprehensive plan amendments or map amendments. The Legislature passed the bill on May 2, 2013, and the Governor signed CS/CS/HB 537 (2013) into law on June 5, 2013.

The Town of Longboat Key

In 1984, the Town of Longboat Key adopted an amendment to its charter to create provisions controlling the creation and alteration of the town's comprehensive plan. The amendment, which added Art. II, s. 22 to its charter, required any increase to the town's then-existing density limitations to garner referendum approval from the town's electors, including requests to increase the allowable density on single parcels. However, CS/CS/HB 537, enacted in 2013 by the Legislature, only grandfathered in local government charter provisions that affected five or more parcels. As such, there is some question regarding whether the passage of the bill has entirely or partially invalidated Longboat Key's charter provision. Because of the retroactive nature of the statute, there is also some question as to its effects on developments that had obtained permission to increase density through referendum approval after June 1, 2011, but before CS/CS/HB 537 took effect on July 1, 2013.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 163.3167(8), F.S., to remove the requirement that the local initiative or referendum be related to a comprehensive plan or map amendment affecting more than five parcels of land. The bill also makes technical changes to subsection (c).

Section 2 provides that the bill shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[14] *City of Boca Raton v. Kennedy, et. al.*, No. 2012-CA-009962-MB (Fla. 15th Cir. Ct. 2012), Order denying plaintiff, City of Boca Raton's and Intervener/Co-Plaintiff, Archstone Palmetto Park, LLC's Motions for Summary Judgment and Granting Defendants' Motion for Summary Judgment. J. Chernow Brown, Oct. 16, 2012.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill increases the number of development projects in Longboat Key potentially subject to the initiative or referendum process prior to final approval. This may delay projects and thereby increase costs for implementation.

C. Government Sector Impact:

The bill restores Longboat Key's established procedure for managing density increases to the town comprehensive plan. The management of initiatives and referenda on growth management issues will require more costs to local government than the prohibition of such processes. However, these costs may be offset by a reduction in legal fees associated with litigating whether the town's law was only partially or wholly invalidated by CS/CS/HB 537 (2013) and the effects of the statute's retroactive nature on developments that had obtained permission to increase density prior to its passage.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 163.3167 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 Detert

28-00548-14 2014374__

A bill to be entitled

An act relating to growth management; amending s. 163.3167, F.S.; revising restrictions on an initiative or referendum process with regard to local comprehensive plan amendments and map amendments; providing an effective date.

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

Section 1. Paragraphs (b) and (c) of subsection (8) of section 163.3167, Florida Statutes, are amended to read:

163.3167 Scope of act.—

(8)

(b) An initiative or referendum process in regard to any local comprehensive plan amendment or map amendment is prohibited unless~~. However, an initiative or referendum process in regard to any local comprehensive plan amendment or map amendment that affects more than five parcels of land is allowed if~~ it is expressly authorized by specific language in a local government charter that was lawful and in effect on June 1, 2011. A general local government charter provision for an initiative or referendum process is not sufficient.

(c) It is the intent of the Legislature that initiative and referendum be prohibited in regard to any development order. It is the intent of the Legislature that initiative and referendum be prohibited in regard to any local comprehensive plan amendment or map amendment, except as specifically and narrowly allowed by ~~permitted in~~ paragraph (b) ~~with regard to local comprehensive plan amendments that affect more than five parcels~~

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28-00548-14 2014374__

~~of land or map amendments that affect more than five parcels of land~~. Therefore, the prohibition on initiative and referendum stated in paragraphs (a) and (b) is remedial in nature and applies retroactively to any initiative or referendum process commenced after June 1, 2011, and any such initiative or referendum process ~~that has been~~ commenced or completed thereafter is ~~hereby~~ deemed null and void and of no legal force and effect.

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

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

The Florida Senate

Committee Agenda Request

To: Senator Nancy Detert, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: March 12, 2014

I respectfully request that **Senate Bill #374**, relating to Growth Management, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Nancy C. Detert
Florida Senate, District 28

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/CS/SB 570

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Galvano

SUBJECT: Title Insurance

DATE: March 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Fav/CS**
2.	Munroe	Cibula	JU	**Fav/CS**
3.	Siples	Hrdlicka	CM	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 570 changes the unearned premium reserve requirement for title insurers holding $50 million or more in surplus to policyholders. Those title insurers must have a reserve of a minimum of 6.5 percent of the total of (1) direct premiums written and (2) premiums for reinsurance assumed, with certain adjustments. Title insurers having less than $50 million in surplus as to policyholders must continue to record unearned premium reserve in accordance with current law (30 cents per $1,000 of net retained liability).

This bill creates a schedule for the release of the unearned premium reserve over 20 years for companies with more than $50 million in surplus, as follows: 35 percent of the initial sum during the year following the year the premium was written or assumed, 15 percent during each year of the next succeeding 2 years, 10 percent during the next succeeding year, 3 percent during each of the next succeeding 3 years, 2 percent during each of the next succeeding 3 years, and 1 percent during each of the next succeeding 10 years.

This bill allows a title insurer organized under the laws of another state which transfers its domicile to Florida to have an unearned premium reserve as required by the laws of the title insurer's former state. That reserve is released according to the requirements of law in effect in the former state at the time of domicile. The release of reserve based on premium written after the insurer moves to Florida is governed by Florida law.

The bill also responds to a recent Florida Supreme Court decision by providing that only contract remedies are available for the breach of a duty that arises solely from the terms of a contract of title insurance or other instrument, relating to real estate closings, issued and approved by the Office of Insurance Regulation.

This bill provides that title insurance agency and agent applications created by the Department of Financial Services (department) need not be on a printed form. This change allows the use of online applications. Current law allows an applicant for licensure as a title insurance agent to substitute work experience in the title insurance business for classroom instruction. This bill provides that the work experience must be under the supervision of a licensed title insurance agent, a title insurer, or an attorney.

This bill applies the same naming requirements applicable to title insurance agents to title insurance agencies. This bill provides that the naming requirements do not apply to a title insurer acting as an agent for another title insurer if both insurers hold active certificates of authority to transact title insurance and both are acting under the names designated on such certificates. The changes to the naming requirements are effective October 1, 2014.

This bill removes the requirement that a title insurance agency deposit securities with the department having a market value of $35,000 or a bond in the same amount at the time of application for licensure. This requirement is no longer necessary because a title insurance agency must obtain a surety bond of at least $35,000 payable to the title insurer. This bill provides that a title insurance agent must be licensed and appointed in order to sell title insurance.

This bill changes from March 31 to May 31, the date which title insurers and agencies must report information required by the Office of Insurance Regulation for the analysis of title insurance premium rates.

II. Present Situation:

Title insurance is (1) insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title; or (2) insurance of owners and secured parties of the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.[1] Title insurance serves to indemnify the insured against financial loss caused by defects in title arising out of events that occurred before the date of the policy.[2]

Title insurance agents and agencies are licensed and regulated by the Department of Financial Services (DFS) while title insurance companies are licensed and regulated by the Office of Insurance Regulation.

[1] *See* s. 624.608, F.S.
[2] *Lawyers Title Insurance Co., Inc. v. Novastar Mortgage, Inc.*, 862 So. 2d 793,797 (Fla. 4th DCA 2003).

Title Insurance Reserve Requirements

Insurance companies must maintain cash or liquid assets on hand to pay claims and satisfy other liabilities. These are called reserves. A title insurer must maintain two types of reserves. First, a title insurer must maintain reserves sufficient to pay all of its unpaid losses.[3] In addition, a title insurer must maintain a guaranty fund or unearned premium reserve to be used for reinsurance in the event the insurer becomes insolvent.[4]

Section 625.111, F.S., provides that the unearned premium reserve must consist of at least the sum of:

- A reserve with respect to unearned premiums for policies written or title liability assumed in reinsurance before July 1, 1999, equal to the reserve established on June 30, 1999, for those unearned premiums. For domestic title insurers subject to this section, such amounts must be calculated in accordance with Florida law in effect at the time the associated premiums were written or assumed and as amended prior to July 1, 1999.
- A total amount equal to 30 cents for each $1,000 of net retained liability[5] for policies written or title liability assumed in reinsurance on or after July 1, 1999.
- An additional amount, if deemed necessary by a qualified actuary.

Title Insurance Unearned Premium Reserve Requirements in Other States

According to the Office of Insurance Regulation (OIR), Florida "has one of the highest statutory premium reserve requirements of all the states in which major title insurers are domiciled."[6] As examples, the OIR cited:

California	4.5% of premium and fees
Florida	$.30 per $1,000 of net retained liability
Minnesota	6.5% of premium and fees
Nebraska	$.17 per $1,000 of net retained liability
Texas	$.185 per $1,000 of net retained liability.[7]

Releasing Unearned Premium Reserve

In 1999, the Legislature changed the law to require a domestic title insurer to release the reserve over a period of 20 years.[8] Section 625.111, F.S., set the following schedule for release of reserves:

For policies written before July 1, 1999, an insurer shall release:

- 30 percent of the initial aggregate sum during 1999;

[3] *See* ss. 625.041 and 625.111, F.S.
[4] *See* s. 625.111, F.S.
[5] "Net retained liability" means the "total liability retained by a title insurer for a single risk, after taking into account the deduction for ceded liability, if any." s. 625.111(4)(a), F.S.
[6] *See* OIR, *SB 758 2014 Agency Legislative Bill Analysis* (Feb.10, 2014) (on file with the Senate Banking and Insurance Committee).
[7] *Id.* at p. 2.
[8] *See* Ch. 99-336, L.O.F. The release of the reserve dollars is based on a reduction of liability that occurs with the passage of time. The release of the reserve makes those monies available for general use by the company.

- 15 percent during calendar year 2000;
- 10 percent during each of calendar years 2001 and 2002;
- 5 percent during each of calendar years 2003 and 2004;
- 3 percent during each of calendar years 2005 and 2006;
- 2 percent during each of calendar years 2007-2013; and
- 1 percent during each of calendar years 2014-2018.

For policies written after July 1, 1999, an insurer shall release:
- 30 percent of the initial sum during calendar year following the year the premium was written;
- 15 percent during the next succeeding year;
- 10 percent during each of the next succeeding 2 years;
- 5 percent during each of the next succeeding 2 years;
- 3 percent during each of the next succeeding 2 years;
- 2 percent during each of the next succeeding 7 years; and
- 1 percent during each of the next succeeding 5 years.

Title Insurance and the Economic Loss Rule

The economic loss rule is a "judicially created doctrine that sets forth circumstances under which a tort action is prohibited if the only damages suffered are economic losses."[9] Parties to a contract are generally prohibited from recovering damages in tort for matters arising from the contract.[10] The Florida Supreme Court has explained:

> Underlying [the economic loss] rule is the assumption that the parties to a contract have allocated the economic risks of nonperformance through the bargaining process. A party to a contract who attempts to circumvent the contractual agreement by making a claim for economic loss in tort is, in effect, seeking to obtain a better bargain than originally made. Thus, when the parties are in privity, contract principles are generally more appropriate for determining remedies for consequential damages that the parties have, or could have, addressed through their contractual agreement. Accordingly, courts have held that a tort action is barred where a defendant has not committed a breach of duty apart from a breach of contract.[11]

In *Tiara Condominium Association, Inc. v. Marsh & McClennan Companies, Inc.*, the Florida Supreme Court held that the economic loss rule does not apply to an insured's suit against an insurance broker where the parties are in contractual privity and the damages are solely economic.[12] The court further held that the economic loss rule is limited to products liability cases. In limiting the economic loss rule to product liability cases, the court explained that it had

[9] *Tiara Condominium Association, Inc. v. Marsh & McClennan Companies, Inc.*, 110 So. 3d 399, 401 (Fla. 2013).
[10] *Id.* at 402.
[11] *Indemnity Ins. Co. of North America v. American Aviation, Inc.,* 891 So. 2d 532, 536-537 (Fla. 2004) (internal citations omitted).
[12] *Tiara Condominium Association,* 399 So. 3d at 407.

long "expressed its desire" to return the economic loss rule to its intended purpose of limiting actions in product liability cases.[13]

Prior to *Tiara Condominium*, Florida followed a majority view that title insurers owe no duty to the insured.[14] A leading case on the applicability of the economic loss rule and the title insurance industry was *Chicago Title Insurance Co. v. Commonwealth Forest Investments*, *Inc.*[15] In that case, the court found that "the economic loss rule protects these contractual expectations, including the important expectation that a title insurer's risk will be limited to the dollar amount shown on the face of the policy."[16] The court concluded that the negligence action against the title insurer was barred by the economic loss rule and the unambiguous language of the policy which precluded an independent tort action for negligence.[17]

Licensing and Appointment of Title Insurance Agents

A person may not act as a title insurance agent until the person is licensed by the DFS.[18, 19] Once a person obtains a license, the person must be authorized or appointed by a title insurer to transact insurance on behalf of the insurer.[20] In order to obtain a license, an applicant must complete a 40-hour classroom course in title insurance or have had at least 12 months of experience in responsible title insurance duties while working as a substantially full-time employee of a title agency, title agent, title insurer, or an attorney who conducts real estate closings and issues title insurance policies but is exempt from licensure.[21] An applicant must also qualify to take and pass a required examination.[22]

Naming of Title Insurance Agencies

Florida law generally prohibits an insurance agency name from being deceptive or misleading. Section 626.8413, F.S., provides that a title insurance agent shall not adopt a name which contains the words "title insurance," "title guaranty," or "title guarantee" unless such words are followed by the word "agent" or "agency." The restrictions on names make clear to a purchaser that title insurance is being purchased from an agent or agency rather than directly from a title insurer. The naming requirements in s. 626.8413, F.S., do not apply to a title insurer acting as an agent for another title insurer.

Bond Requirement

Section 626.8418(2), F.S., requires an applicant for licensure as a title insurance agency to deposit security with the DFS of at least $35,000 or post a surety bond payable to the DFS of at

[13] *Tiara Condominium Association*, 399 So. 3d at 407.
[14] *See e.g., MacDonald v. Old Republic Nat. Title Ins. Co.*, 882 F.Supp.2d 236, 244 (D. Mass. 2012).
[15] *Chicago Title Ins. Co. v. Commonwealth Forest Inv., Inc.*, 494 F.Supp.2d 1332 (M.D. Fla. 2007).
[16] *Chicago Title Ins. Co.*, 494 F.Supp.2d at 1337.
[17] *Chicago Title Ins. Co.*, 494 F.Supp.2d at 1337-38.
[18] *See* s. 626.8417, F.S.
[19] Title insurers and attorneys admitted to practice law in Florida and in good standing with The Florida Bar are exempt from the licensing and appointment requirements. *See* s. 626.8417(4)(a), F.S.
[20] *See* s. 626.841(1), F.S., defining "title insurance agent" as one appointed by a title insurer to issue policies on its behalf.
[21] *See* s. 626.8417(3)(a), F.S.
[22] *See* s. 626.8417(3)(b), F.S.

least $35,000 for the benefit of any appointing insurer damaged by a violation by the title insurance agency of its contract with the appointing insurer. Section 626.8419(1)(c), F.S., requires a title insurance agency to obtain a surety bond of at least $35,000 payable to the title insurer appointing the agency. The surety bond must be for the benefit of any appointing insurer damaged by a violation by the title insurance agency of its contract with the appointing title insurer.

Reports to the Office of Insurance Regulation

Title insurance agencies and title insurers are required to submit information including revenue, loss, and expense data to the OIR on March 31 of the year after the reporting year.[23] The OIR uses the information to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry.[24]

III. Effect of Proposed Changes:

Title Insurance Reserve Requirements (Sections 1 & 2)

This bill provides that a title insurer must reserve the amount necessary to pay all of its known unpaid losses and claims incurred on or before the date of the financial statement, together with the expenses of adjustment or settlement. This requirement is in addition to the reserves required under s. 625.111, F.S. This bill removes references to unreported claims – claims where the loss has occurred but has not been reported – as a liability to be charged against a title insurer's assets because unreported claims are accounted for in title insurance by the unearned premium reserve.[25]

This bill creates a new unearned premium reserve requirement for title insurers holding $50 million or more in surplus as to policyholders. Those insurers must have a reserve of a minimum of 6.5 percent of the total of (1) direct premiums written and (2) premiums for reinsurance assumed, plus other income, less premiums for reinsurance ceded as displayed in Schedule P of the title insurer's most recent annual statement filed with the OIR. Title insurers having less than $50 million in surplus as to policyholders must continue to record unearned premium reserve in accordance with current law (30 cents per $1,000 of net retained liability).

The effect of this change will reduce the unearned premium reserve requirement for title insurers having more than $50 million in surplus. This change will not have an immediate effect because there are no title insurers with $50 million in surplus domiciled in Florida.[26] According to the OIR, reducing the statutory premium reserve requirement for larger title insurers could encourage foreign title insurers to re-domesticate to Florida.[27] The two Florida insurers placed in the rehabilitation since 2008 had less than $50 million in surplus prior to the entry of the

[23] *See* s. 627.782(8), F.S.
[24] *Id.*
[25] OIR, *SB 758 2014 Agency Legislative Bill Analysis* at 2.
[26] *Id.* at 3.
[27] *Id.*

rehabilitation orders.[28] A third Florida insurer ceased writing new policies when its surplus dropped from $27 million to $6 million.[29]

Releasing Unearned Premium Reserve (Section 2)

This bill creates a schedule for the release of unearned premium reserve for companies with more than $50 million in surplus. This bill provides that the unearned premium for policies written or title liability assumed during a particular calendar year shall be released from reserve as follows:

- 35 percent of the initial sum during the calendar year following the year the premium was written or assumed;
- 15 percent during each year of the next succeeding 2 years;
- 10 percent during the next succeeding year;
- 3 percent during each of the next succeeding 3 years;
- 2 percent during each of the next succeeding 3 years; and
- 1 percent during each of the next succeeding 10 years.

Reserve Requirement When a Title Insurer Moves to Florida (Section 2)

Currently, no title insurers are domiciled in Florida. If a title insurer moves to the state, it must immediately comply with Florida's reserve requirements. However, this bill allows a title insurer organized under the laws of another state that transfers its domicile to Florida to have an unearned premium reserve as required by the laws of the title insurer's former state of domicile. The reserve is released according to the requirements of law in effect in the former state at the time of domicile.

This bill requires that, for new business written after the effective date of the transfer of domicile to Florida, the domestic title insurer shall add to and set aside in the statutory or unearned premium reserve the appropriate amount under Florida law as determined by the company's surplus.

Bulk Reserves (Section 2)

This bill provides that a domestic title insurer is not required to record a separate bulk reserve. "Bulk reserve" means provision for subsequent development on known claims. This bill further provides that if a separate bulk reserve is recorded, the statutory premium reserve must be reduced by the amount recorded for such bulk reserve.

[28] DFS, Division of Rehabilitation and Liquidation, *available at* http://www.myfloridacfo.com/Division/Receiver/Companies/KEL/default.htm#.UxD1zfldUeE and http://www.myfloridacfo.com/Division/Receiver/Companies/National_Title/default.htm#.UxD2BPldUeF (last visited Mar. 19, 2014). The information may be found by reviewing the NAIC financial statements submitted by the companies.

[29] Press Release, A.M. Best, *A.M. Best Withdraws Ratings of Attorneys' Title Insurance Fund Inc.* (Aug. 20, 2009), *available at* http://www3.ambest.com/ambv/bestnews/presscontent.aspx?altsrc=0&refnum=14608 (last visited Mar. 19, 2014).

The Economic Loss Rule (Section 11)

This bill responds to the 2013 decision of the Florida Supreme Court in *Tiara Condominium Association, Inc. v. Marsh & McClennan Companies, Inc.*, by providing that only contract remedies are available for breach of a duty which arises solely from the terms of a contract of title insurance or an instrument, such as a closing protection letter, issued pursuant to s. 627.786(3), F.S.

Licensing and Appointment of Title Insurance Agents (Sections 5 and 7)

This bill amends s. 626.8412, F.S., to provide that a title insurance agent must be licensed by the DFS and appointed by a title insurer in order to sell title insurance.

This bill amends s. 626.8417, F.S., to provide that the DFS's license application need not be on a printed form. This change allows the department to use online applications. This bill specifies that the 12 months of experience in responsible title insurance duties required as an alternative to classroom instruction must be under the supervision of a licensed title insurance agent, a title insurer, or an attorney.

Naming of Title Insurance Agencies (Section 6)

This bill applies the same naming requirements applicable to title insurance agents to title insurance agencies. It provides that a title insurance agent or agency may not adopt a name which contains the words "title insurance," "title company," "title guaranty," or "title guarantee" unless such words are followed by the word "agent" or "agency." This bill provides that the naming restrictions do not apply to a title insurer acting as an agent for another title insurer if both insurers hold active certificates of authority to transact title insurance and both are acting under the names designated on such certificates. The changes to the naming requirements are effective October 1, 2014.

Bond Requirement (Sections 8 and 9)

The bill repeals the requirement that a title insurance agency deposit with the DFS securities having a market value of $35,000 or a bond in the same amount at the time of application for licensure. This requirement is no longer necessary because s. 626.8419(1)(c), F.S., requires a title insurance agency to obtain a surety bond of at least $35,000 payable to the title insurer.

Technical Changes

Sections 10 and 13 of this bill repeal obsolete language relating to binders and guarantees of title. Those terms are no longer used.

Section 12 changes the date which title insurers and title insurance agencies must report required revenue, loss, and expense data to the OIR from March 31 to May 31.

Sections 3 and 4 correct cross-references.

Effective Date (Section 14)

The bill takes effect July 1, 2014, unless otherwise specified in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

According to the OIR, this bill may encourage foreign title insurers to re-domesticate to Florida which could increase tax and fee revenues to state and local governments.[30]

B. Private Sector Impact:

Limiting liability to contract remedies could benefit insurers by making remedies for breach of contract more predictable.

According to the OIR, this bill may encourage foreign title insurers to re-domesticate to Florida which may increase business opportunities.[31] Concerns have been expressed that the "two tier" reserve system created by the bill may disadvantage smaller title insurers. First, there is concern that lenders could use $50 million as a benchmark for acceptable surplus. Finally, there is concern that smaller title insurers would be at a disadvantage when offering reissue rates to consumers.[32]

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

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[30] OIR, *SB 758 2014 Agency Legislative Bill Analysis*.
[31] *Id.*
[32] Discussion points provided by representatives at Westcor Land Title Insurance Company (on file with the staff of the Senate Banking and Insurance Committee).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 625.041, 625.111, 624.407, 624.408, 626.8412, 626.8413, 626.8417, 626.8418, 626.8419, 626.8437, 627.778, 627.782, and 627.7845.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Judiciary on March 11, 2014:
The committee substitute adds to the underlying bill the substance of CS/SB 758, which relates to title insurance reserves.

CS by Banking and Insurance on February 4, 2014:
The CS provides that only contract remedies are available for a breach of duty arising from the terms of an instrument issued pursuant to s. 627.786(3), F.S., and changes the date which title insurers and title insurance agencies must report information to the Office of Insurance Regulation from March 31 to May 31.

B. Amendments:

None.

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

By the Committees on Judiciary; and Banking and Insurance; and Senator Galvano

590-02439-14 2014570c2

1 A bill to be entitled
2 An act relating to title insurance; amending s.
3 625.041, F.S.; specifying that a title insurer is
4 liable for all of its unpaid losses and claims;
5 amending s. 625.111, F.S.; revising and specifying the
6 reserves certain title insurers must set aside;
7 specifying how such reserves will be released;
8 specifying which state law governs the amount of the
9 reserve when a title insurer transfers its domicile to
10 this state; defining “bulk reserve”; amending ss.
11 624.407 and 624.408, F.S.; conforming cross-
12 references; amending s. 626.8412, F.S.; specifying
13 that only a licensed and appointed agent or agency is
14 authorized to sell title insurance; amending s.
15 626.8413, F.S.; providing additional limitations on
16 the name that a title insurance agent or agency may
17 adopt; providing applicability; amending s. 626.8417,
18 F.S.; conforming provisions to changes made by the
19 act; amending s. 626.8418, F.S.; revising the
20 application requirements for a title insurance agency
21 license; deleting certain bonding requirements and
22 procedures; amending s. 626.8419, F.S.; conforming
23 provisions to changes made by the act; amending s.
24 626.8437, F.S.; revising terms relating to grounds for
25 actions against a licensee or appointee; amending s.
26 627.778, F.S.; limiting the remedies available for the
27 breach of duty arising from a title insurance
28 contract; amending s. 627.782, F.S.; revising the date
29 that certain information relating to title insurance

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30 rates must be submitted to the Office of Insurance
31 Regulation by title insurance agencies and insurers;
32 amending s. 627.7845, F.S.; revising terms relating to
33 determination of insurability and preservation of
34 evidence of title search and examination; providing
35 effective dates.
36
37 Be It Enacted by the Legislature of the State of Florida:
38
39 Section 1. Section 625.041, Florida Statutes, is amended to
40 read:
41 625.041 Liabilities, in general.—In any determination of
42 the financial condition of an insurer, liabilities to be charged
43 against its assets ~~shall~~ include:
44 (1) The amount, estimated in accordance ~~consistent~~ with ~~the~~
45 ~~provisions of~~ this code, necessary to pay all of its unpaid
46 losses and claims incurred on or before ~~prior to~~ the date of
47 statement, whether reported or unreported, together with the
48 expenses of adjustment or settlement thereof.
49 (2) With respect to title insurance, the amount, estimated
50 in accordance with this code, necessary to pay all of its known
51 unpaid losses and claims incurred on or before the date of
52 statement, together with the expenses of adjustment or
53 settlement thereof. This requirement is in addition to the
54 reserves required under s. 625.111.
55 (3) ~~(2)~~ With respect ~~reference~~ to life and health insurance
56 and annuity contracts:
57 (a) The amount of reserves on life insurance policies and
58 annuity contracts in force, valued according to the tables of

59 mortality, rates of interest, and methods adopted pursuant to
60 this code which are applicable thereto.
61 (b) Reserves for disability benefits, for both active and
62 disabled lives.
63 (c) Reserves for accidental death benefits.
64 (d) Any additional reserves that may be required by the
65 office in accordance ~~consistent~~ with practice formulated or
66 approved by the National Association of Insurance Commissioners
67 or its successor organization, on account of such insurance,
68 including contract and premium deficiency reserves.
69 (4) ~~(3)~~ With respect ~~reference~~ to insurance other than that
70 specified in subsections (2) and (3) ~~subsection (2), and other~~
71 ~~than title insurance~~, the amount of reserves equal to the
72 unearned portions of the gross premiums charged on policies in
73 force, computed in accordance with this part.
74 (5) ~~(4)~~ Taxes, expenses, and other obligations due or
75 accrued at the date of the statement.
76 (6) ~~(5)~~ An ~~Any~~ insurer in this state which ~~that~~ writes
77 workers’ compensation insurance shall accrue a liability on its
78 financial statements for all Special Disability Trust Fund
79 assessments that are due within the current calendar year. ~~In~~
80 ~~addition,~~ Those insurers shall also disclose in the notes to the
81 financial statements required to be filed pursuant to s. 624.424
82 an estimate of future Special Disability Trust Fund assessments~~,~~
83 if the assessments are likely to occur and can be estimated with
84 reasonable certainty.
85 Section 2. Section 625.111, Florida Statutes, is amended to
86 read:
87 625.111 Title insurance reserve.—In addition to an adequate

88 reserve as to outstanding losses relating to known claims~~,~~ as
89 required under s. 625.041, a domestic title insurer shall
90 establish, segregate, and maintain a guaranty fund or unearned
91 premium reserve as provided in this section. The sums ~~required~~
92 ~~under this section~~ to be reserved for unearned premiums on title
93 guarantees and policies ~~at all times and for all purposes~~ shall
94 be considered and constitute unearned portions of the original
95 premiums and shall be charged as a reserve liability of the ~~such~~
96 insurer in determining its financial condition. ~~While~~ Such ~~sums~~
97 ~~are so~~ reserved funds~~, they~~ shall be withdrawn from the use of
98 the insurer for its general purposes, impressed with a trust in
99 favor of the holders of title guarantees and policies, and held
100 available for reinsurance of the title guarantees and policies
101 in the event of the insolvency of the insurer. ~~Nothing contained~~
102 ~~in~~ This section does not ~~shall~~ preclude the ~~such~~ insurer from
103 investing such reserve in investments authorized by law, ~~for~~
104 ~~such an insurer~~ and the income from such investments ~~invested~~
105 ~~reserve~~ shall be included in the general income of the insurer
106 and may ~~to~~ be used by such insurer for any lawful purpose.
107 (1) For an unearned premium reserve ~~reserves~~ established on
108 or after July 1, 1999, such ~~unearned premium~~ reserve must be in
109 ~~shall consist of not less than~~ an amount at least equal to the
110 sum of the amounts specified in paragraphs (a), (b), and (d) for
111 title insurers holding less than $50 million in surplus as to
112 policyholders as of the previous year end, and the sum of the
113 amounts specified in paragraphs (c) and (d) for title insurers
114 holding $50 million or more in surplus as to policyholders as of
115 the previous year end:
116 (a) A reserve with respect to unearned premiums for

policies written or title liability assumed in reinsurance before July 1, 1999, equal to the reserve established on June 30, 1999, for those unearned premiums with such reserve being subsequently released as provided in subsection (2). For domestic title insurers subject to this section, such amounts shall be calculated in accordance with ~~provisions of law of this~~ state law in effect at the time the associated premiums were written or assumed and as amended before ~~prior to~~ July 1, 1999.

(b) A total amount equal to 30 cents for each $1,000 of net retained liability for policies written or title liability assumed in reinsurance on or after July 1, 1999, with such reserve being subsequently released as provided in subsection (2). For the purpose of calculating this reserve, the total of the net retained liability for all simultaneous issue policies covering a single risk shall be equal to the liability for the policy with the highest limit covering that single risk, net of any liability ceded in reinsurance.

(c) On or after January 1, 2014, for title insurers holding $50 million or more in surplus as to policyholders as of the previous year end, a minimum of 6.5 percent of the total of the following:

1. Direct premiums written; and

2. Premiums for reinsurance assumed, plus other income, less premiums for reinsurance ceded as displayed in Schedule P of the title insurer’s most recent annual statement filed with the office with such reserve being subsequently released as provided in subsection (2). Title insurers with less than $50 million in surplus as to policyholders must continue to record unearned premium reserve in accordance with paragraph (b).

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

(d) ~~(c)~~ An additional amount, if deemed necessary by a qualified actuary, to ~~which shall~~ be subsequently released as provided in subsection (2). Using financial results as of December 31 of each year, all domestic title insurers shall obtain a Statement of Actuarial Opinion from a qualified actuary regarding the insurer’s loss and loss adjustment expense reserves, including reserves for known claims, ~~adverse development on known claims,~~ incurred but not reported claims, and unallocated loss adjustment expenses. The actuarial opinion must ~~shall~~ conform to the annual statement instructions for title insurers adopted by the National Association of Insurance Commissioners and ~~shall~~ include the actuary’s professional opinion of the insurer’s reserves as of the date of the annual statement. If the amount of the reserve stated in the opinion and displayed in Schedule P of the annual statement for that reporting date is greater than the sum of the known claim reserve and unearned premium reserve as calculated under this section, as of the same reporting date and including any previous actuarial provisions added at earlier dates, the insurer shall add to the insurer’s unearned premium reserve an actuarial amount equal to the reserve shown in the actuarial opinion, minus the known claim reserve and the unearned premium reserve, as of the current reporting date and calculated in accordance with this section, but not ~~in no event~~ calculated as of any date before ~~prior to~~ December 31, 1999. The comparison shall be made using that line on Schedule P displaying the Total Net Loss and Loss Adjustment Expense which is comprised of the Known Claim Reserve, and any associated Adverse Development Reserve, the reserve for Incurred But Not Reported Losses, and

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

175 Unallocated Loss Adjustment Expenses.
176 (2) ~~(a)~~ With respect to reserves ~~the reserve~~ established in
177 accordance with:
178 (a) Paragraph (1)(a), the domestic title insurer shall
179 release the reserve over the subsequent ~~a period of~~ 20
180 ~~subsequent~~ years as provided in this paragraph. The insurer
181 shall release 30 percent of the initial aggregate sum during
182 1999, with one quarter of that amount being released on March
183 31, June 30, September 30, and December 31, 1999, with the March
184 31 and June 30 releases to be retroactive and reflected on the
185 September 30 financial statements. Thereafter, the insurer shall
186 release, on the same quarterly basis as specified for reserves
187 released during 1999, a percentage of the initial aggregate sum
188 as follows: 15 percent during calendar year 2000, 10 percent
189 during each of calendar years 2001 and 2002, 5 percent during
190 each of calendar years 2003 and 2004, 3 percent during each of
191 calendar years 2005 and 2006, 2 percent during each of calendar
192 years 2007-2013, and 1 percent during each of calendar years
193 2014-2018.
194 (b) ~~With respect to reserves established in accordance with~~
195 Paragraph (1)(b), the unearned premium for policies written or
196 title liability assumed during a particular calendar year shall
197 be earned, and released from reserve, over the subsequent ~~a~~
198 ~~period of~~ 20 ~~subsequent~~ years as provided in this paragraph. The
199 insurer shall release 30 percent of the initial sum during the
200 year following ~~next succeeding~~ the year the premium was written
201 or assumed, with one quarter of that amount being released on
202 March 31, June 30, September 30, and December 31 of such year.
203 Thereafter, the insurer shall release, on the same quarterly

204 basis as specified for reserves released during the year
205 following ~~first succeeding~~ the year the premium was written or
206 assumed, a percentage of the initial sum as follows: 15 percent
207 during the next succeeding year, 10 percent during each of the
208 next succeeding 2 years, 5 percent during each of the next
209 succeeding 2 years, 3 percent during each of the next succeeding
210 2 years, 2 percent during each of the next succeeding 7 years,
211 and 1 percent during each of the next succeeding 5 years.
212 (c) ~~With respect to reserves established in accordance with~~
213 Paragraph (1)(c), the unearned premium for policies written or
214 title liability assumed during a particular calendar year shall
215 be earned, and released from reserve, over the subsequent 20
216 years at an amortization rate not to exceed the formula in this
217 paragraph. The insurer shall release 35 percent of the initial
218 sum during the year following the year the premium was written
219 or assumed, with one quarter of that amount being released on
220 March 31, June 30, September 30, and December 31 of such year.
221 Thereafter, the insurer shall release, on the same quarterly
222 basis as specified for reserve released during the year
223 following the year the premium was written or assumed, a
224 percentage of the initial sum as follows: 15 percent during each
225 year of the next succeeding 2 years, 10 percent during the next
226 succeeding year, 3 percent during each of the next succeeding 3
227 years, 2 percent during each of the next succeeding 3 years, and
228 1 percent during each of the next succeeding 10 years.
229 (d) Paragraph (1)(d), any additional amount established in
230 any calendar year shall be released in the years subsequent to
231 its establishment as provided in paragraph (c) ~~(b)~~, with the
232 timing and percentage of releases being in all respects

233 identical to those of unearned premium reserves that are
234 calculated as provided in paragraph (c) ~~(b)~~ and established with
235 regard to premiums written or liability assumed in reinsurance
236 in the same year as the year in which any additional amount was
237 originally established.
238 (3) If a title insurer that is organized under the laws of
239 another state transfers its domicile to this state, the
240 statutory or unearned premium reserve shall be the amount
241 required by the laws of the title insurer's former state of
242 domicile as of the date of transfer of domicile and shall be
243 released from reserve according to the requirements of law in
244 effect in the former state at the time of domicile. On or after
245 January 1, 2014, for new business written after the effective
246 date of the transfer of domicile to this state, the domestic
247 title insurer shall add to and set aside in the statutory or
248 unearned premium reserve such amount as provided in paragraph
249 (1)(c).
250 (4)~~(3)~~ At any reporting date, the amount of the required
251 releases of existing unearned premium reserves under subsection
252 (2) shall be calculated and deducted from the total unearned
253 premium reserve before any additional amount is established for
254 the current calendar year in accordance with ~~the provisions of~~
255 paragraph (1)(d) ~~(1)(c)~~.
256 (5) A domestic title insurer is not required to record a
257 separate bulk reserve. However, if a separate bulk reserve is
258 recorded, the statutory premium reserve must be reduced by the
259 amount recorded for such bulk reserve.
260 (6)~~(4)~~ As used in this section, the term:
261 (a) "Bulk reserve" means provision for subsequent

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262 development on known claims.
263 (b)~~(a)~~ "Net retained liability" means the total liability
264 retained by a title insurer for a single risk, after taking into
265 account the deduction for ceded liability, if any.
266 (c)~~(b)~~ "Qualified actuary" means a person who is, as
267 detailed in the National Association of Insurance Commissioners'
268 Annual Statement Instructions:
269 1. A member in good standing of the Casualty Actuarial
270 Society;
271 2. A member in good standing of the American Academy of
272 Actuaries who has been approved as qualified for signing
273 casualty loss reserve opinions by the Casualty Practice Council
274 of the American Academy of Actuaries; or
275 3. A person who otherwise has competency in loss reserve
276 evaluation as demonstrated to the satisfaction of the insurance
277 regulatory official of the domiciliary state. In such case, at
278 least 90 days before ~~prior to the~~ filing ~~of~~ its annual
279 statement, the insurer must request ~~approval~~ that the person be
280 deemed qualified and that request must be approved or denied.
281 The request must include the National Association of Insurance
282 Commissioners' Biographical Form and a list of all loss reserve
283 opinions issued in the last 3 years by this person.
284 (d)~~(c)~~ "Single risk" means the insured amount of a ~~any~~
285 title insurance policy, except that where two or more title
286 insurance policies are issued simultaneously covering different
287 estates in the same real property, "single risk" means the sum
288 of the insured amounts of all such ~~title insurance~~ policies. A
289 ~~Any~~ title insurance policy insuring a mortgage interest, a claim
290 payment under which reduces the insured amount of a fee or

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291 leasehold title insurance policy, shall be excluded in computing
292 the amount of a single risk to the extent that the insured
293 amount of the mortgage title insurance policy does not exceed
294 the insured amount of the fee or leasehold title insurance
295 policy.
296 Section 3. Subsection (5) of section 624.407, Florida
297 Statutes, is amended to read:
298 624.407 Surplus required; new insurers.—
299 (5) For the purposes of this section, liabilities do not
300 include liabilities required under s. 625.041(5) ~~s. 625.041(4)~~.
301 For purposes of computing minimum surplus as to policyholders
302 pursuant to s. 625.305(1), liabilities include liabilities
303 required under s. 625.041(5) ~~s. 625.041(4)~~.
304 Section 4. Subsection (2) of section 624.408, Florida
305 Statutes, is amended to read:
306 624.408 Surplus required; current insurers.—
307 (2) For purposes of this section, liabilities do not
308 include liabilities required under s. 625.041(5) ~~s. 625.041(4)~~.
309 For purposes of computing minimum surplus as to policyholders
310 pursuant to s. 625.305(1), liabilities include liabilities
311 required under s. 625.041(5) ~~s. 625.041(4)~~.
312 Section 5. Paragraph (a) of subsection (1) of section
313 626.8412, Florida Statutes, is amended to read:
314 626.8412 License and appointments required.—
315 (1) Except as otherwise provided in this part:
316 (a) Title insurance may be sold only by a licensed and
317 appointed title insurance agent employed by a licensed and
318 appointed title insurance agency or employed by a title insurer.
319 Section 6. Effective October 1, 2014, section 626.8413,

320 Florida Statutes, is amended to read:
321 626.8413 Title insurance agents; certain names prohibited.—
322 After October 1, 2014 ~~1985~~, a title insurance agent or title
323 insurance agency may ~~as defined in s. 626.841 shall~~ not adopt a
324 name that ~~which~~ contains the words “title insurance,” “title
325 company,” “title guaranty,” or “title guarantee~~,~~” unless such
326 words are followed by the word “agent” or “agency” in the same
327 size and type as the words preceding it ~~them~~. This section does
328 not apply to a title insurer acting as an agent for another
329 title insurer if both insurers hold active certificates of
330 authority to transact title insurance business in this state and
331 if both insurers are acting under the names designated on such
332 certificates.
333 Section 7. Section 626.8417, Florida Statutes, is amended
334 to read:
335 626.8417 Title insurance agent licensure; exemptions.—
336 (1) A person may not act as a title insurance agent ~~as~~
337 ~~defined in s. 626.841~~ until a valid title insurance agent’s
338 license has been issued to that person by the department.
339 (2) An application for license as a title insurance agent
340 shall be filed with the department on ~~printed~~ forms furnished by
341 the department.
342 (3) The department may ~~shall~~ not grant or issue a license
343 as a title insurance agent to an ~~any~~ individual who is found by
344 the department ~~it~~ to be untrustworthy or incompetent, who does
345 not meet the qualifications for examination specified in s.
346 626.8414, or who does not meet the following qualifications:
347 (a) Within the 4 years immediately preceding the date of
348 the application for license, the applicant must have completed a

40-hour classroom course in title insurance, 3 hours of which are ~~shall be~~ on the subject matter of ethics, as approved by the department, or must have had at least 12 months of experience in responsible title insurance duties under the supervision of a licensed title insurance agent, title insurer, or attorney while working in the title insurance business as a substantially full-time, bona fide employee of a title insurance agency, title insurance agent, title insurer, or attorney who conducts real estate closing transactions and issues title insurance policies but who is exempt from licensure under subsection (4) ~~pursuant to paragraph (4)(a)~~. If an applicant's qualifications are based upon the periods of employment at responsible title insurance duties, the applicant must submit, with the license application ~~for license on a form prescribed by the department~~, an ~~the~~ affidavit of the applicant and of the employer affirming ~~setting forth~~ the period of such employment, that the employment was substantially full time, and giving a brief abstract of the nature of the duties performed by the applicant.

(b) The applicant must have passed any examination for licensure required under s. 626.221.

(4)~~(a)~~ Title insurers or attorneys duly admitted to practice law in this state and in good standing with The Florida Bar are exempt from the provisions of this chapter relating ~~with regard~~ to title insurance licensing and appointment requirements.

(5)~~(b)~~ An insurer may designate a corporate officer of the insurer to occasionally issue and countersign binders, commitments, and policies of title insurance ~~policies, or guarantees of title~~. The ~~A~~ designated officer is exempt from the

provisions of this chapter relating ~~with regard~~ to title insurance licensing and appointment requirements while the officer is acting within the scope of the designation.

(6)~~(c)~~ If an attorney owns ~~or attorneys own~~ a corporation or other legal entity that ~~which~~ is doing business as a title insurance agency, other than an entity engaged in the active practice of law, the agency must be licensed and appointed as a title insurance agent.

Section 8. Section 626.8418, Florida Statutes, is amended to read:

626.8418 Application for title insurance agency license.—Before ~~Prior to~~ doing business in this state as a title insurance agency, ~~a title insurance agency must meet all of the following requirements:~~

~~(1)~~ the applicant must file with the department an application for a license as a title insurance agency, on ~~printed~~ forms furnished by the department, which ~~that~~ includes all of the following:

(1)~~(a)~~ The name of each majority owner, partner, officer, and director of the title insurance agency.

(2)~~(b)~~ The residence address of each person required to be listed under subsection (1) ~~paragraph (a)~~.

(3)~~(c)~~ The name of the title insurance agency and its principal business address.

(4)~~(d)~~ The location of each title insurance agency office and the name under which each agency office conducts or will conduct business.

(5)~~(e)~~ The name of each title insurance agent to be in full-time charge of a title insurance ~~an~~ agency office and

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407 specification of which office.
408 (6) ~~(f)~~ Such additional information as the department
409 requires by rule to ascertain the trustworthiness and competence
410 of persons required to be listed on the application and to
411 ascertain that such persons meet the requirements of this code.
412 ~~(2) The applicant must have deposited with the department~~
413 ~~securities of the type eligible for deposit under s. 625.52 and~~
414 ~~having at all times a market value of not less than $35,000. In~~
415 ~~place of such deposit, the title insurance agency may post a~~
416 ~~surety bond of like amount payable to the department for the~~
417 ~~benefit of any appointing insurer damaged by a violation by the~~
418 ~~title insurance agency of its contract with the appointing~~
419 ~~insurer. If a properly documented claim is timely filed with the~~
420 ~~department by a damaged title insurer, the department may remit~~
421 ~~an appropriate amount of the deposit or the proceeds that are~~
422 ~~received from the surety in payment of the claim. The required~~
423 ~~deposit or bond must be made by the title insurance agency, and~~
424 ~~a title insurer may not provide the deposit or bond directly or~~
425 ~~indirectly on behalf of the title insurance agency. The deposit~~
426 ~~or bond must secure the performance by the title insurance~~
427 ~~agency of its duties and responsibilities under the issuing~~
428 ~~agency contracts with each title insurer for which it is~~
429 ~~appointed. The agency may exchange or substitute other~~
430 ~~securities of like quality and value for securities on deposit,~~
431 ~~may receive the interest and other income accruing on such~~
432 ~~securities, and may inspect the deposit at all reasonable times.~~
433 ~~Such deposit or bond must remain unimpaired as long as the title~~
434 ~~insurance agency continues in business in this state and until 1~~
435 ~~year after termination of all title insurance agency~~

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436 ~~appointments held by the title insurance agency. The title~~
437 ~~insurance agency is entitled to the return of the deposit or~~
438 ~~bond together with accrued interest after such year has passed,~~
439 ~~if no claim has been made against the deposit or bond. If a~~
440 ~~surety bond is unavailable generally, the department may adopt~~
441 ~~rules for alternative methods to comply with this subsection.~~
442 ~~With respect to such alternative methods for compliance, the~~
443 ~~department must be guided by the past business performance and~~
444 ~~good reputation and character of the proposed title insurance~~
445 ~~agency. A surety bond is deemed to be unavailable generally if~~
446 ~~the prevailing annual premium exceeds 25 percent of the~~
447 ~~principal amount of the bond.~~
448 Section 9. Paragraphs (a) through (c) of subsection (1) of
449 section 626.8419, Florida Statutes, are amended to read:
450 626.8419 Appointment of title insurance agency.—
451 (1) The title insurer engaging or employing the title
452 insurance agency must file with the department, on forms
453 furnished by the department, an application certifying that the
454 proposed title insurance agency meets all of the following
455 requirements:
456 (a) The title insurance agency has ~~must have~~ obtained a
457 fidelity bond in an amount of at least~~, not less than~~ $50,000,
458 acceptable to the insurer appointing the agency. If a fidelity
459 bond is unavailable generally, the department shall ~~must~~ adopt
460 rules for alternative methods to comply with this paragraph.
461 (b) The title insurance agency must have obtained errors
462 and omissions insurance in an amount acceptable to the insurer
463 appointing the agency. The amount of the coverage must be at
464 least ~~may not be less than~~ $250,000 per claim and an aggregate

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limit with a deductible no greater than $10,000. If errors and omissions insurance is unavailable generally, the department shall ~~must~~ adopt rules for alternative methods that ~~to~~ comply with this paragraph.

(c) ~~Notwithstanding s. 626.8418(2),~~ The title insurance agency must have obtained a surety bond in an amount of at least ~~not less than~~ $35,000 made payable to the title insurer or title insurers appointing the agency. The surety bond must be for the benefit of any appointing title insurer damaged by a violation by the title insurance agency of its contract with the appointing title insurer. If the surety bond is payable to multiple title insurers, the surety bond must provide that each title insurer is to be notified if ~~in the event~~ a claim is made upon the surety bond or the bond is terminated.

Section 10. Subsections (3) and (4) of section 626.8437, Florida Statutes, are amended to read:

626.8437 Grounds for denial, suspension, revocation, or refusal to renew license or appointment.—The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any title insurance agent or agency, and it shall suspend or revoke the eligibility to hold a license or appointment of such person, if it finds that as to the applicant, licensee, appointee, or any principal thereof, any one or more of the following grounds exist:

(3) Willful misrepresentation of any title insurance policy~~, guarantee of title, binder,~~ or commitment, or willful deception with regard to ~~any~~ such policy~~, guarantee, binder,~~ or commitment, done ~~either~~ in person or by any form of dissemination of information or advertising.

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(4) Demonstrated lack of fitness or trustworthiness to represent a title insurer in the issuance of its commitments or~~,~~ ~~binders,~~ policies of title insurance~~, or guarantees of title~~.

Section 11. Subsection (3) is added to section 627.778, Florida Statutes, to read:

627.778 Limit of risk.—

(3) Only contract remedies are available for the breach of a duty which arises solely from the terms of a contract of title insurance or an instrument issued pursuant to s. 627.786(3).

Section 12. Subsection (8) of section 627.782, Florida Statutes, is amended to read:

627.782 Adoption of rates.—

(8) Each title insurance agency and insurer licensed to do business in this state and each insurer's direct or retail business in this state shall maintain and submit information, including revenue, loss, and expense data, as the office determines necessary to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry in this state. Such ~~This~~ information shall ~~must~~ be transmitted to the office annually by May ~~March~~ 31 of the year after the reporting year. The commission shall adopt rules relating to ~~regarding~~ the collection and analysis of the data from the title insurance industry.

Section 13. Subsection (2) of section 627.7845, Florida Statutes, is amended to read:

627.7845 Determination of insurability required; preservation of evidence of title search and examination.—

(2) The title insurer shall cause the evidence of the

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523 determination of insurability and the reasonable title search or
524 search of the records of a Uniform Commercial Code filing office
525 to be preserved and retained in its files or in the files of its
526 title insurance agent or agency for at least ~~a period of not~~
527 ~~less than~~ 7 years after the title insurance commitment or~~,~~ title
528 insurance policy~~, or guarantee of title~~ was issued. The title
529 insurer or its agent or agency must produce the evidence
530 required to be maintained under ~~by~~ this subsection at its
531 offices upon the demand of the office. Instead of retaining the
532 original evidence, the title insurer or its ~~the title insurance~~
533 agent or agency may, in the regular course of business,
534 establish a system under which all or part of the evidence is
535 recorded, copied, or reproduced by any photographic,
536 photostatic, microfilm, microcard, miniature photographic, or
537 other process that ~~which~~ accurately reproduces or forms a
538 durable medium for reproducing the original.
539 Section 14. Except as otherwise expressly provided in this
540 act, this act shall take effect July 1, 2014.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO
26th District

March 18, 2014

Senator Nancy Detert
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Madam Chair Detert:

I respectfully request that CS/CS/SB 570, Title Insurance, be scheduled for a hearing in the Committee on Commerce and Tourism 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.

Sincerely,

Bill Galvano

cc: Jennifer Hrdlicka
Patty Blackburn

REPLY TO:
❒ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
❒ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1142

INTRODUCER: Senator Lee

SUBJECT: Ticket Sales

DATE: March 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CM	**Pre-meeting**
2.			CJ	
3.			AP	

I. Summary:

SB 1142 increases the criminal penalties related to counterfeit tickets and sales of "multiuse tickets" to theme parks. The bill also creates criminal penalties for the purchase of multiuse tickets and for certain sales or purchases of a card, wristband, or other medium that accesses or is associated with a nontransferable multiuse ticket.

II. Present Situation:

Generally there is little regulation on the initial sale of tickets by original ticket issuers and their agents. The resale of tickets is regulated by states for various reasons, including the belief that resale can lead to fraud by the sale of fake tickets and this harms innocent consumers.[1] Ticket issuers have also made efforts to limit fraudulent tickets, including the use of credit cards to purchase tickets, barcodes placed on tickets, and electronic tickets to provide ways for an original ticket issuer to link a ticket to a particular person and keep track of ownership of a ticket.[2]

Regulation of Fraudulent Ticket Sales in Florida

Section 817.361, F.S., makes it a second degree misdemeanor to offer for sale, sell, or transfer, with or without consideration, any nontransferable multiday or multievent ticket that has been used at least once for admission. Second or subsequent violations are first degree

[1] Benitah, Jonathan C., "Anti-Scalping Laws: Should They Be Forgotten?" 6 TXRESL 55, 60 (2005). Resale of tickets in Florida is generally regulated under s. 817.36, F.S.

[2] For example, Disney recently invested in a new form of ticket which is a wireless radio-frequency identification wristband. See Garcia, Jason, Orlando Sentential (March 29, 2013), available at http://www.orlandosentinel.com/the-daily-disney/os-disney-nextgen-ticket-laws-20130329,0,2136300.story; and Shaw Brown, Genevieve, ABC News (January 9, 2013), available at http://abcnews.go.com/Travel/magicband-disney-park-entry/story?id=18161268 (last visited 3/13/2014).

misdemeanors.[3] A nontransferable ticket is one on which is clearly printed the phrase: "Nontransferable; must be used by the same person on all days" or a similar phrase.

Section 817.355, F.S., makes the counterfeit, forging, altering, or possession of any ticket with the intention to defraud a facility, a first degree misdemeanor.

Section 817.357, F.S., states that it is a violation of the Florida Deceptive and Unfair Trade Practices Act[4] for knowingly purchasing a quantity of tickets from the original ticket seller that exceeds the maximum ticket limit quantity set, with the intent to resell such tickets. This does not apply to "original ticket sellers," meaning "the issuer of such ticket or a person or firm who provides distribution services or ticket sales services under a contract with such issuer."

III. Effect of Proposed Changes:

Penalties

Section 1 amends s. 817.355, F.S., to increase the criminal penalties for the fraudulent creation or possession of admission tickets.

Under current law, the counterfeit, forging, altering, or possession of any ticket with the intention to defraud a facility is a first degree misdemeanor. The bill creates a third degree felony for subsequent violations.

The bill creates a third degree felony for the counterfeit, forging, altering, or possession of 10 or more tickets with the intention to defraud a facility.

A third degree felony is punishable by a fine of $5,000, a term of imprisonment not exceeding 5 years, or, in the case of a habitual offender a term of imprisonment not exceeding 10 years.

Section 2 amends s. 817.361, F.S., to provide criminal penalties for the resale or repurchase of a multiuse ticket that has been used at least once for admission.

Under current law it is a second degree misdemeanor to offer for sale, sell, or transfer, with or without consideration, any nontransferable multiuse ticket that has been used at least once for admission. The bill increases the penalty to a first degree misdemeanor.

The bill also creates a first degree misdemeanor to purchase or offer to purchase, with or without consideration, any nontransferable multiuse ticket that has been used at least once for admission. The penalties also apply to the sale or purchase of "a card, wristband, or other medium that accesses or is associated with a nontransferable multiuse ticket."

The bill creates a first degree misdemeanor to knowingly offer for sale, sell, or transfer, with or without consideration, a card, wristband, or other medium that accesses or is associated with a

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[3] Second degree misdemeanors are punishable by up 60 days imprisonment and a fine of up to $500. First degree misdemeanors are punishable by up to 1 year imprisonment and a fine of up to $1,000. ss. 775.082 and 775.083, F.S.

[4] Sections 501.201 – 501.213, F.S. The associated civil penalty for a violation of the act is up to $10,000 per violation.

nontransferable multiuse ticket that already has a card, wristband, or other medium accessing or associated with it.

A second or subsequent violation of the provisions is increased from a first degree misdemeanor to a third degree felony.

A third degree felony is punishable by a fine of $5,000, a term of imprisonment not exceeding 5 years, or, in the case of a habitual offender a term of imprisonment not exceeding 10 years. A first degree misdemeanor is punishable by up to 1 year imprisonment and a fine of up to $1,000. A second degree misdemeanor is punishable by up 60 days imprisonment and a fine of up to $500.

Because the bill limits the definition of "multiuse ticket" to admission to a theme park, the effect is to repeal penalties for the resale of used multiday or multievent tickets to entertainment venues other than theme parks.[5]

Nontransferable Multiuse Tickets

Under current law, a ticket is transferable unless otherwise stated on the ticket itself. **Section 2** repeals that provision, and instead states that a multiuse ticket is nontransferable. The bill provides two instances when a multiuse ticket is transferable:

- The phrase "may be used by more than one person" is printed clearly on the ticket; or
- The issuer of the ticket explicitly states on its website that the ticket may be used by more than one person.

Section 3 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[5] The bill defines a "multiuse ticket" as a ticket, other medium, or "right" designed for admission to more than one amusement location or facility in a theme park or for more than 1 day to a theme park. A "theme park" is an area of at least 25 acres that contains rides or other recreation activities and is owned by the same business entity.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals who counterfeit tickets or sell or transfer used multiuse tickets or associated cards or wristbands will be subject to increased criminal penalties. Additionally, individuals who purchase a used multiuse ticket may be subject to criminal penalties.

However, individuals will no longer be subject to criminal penalties for the resale or transfer of multiday or multievent tickets to entertainment venues other than theme parks.

C. Government Sector Impact:

The Department of Corrections indicated that the impact on the prison population is expected to be insignificant and the impact on community supervision population is expected to be minimal.

The Department of Corrections stated that the bill would require the department to create a new offense code for the Offender Based Information System, requiring IT programing.[6]

VI. Technical Deficiencies:

None.

VII. Related Issues:

There may be confusion as to when a multiuse ticket is transferrable. The bill does not provide any direction to an issuer how to "explicitly state" on its website when a ticket is may be used by more than one person.

Current law prohibits the resale of tickets for more than $1 over the original admission price for multiday or multievent access to a park or entertainment complex, or a concert, entertainment event, permanent exhibition, or recreational activity within a park or complex, including an entertainment/resort complex.[7]

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[6] Department of Corrections, 2014 Agency Legislative Bill Analysis: SB 1142 (3/6/2014). The department's estimated average cost to program new offense codes each year due to legislation passed with penalties is $7,650 (estimated 90 hours at $85.00 per hour). "This amount could fluctuate due to the number of new offense codes required or other programming exceptions."

[7] Section 817.36(1)(b), F.S. "Entertainment/resort complex" is defined in s. 516.01(18), F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 817.355 and 817.361.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Commerce and Tourism (Stargel) recommended the following:

1 **Senate Amendment (with title amendment)**

2

3 Delete everything after the enacting clause

4 and insert:

5 Section 1. Section 817.355, Florida Statutes, is amended to

6 read:

7 817.355 Fraudulent creation or possession of admission

8 ticket.—

9 (1) Except as provided in subsections (2) and (3), a ~~Any~~

10 person who counterfeits, forges, alters, clones, or possesses a

11 ~~any~~ ticket, card, wristband, or other medium that accesses or is
12 associated with a ticket; or a ticket, token, or paper designed
13 for admission to or the rendering of services by a ~~any~~ sports,
14 amusement, concert, or other facility offering services to the
15 general public, with the intent to defraud such facility,
16 commits ~~is guilty of~~ a misdemeanor of the first degree,
17 punishable as provided in s. 775.082 or s. 775.083.
18 (2) A person who commits a second or subsequent violation
19 of subsection (1) commits a felony of the third degree,
20 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
21 (3) A person who counterfeits, forges, alters, clones, or
22 possesses 10 or more tickets, cards, wristbands, or other media
23 that access or are associated with a ticket, token, or paper
24 designed for admission to or the rendering of services by a
25 sports, amusement, concert, or other facility offering services
26 to the general public with the intent to defraud such facility,
27 commits a felony of the third degree, punishable as provided in
28 s. 775.082, s. 775.083, or s. 775.084.
29 Section 2. Section 817.361, Florida Statutes, is amended to
30 read:
31 817.361 Sale or transfer ~~Resale~~ of multiuse tickets
32 ~~multiday or multievent ticket~~.—
33 (1) As used in this section, the term:
34 (a) “Issuer” means the person or entity that created a
35 multiuse ticket and is obligated to allow admission thereunder.
36 (b) “Multiuse ticket” means a ticket, other medium, or
37 right designed for admission to more than one theme park
38 complex, or to more than one amusement location or other
39 facility in a theme park complex, or for admission for more than

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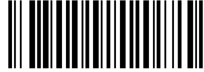
40 1 day or more than once in the same day to one or more such
41 locations or facilities in a theme park complex.
42 (c) "Theme park complex" means an area comprised of at
43 least 25 acres of land owned by the same business entity and
44 which contains rides or other recreational activities.
45 (2) A person who ~~Whoever~~ offers for sale, sells, or
46 transfers in connection with a commercial transaction, with or
47 without consideration, a ~~any~~ nontransferable multiuse ticket or
48 a card, wristband, or other medium that accesses or is
49 associated with any such nontransferable multiuse ticket ~~or~~
50 ~~other nontransferable medium designed for admission to more than~~
51 ~~one amusement location or other facility offering entertainment~~
52 ~~to the general public, or for admission for more than 1 day~~
53 ~~thereto,~~ after the nontransferable multiuse ~~said~~ ticket ~~or other~~
54 ~~medium~~ has been used at least once for admission commits a
55 violation of this subsection. For purposes of this subsection, a
56 multiuse ticket is nontransferable unless the phrase "may be
57 used by more than one person" is printed clearly on the multiuse
58 ticket by the issuer or the issuer explicitly states on its
59 website that the multiuse ticket may be used by more than one
60 person~~, is guilty of a misdemeanor of the second degree,~~
61 ~~punishable as provided in s. 775.082 or s. 775.083~~. ~~A~~
62 ~~nontransferable ticket or other nontransferable medium is one on~~
63 ~~which is clearly printed the phrase: "Nontransferable; must be~~
64 ~~used by the same person on all days" or words of similar import.~~
65 (3)(a) Except as provided in paragraph (b), a person who
66 violates subsection (2) commits a misdemeanor of the first
67 degree, punishable as provided in s. 775.082 or s. 775.083.
68 (b) A person who commits ~~Upon conviction for~~ a second or

69 subsequent violation of ~~this~~ subsection (2) commits~~, such person~~
70 ~~is guilty of~~ a felony ~~misdemeanor~~ of the third ~~first~~ degree,
71 punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s.
72 775.084.
73 Section 3. This act shall take effect July 1, 2014.
74
75 ================= T I T L E A M E N D M E N T ================
76 And the title is amended as follows:
77 Delete everything before the enacting clause
78 and insert:
79 A bill to be entitled
80 An act relating to ticket sales; amending s. 817.355,
81 F.S.; providing that a person who counterfeits,
82 forges, alters, clones, or possesses a ticket, card,
83 wristband, or other medium that accesses or is
84 associated with a specified ticket, token, or paper
85 with the intent to defraud commits a misdemeanor of
86 the first degree; providing enhanced criminal
87 penalties for second and subsequent violations
88 concerning fraudulent creation or possession of an
89 admission ticket; providing criminal penalties for
90 persons who commit such violations involving more than
91 a specified number of tickets, cards, wristbands, or
92 other media that access or are associated with a
93 specified ticket, token, or paper; amending s.
94 817.361, F.S.; defining terms; prohibiting the sale,
95 offer for sale, or transfer of certain multiuse
96 tickets or a card, wristband, or other medium that
97 accesses or is associated with such multiuse ticket;

 719812

98 providing criminal penalties; providing enhanced
99 criminal penalties for second or subsequent violations
100 of provisions relating to the sale, offer for sale, or
101 transfer of certain multiuse tickets; providing an
102 effective date.

By Senator Lee

A bill to be entitled

An act relating to ticket sales; amending s. 817.355, F.S.; providing enhanced criminal penalties for second and subsequent violations concerning fraudulent creation or possession of an admission ticket; providing criminal penalties for persons who commit such violations involving more than a specified number of tickets; amending s. 817.361, F.S.; providing definitions; prohibiting the purchase, sale, and transfer of certain multiuse tickets; prohibiting the sale and transfer of certain cards, wristbands, and media that access or are associated with multiuse tickets; providing enhanced criminal penalties for second or subsequent violations of provisions relating to the purchase, sale, or transfer of certain multiuse tickets and the sale and transfer of certain cards, wristbands, and media that access or are associated with multiuse tickets; providing an effective date.

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

Section 1. Section 817.355, Florida Statutes, is amended to read:

817.355 Fraudulent creation or possession of admission ticket.—

(1) Except as provided in subsections (2) and (3), a ~~Any~~ person who counterfeits, forges, alters, or possesses a ~~any~~ ticket, token, or paper designed for admission to or the rendering of services by a ~~any~~ sports, amusement, concert, or

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

other facility offering services to the general public, with the intent to defraud such facility, commits ~~is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person who commits a second or subsequent violation of subsection (1) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who counterfeits, forges, alters, or possesses 10 or more tickets, tokens, or papers designed for admission to or the rendering of services by a sports, amusement, concert, or other facility offering services to the general public with the intent to defraud such facility commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Section 817.361, Florida Statutes, is amended to read:

817.361 Purchase, sale, or transfer ~~Resale~~ of multiuse tickets; sale or transfer of cards, wristbands, and media that access or are associated with multiuse tickets ~~multiday or multievent ticket~~.—

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

(a) “Issuer” means the person or entity that created a multiuse ticket and is obligated to allow admission thereunder.

(b) “Multiuse ticket” means a ticket, other medium, or right designed for admission to more than one amusement location or other facility in a theme park complex, or for admission for more than 1 day or more than once in the same day to one or more such locations or facilities in a theme park complex.

(c) “Theme park complex” means an area comprised of at

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

59 least 25 acres of land owned by the same business entity that
60 contains rides or other recreational activities.
61 (2) A person who purchases, offers to purchase, ~~Whoever~~
62 offers for sale, sells, or transfers in connection with a
63 commercial transaction, with or without consideration, a ~~any~~
64 nontransferable multiuse ticket or a card, wristband, or other
65 medium that accesses or is associated with such nontransferable
66 multiuse ticket ~~or other nontransferable medium designed for~~
67 ~~admission to more than one amusement location or other facility~~
68 ~~offering entertainment to the general public, or for admission~~
69 ~~for more than 1 day thereto,~~ after the nontransferable multiuse
70 ~~said~~ ticket ~~or other medium~~ has been used at least once for
71 admission, commits a violation of this subsection. For purposes
72 of this subsection, a multiuse ticket is nontransferable unless
73 the phrase “may be used by more than one person” is printed
74 clearly on the multiuse ticket by the issuer or the issuer
75 explicitly states on its website that the multiuse ticket may be
76 used by more than one person ~~is guilty of a misdemeanor of the~~
77 ~~second degree, punishable as provided in s. 775.082 or s.~~
78 ~~775.083~~. ~~A nontransferable ticket or other nontransferable~~
79 ~~medium is one on which is clearly printed the phrase:~~
80 ~~“Nontransferable; must be used by the same person on all days”~~
81 ~~or words of similar import.~~
82 (3) A person who offers for sale, sells, or transfers in
83 connection with a commercial transaction, with or without
84 consideration, a card, wristband, or other medium that accesses
85 or is associated with a multiuse ticket with the knowledge that
86 another person possesses a card, wristband, or other medium that
87 accesses or is associated with the same multiuse ticket commits

88 a violation of this subsection.
89 (4)(a) Except as provided in paragraph (b), a person who
90 violates subsection (2) or subsection (3) commits a misdemeanor
91 of the first degree, punishable as provided in s. 775.082 or s.
92 775.083.
93 (b) A person who commits ~~Upon conviction for~~ a second or
94 subsequent violation of ~~this~~ subsection (2) or subsection (3) or
95 who commits a violation of subsection (2) after committing a
96 violation of subsection (3) or who commits a violation of
97 subsection (3) after committing a violation of subsection (2)
98 commits~~, such person is guilty of~~ a felony ~~misdemeanor~~ of the
99 third ~~first~~ degree, punishable as provided in s. 775.082, ~~or~~ s.
100 775.083, or s. 775.084.
101 Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

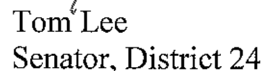
COMMITTEES:
Judiciary, *Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Banking and Insurance
Ethics and Elections
Gaming
Rules
Transportation

SENATOR TOM LEE
Deputy Majority Leader
24th District

March 6, 2014

The Honorable Nancy Detert
Senate Commerce and Tourism Committee, Chair
416 Senate Office Building
404 South Monroe St.
Tallahassee, FL 32399

Dear Chair Detert,



I respectfully request that SB 1142 related to *Ticket Sales*, be placed on the Senate Commerce and Tourism Committee agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Tom Lee
Senator, District 24

Cc: Jennifer Hrdlicka, Staff Director

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

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1182

INTRODUCER: Senator Brandes

SUBJECT: Secondary Metals Recyclers

DATE: March 21, 2014 REVISED: ________ ________ ________ ________

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Malcolm	Hrdlicka	CM	**Pre-meeting**
2.			AG	
3.			AP	

I. Summary:

SB 1182 transfers regulatory authority over secondary metals recyclers from the Department of Revenue (DOR) to the Department of Agriculture and Consumer Services (DACS) and makes a number of regulatory changes to provide increased oversight of secondary metals recyclers.

Specifically, the bill:

- Increases the annual registration fee for a secondary metals recycler from $6 per location to $350 per location;
- Requires a secondary metals recycler to maintain workers' compensation insurance and general liability insurance;
- Requires the DACS to immediately suspend the registration or application for registration of a secondary metals recycler if it or any of its senior personnel is convicted of certain felonies;
- Allows the DACS to suspend, revoke, or restrict the registration of a secondary metals recycler if it has been convicted of certain crimes or violated certain regulations in a prior 10-year period;
- Expands the list of prohibited acts related to secondary metals recyclers that constitute a third-degree felony;
- Specifies that a person who knowingly provides false information and then receives payment from a secondary metals recycler in return for regulated metals commits a second- or third-degree felony depending on the value of the payment received, and makes it a second-degree felony if the payment received is for restricted regulated metals;
- Prohibits the purchase of regulated metals, restricted regulated metals, or ferrous metals on Sundays;
- Revises the types of restricted regulated metals the purchase of which is prohibited without obtaining proof that the seller is authorized to sell the metals;
- Authorizes a DACS investigator to inspect a secondary metals recycler and all records maintained by a secondary metals recycler;

- Authorizes the DACS to seek an inspection warrant if DACS personnel are denied access to a registrant's place of business in order to verify registration; and
- Authorizes the DACS to levy administrative penalties for certain violations of the secondary metals recycler regulations.

II. Present Situation:

Secondary metals recyclers are currently regulated by the DOR under Part II of ch. 538, F.S. A secondary metals recycler is, generally, a person who is engaged in the business of obtaining used ferrous[1] or nonferrous[2] metals or converting such metals into raw material products.[3] Current law requires a secondary metals recycler to register with the DOR prior to engaging in business, provides for the inspection of regulated metals and records kept by the recycler, regulates methods of payment, and provides certain prohibitions and penalties.[4]

The DACS is charged with, among other things, protecting consumers from unsafe or defective products and deceptive business practices. The Division of Consumer Services (division) within the DACS is tasked with receiving the state's consumer complaints. It is also responsible for overseeing and regulating a broad range of business activities, including commercial weight loss practices, telephone solicitations, dance studios, pawnshops, health studios, sellers of travel, and telemarketers. The division is also responsible for protecting consumers from unfair and unsafe business practices across a wide range of products, including petroleum products, brake fluid, antifreeze, lubricating oil, and weighing and measuring devices.

III. Effect of Proposed Changes:

Section 1 transfers the authority, responsibility, and funding for regulating secondary metals recyclers from the DOR to the DACS as a type two transfer.[5]

The DOR Confidentiality and Information Sharing

Under s. 213.053, F.S., information contained in returns, reports, or other documents received by the DOR, including investigative reports, is confidential and exempt from public disclosure. This protection applies to certain taxes, trust funds, and regulatory programs, including the registration of secondary metals recyclers.[6] The DOR may disclose certain information to other agencies, and those agencies are bound by the same requirements of confidentiality as the DOR. For example, the DOR may disclose only the name, addresses, and sales tax registration

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[1] Section 538.18(3), F.S., defines ferrous metals as any metals containing significant quantities of iron or steel.
[2] Section 538.18(6), F.S., defines nonferrous metals as metals not containing significant quantities or iron or steel, including copper, brass, aluminum, bronze, lead, zinc, nickel, and alloys.
[3] Section 538.18(11), F.S.
[4] A number of organizations, such as charities, non-profit corporations, and religious institutions, and individuals, such as law enforcement officers and bankruptcy trustees, are exempt from part II of ch. 538, F.S. Section 538.22, F.S.
[5] Section 20.06(2), F.S., defines a type two transfer to include the merging or removal of an existing program of one department into another department. Any program transferred by a type two transfer retains all its statutory powers, duties, and functions. Unless provided by law, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.
[6] Section 213.053(1), F.S.

information to the division at the DACS.[7] Additionally, the DOR is authorized to disclose to a law enforcement officer whether a secondary metals recycler's certificate of registration is valid and provide the name of the certificate holder.[8]

Section 3 amends s. 213.053, F.S., to authorize the DOR to also provide sales tax information to the division in addition to names, addresses, and sales tax registration information allowed in current law. This information may only be provided to the DACS for the purposes of enforcing the regulations related to payment methods for purchases of certain metals by secondary metals recyclers.[9]

The bill also repeals the DOR's authorization to disclose to a law enforcement officer whether a secondary metals recycler's certificate of registration is valid and to provide the name of the certificate holder. Because secondary metals recycler registration is transferred to the DACS, this provision in s. 213.053, F.S., is obsolete.

Registration Requirements

Currently, under s. 538.25, F.S., a secondary metals recycler must register with the DOR and pay an annual fee of $6 for each location. Applicants are generally required to provide a complete set of fingerprints and a recent identification card with the applicant's photo on it.[10] The DOR must forward an applicant's fingerprints to the Florida Department of Law Enforcement (FDLE) for a criminal background check.[11] The DOR may issue a temporary registration to each location pending completion of the background check.[12]

One application is required for each secondary metals recycler, and if a secondary metals recycler owns more than one location, the application must list each location and the DOR will issue a duplicate registration for each location.[13] The registration must be conspicuously displayed at the place of business set forth on the registration.[14]

A fine of up to $10,000 may be imposed for each knowing and intentional violation of the registration requirements, and if the fine is not paid within 60 days, the DOR may bring a civil action.[15] The DOR may also deny, revoke, restrict, or suspend a registration if, within the preceding 24 months, the applicant or registrant, knowingly and intentionally:[16]

- Violates provisions related to inspections[17] or hold notices;[18]

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[7] *Id*. at (8)(p).
[8] Section 213.053(11), F.S.
[9] Section 538.235(3), F.S.
[10] Section 538.25(1)(c), F.S.
[11] *Id.* at (1)(b). According to the DACS, the fingerprinting fee paid by an applicant is $31.50. DACS, *Agency Analysis: SB 1182*, 2 (Mar. 3, 2014) (on file with the Committee on Commerce and Tourism).
[12] *Id.*
[13] *Id.* at (1)(a).
[14] *Id.* at (2).
[15] *Id.* at (3). *See* s. 120.69, F.S.
[16] Section 538.25(4), F.S.
[17] Section 538.20, F.S.
[18] Section 538.21, F.S.

- Engages in a pattern of failing to keep records;[19]
- Makes a material false statement in the application for registration; or
- Engages in fraud in connection with any purchase or sale of regulated metals.

The same penalties may be assessed if, within the preceding 24 months:

- The applicant or registrant has been convicted of or pled guilty to a felony involving property, any felony drug offense, or knowingly and intentionally violating laws relating to registration as a secondary metals recycler; or
- The applicant has, after receipt of written notice from the DOR of failure to pay sales tax, failed to pay within 30 days after the receipt of the notice.[20]

Section 10 amends s. 538.25, F.S., to require a secondary metals recycler to register on an application form prescribed by the DACS. The required information on the application is generally consistent with current law but must also include the full name and address of the applicant and any other information required by the DACS. If the applicant is not an individual, the applicant must state the full name and address of each owner of at least 10 percent equity interest in the business. If the applicant is a corporation, the application must state the full name and address of each officer and director.

The bill increases the annual registration fee for each of the secondary metals recycler's locations from $6 to $350. All fees collected must be transferred into the General Inspection Trust Fund.

The bill repeals the fine for each knowing and intentional violation of the registration requirements.[21]

The bill requires each secondary metals recycler to maintain workers' compensation insurance and general liability insurance and must provide the DACS with evidence of each. Failure to maintain either form of insurance constitutes an immediate threat to the public health, safety, and welfare of the residents of Florida, and the DACS may immediately suspend or deny the recycler's registration.

In addition, the bill requires a secondary metals recycler to allow the DACS personnel to enter the secondary metals recycler's place of business in order to verify that a registration is valid. If the DACS personnel are refused entry for this purpose, the DACS can seek an inspection warrant[22] to obtain compliance with this requirement.

The DACS may deny, suspend, revoke, or restrict a registration if the secondary metals recycler or any senior personnel of the recycler has been convicted of knowingly and intentionally violating certain requirements and regulations or been convicted of certain crimes within a 10-year period, as opposed to the current 2-year period, immediately preceding the denial, suspension, revocation, or restriction.

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[19] Section 538.19, F.S.

[20] Section 539.25(4)(b) and (c), F.S.

[21] A secondary metal recycler that does not register still commits a third-degree felony, pursuant to s. 538.23(5), F.S., and may be subject to additional administrative fines under s. 538.27, F.S., which is created in section 12 of the bill.

[22] *See* ss. 933.20-933.30, F.S.

Upon notification from a law enforcement agency, court, state attorney, or the FDLE, the DACS must immediately suspend the registration or application of a secondary metals recycler, if the recycler, or any of its senior personnel are convicted of a felony under chs. 812[23] or 817, F.S.[24]

Inspections

A properly identified law enforcement officer has the right to inspect during usual business hours any purchased regulated metals in the possession of a secondary metals recycler and any records required to be maintained by the recycler.[25]

Section 7 amends s. 538.20, F.S., to provide that, in addition to a law enforcement officer, an employee of the DACS who is a nonsworn, trained regulatory investigator has the right to inspect any purchased regulated metals in possession of a secondary metals recycler and any records maintained by a recycler.

Violations and Penalties

Section 538.23, F.S., makes it a third-degree felony[26] for a secondary metals recycler to knowingly and intentionally violate s. 538.26(2), F.S., which prohibits a secondary metals recycler from purchasing regulated metals, restricted regulated metals, or ferrous metals from a seller when such items were not transported in a motor vehicle.[27] This is the only prohibited act listed under s. 538.26, F.S., that is a third-degree felony. Violations of the other prohibited acts under s. 538.26, F.S., are currently first-degree misdemeanors with a fine of up to $10,000.[28]

Section 538.23(3), F.S., also prohibits a person from knowingly providing false verification of ownership or providing false or altered identification and receiving payment from a secondary metals recycler in return for regulated metals. If the person receives payment less than $300, he or she is guilty of a third-degree felony. If the payment is $300 or more, it is a second-degree felony.[29]

Section 9 amends s. 538.23, F.S., to make any knowing and intentional violation by a secondary metals recycler of any of the prohibitions listed in s. 538.26, F.S., (*see* Prohibited Acts below) that constitute a third-degree felony. The bill also includes a person who knowingly provides false information and receives payment from a secondary metals recycler in return for regulated metals as a third-degree felony if the value of the payment is less than $300. If the payment is

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[23] Chapter 812, F.S., relates to theft, robbery, and related crimes.
[24] Chapter 817, F.S., relates to fraudulent practices including false pretenses and fraud, credit card crimes, credit service organizations, and credit counseling services.
[25] Section 538.20, F.S.
[26] A third-degree felony is punishable by up to 5 years in prison, or up to 10 years for a habitual offender, and a $5,000 fine. Sections 775.082(3)(d), 775.083(1)(c), and 775.084(4)(a), F.S.
[27] Section 538.26(2), F.S.
[28] Section 538.07, F.S. A first degree misdemeanor is punishable by a term of imprisonment not to exceed 1 year. Section 775.082, F.S.
[29] A second-degree felony is punishable by up to 15 years in prison, or up to 30 years for a habitual offender, and a $10,000 fine. Sections 775.082(3)(c), 775.083(1)(b), and 775.084(4)(a), F.S.

$300 or more, it is a second-degree felony. In addition, the bill adds that a person commits a second-degree felony if the payment received is for *restricted* regulated metals.[30]

Prohibited Acts

Currently, s. 538.26, F.S., contains a number of unlawful acts that a secondary metals recycler is prohibited from doing. Prohibited acts include purchasing regulated metals, restricted regulated metals, or ferrous metals before 7 a.m. or after 7 p.m. Additionally, a secondary metals recycler is prohibited from purchasing a number of restricted regulated metals items without obtaining proof that the seller is authorized to sell the items. Such items include:

- An electric light pole or other utility structure and its fixtures, wires, and hardware that are readily identifiable as connected to the utility structure;
- Communication, transmission, distribution, and service wire from a utility, including copper or aluminum bus bars, connectors, grounding plates, or grounding wire; and
- More than two lead-acid batteries, or any part or component of the battery, in a single purchase or from the same individual in a single day.

Section 11 amends s. 538.26, F.S., to prohibit the purchase of regulated metals, restricted regulated metals, or ferrous metals on Sundays. The bill also adds the following items to the list of regulated metals that a secondary metals recycler is prohibited from purchasing without first obtaining proof that the seller is authorized to sell the item:

- A *metal* electric light pole and its fixtures, and hardware that is readily identifiable as connected to a *metal electric light structure*.
- Communication, transmission, distribution, and service wire other than from a utility, including jelly wire, heavy gauge copper, certain types of aluminum wire, waveguide, and underground cable; and
- Three or more lead-acid batteries.

In addition, the bill removes the following from the list of regulated metals that a secondary metals recycler is prohibited from purchasing without first obtaining proof that the seller is authorized to sell the items:

- Utility structures other than metal electric light poles, including their fixtures, wires, and hardware; and
- Wires for metal electric light poles.

Administrative Penalties

Except for authorizing the DOR to levy a fine of up to $10,000 for violating the secondary metals recycler registration requirements,[31] part II of ch. 538, F.S., does not provide any other administrative fines or penalties if a secondary metals recycler violates part II.

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[30] "Restricted regulated metals" are defined as those regulated metals, such as manhole covers, electrical wiring, and railroad equipment, the purchase of which is prohibited without obtaining proof that the seller owns or is authorized to sell the metals. Sections 538.18(10) and 538.26(5), F.S.

[31] Section 538.25(3), F.S.

Section 12 creates s. 538.27, F.S., to authorize the DACS to levy administrative penalties for violations of ss. 538.19,[32] 538.235,[33] 538.25,[34] and 538.26, F.S.[35] Upon its determination that a violation has occurred, the DACS may initiate one of the following administrative penalties:

- Issue a notice of noncompliance pursuant to s. 120.695, F.S.;
- Impose an administrative fine up to $200 per violation and up to $5,000 per inspection; and
- Issue a cease and desist order.

Any administrative proceedings that could result in any of the above penalties must be conducted in accordance with the Administrative Procedures Act.[36] The DACS may bring a civil action under s. 120.69, F.S., to recover any fine imposed under this section that is not paid within 60 days.

Fines collected under this section must be deposited into the General Inspection Trust Fund.

Section 5 amends s. 538.18, F.S., to update the definition of "department" from the DOR to the DACS.

Sections 2, 4, and 6 amend ss. 213.05, 319.30, and 538.19, F.S., respectively to correct references to the DACS.

Section 8 amends s. 538.21, F.S., to transfer current law related to hold notices that was located in s. 538.25(2), F.S., to this section, which deals with hold notices.

Section 13 creates s. 538.29, F.S., to authorize the DACS to adopt rules and forms to administer part II of ch. 538, F.S., and it requires the rules to include tiered penalties for violations of part II.

Section 14 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[32] *See* Required Records section above.
[33] *See* Methods of Payment section above.
[34] *See* Registration section above.
[35] *See* Prohibited Acts and Practices section above.
[36] Chapter 120, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill increases the annual registration fee for secondary metals recyclers from $6 per location to $350 per location. The DACS estimates that the $350 annual registration fee and the $31.50 fingerprint fee paid by registrants will result in an estimated recurring revenue increase of $283,836 annually.[37]

The bill has not been evaluated by the Revenue Estimating Conference.

B. Private Sector Impact:

Under the bill, secondary metals recyclers will pay an increased annual registration fee of $350 for each site, instead of the current annual fee of $6 for each site. Secondary metals recyclers will also be required to maintain current and valid workers' compensation insurance and general liability coverage.

Secondary metals recyclers may also incur greater costs due to any fines levied by the DACS and any violations prosecuted by the Attorney General or the State Attorney.

C. Government Sector Impact:

The DACS estimates $283,886 in registration and fingerprinting revenue to be deposited into the General Inspection Trust Fund. For Fiscal Year 2014-2015, the DACS will require four positions and $445,385 to implement the provisions in the bill.

REVENUES (General Inspection Trust Fund)		**FY 2014-15**	**FY 2015-16**
Registration Fees		260,400	260,400
Fingerprint Fees		23,436	23,436
	Total	283,836	283,836
EXPENDITURES (General Inspection Trust Fund)			
Salaries and Benefits		207,916	207,916
Expenses		46,519	26,993
Contracted Services		111,836	23,436
Special Category - Human Resources		1,376	1,376
OCO		8,800	0
Acquisition of Motor Vehicles		68,938	0
Non-operating		30,991	30,991
	Total	476,376	290,712

[37] DACS, *Agency Analysis*, 2. The DACS estimate is based on an estimated 744 registrants. An estimated $23,436 will be transferred to the FDLE for fingerprinting and background checks.

The DACS states an undetermined amount of revenue will be generated from administrative penalties.[38]

The Criminal Justice Impact Conference has not yet determined the impact of this bill on prison beds.

VI. Technical Deficiencies:

The bill limits information the DOR may provide to the DACS to only names, addresses, sales tax registration information, and information related to sales tax remittances *only* for the purpose of enforcing the methods of payment regulations for secondary metals recyclers. It appears the bill may prohibit the DOR from releasing names, addresses, and sales tax information to any other division of the DACS for any other purpose, which is permitted in current law.

The bill retains current law that allows the DACS to subtract administrative costs from any fees collected before the fees are deposited to the General Inspection Trust Fund. Similar language does not appear to exist anywhere else in current law.

The bill also retains current law that requires secondary metals recyclers to renew their annual registration by October 1 of each year. The DACS is pursuing a policy of allowing rolling renewals rather than specific annual filing dates. Rolling renewals distribute application cycles throughout the year and allow current staffing levels to be sufficient to process the workload and prevent large backlogs of registrations.

VII. Related Issues:

The bill authorize the DACS to adopt rules to implement the act and must include tiered penalties for violations.

The FDLE recommends that the fingerprinting provisions be amended to require that the fingerprints be taken by an authorized entity, require that fingerprints be retained for participation in the state and federal fingerprint retention program, and clarify that fingerprint fees are paid by the applicant.[39]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 213.05, 213.053, 319.30, 538.18, 538.19, 538.20, 538.21, 538.23, 538.25, and 538.26.

This bill creates the following sections of the Florida Statutes: 538.27 and 528.29.

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[38] *Id.*
[39] FDLE, *Agency Analysis: SB 1182*, 5-6 (Mar. 14, 2014) (on file with the Committee on Commerce and Tourism).

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.

560694

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Commerce and Tourism (Hays) recommended the following:

1 **Senate Amendment**

2

3 Delete line 287

4 and insert:

5 at any location until any holding period has expired. At the

236056

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Commerce and Tourism (Hays) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 393 - 407
4 and insert:
5 (c)1. An applicant who is required to submit a copy of his
6 or her fingerprints under paragraph (a) must be fingerprinted by
7 an agency, entity, or vendor that meets the requirements of s.
8 943.053(13). The agency, entity, or vendor shall forward a
9 complete set of the applicant’s fingerprints to the Department
10 of Law Enforcement for state processing, and the Department of

236056

11 Law Enforcement shall forward the applicant's fingerprints to
12 the Federal Bureau of Investigation for national processing.
13 2. Fees for state and national fingerprint processing and
14 fingerprint retention shall be borne by the applicant. The state
15 cost for fingerprint processing is that authorized in s.
16 943.053(3)(b) for records provided to persons or entities other
17 than those specified as exceptions therein.
18 3. All fingerprints submitted to the Department of Law
19 Enforcement as required under this paragraph shall be retained
20 by the Department of Law Enforcement as provided under s.
21 943.05(2)(g) and (h) and enrolled in the Federal Bureau of
22 Investigation's national retained print arrest notification
23 program. Fingerprints may not be enrolled in the national
24 retained print arrest notification program until the Department
25 of Law Enforcement begins participation with the Federal Bureau
26 of Investigation. Arrest fingerprints will be searched against
27 the retained prints by the Department of Law Enforcement and the
28 Federal Bureau of Investigation.
29 4. For any renewal of the applicant's registration, the
30 department shall request the Department of Law Enforcement to
31 forward the retained fingerprints of the applicant to the
32 Federal Bureau of Investigation unless the applicant is enrolled
33 in the national retained print arrest notification program
34 described in subparagraph 3. The fee for the national criminal
35 history check shall be paid as part of the renewal fee to the
36 department and forwarded by the department to the Department of
37 Law Enforcement. If the applicant's fingerprints are retained in
38 the national retained print arrest notification program, the
39 applicant shall pay the state and national retention fee to the

236056

40 department, and the department shall forward the fee to the
41 Department of Law Enforcement.
42 5. The department shall notify the Department of Law
43 Enforcement regarding any person whose fingerprints have been
44 retained but who is no longer registered under this chapter.
45 6. The department shall screen background results to
46 determine if an applicant meets registration requirements.
47 ~~(b) The department shall forward the full set of~~
48 ~~fingerprints to the Department of Law Enforcement for state and~~
49 ~~federal processing, provided the federal service is available,~~
50 ~~to be processed for any criminal justice information as defined~~
51 ~~in s. 943.045. The cost of processing such fingerprints shall be~~
52 ~~payable to the Department of Law Enforcement by the department.~~
53 ~~The department may issue a temporary registration to each~~
54 ~~location pending completion of the background check by state and~~
55 ~~federal law enforcement agencies but shall revoke such temporary~~
56 ~~registration if the completed background check reveals a~~
57 ~~prohibited criminal background. The Department of Law~~
58 ~~Enforcement shall report its findings to the Department of~~
59 ~~Revenue within 30 days after the date the fingerprints are~~
60 ~~submitted for criminal justice information.~~
61
62 ================= T I T L E A M E N D M E N T ================
63 And the title is amended as follows:
64 Between lines 30 and 31
65 insert:
66 requiring that certain applicants for a secondary
67 metals recycler registration be fingerprinted by
68 certain agencies, entities, or vendors; requiring such

236056

69 agencies, entities, or vendors to submit a complete
70 set of the applicant’s fingerprints to the Department
71 of Law Enforcement for state processing; requiring the
72 Department of Law Enforcement to forward the
73 applicant’s fingerprints to the Federal Bureau of
74 Investigation for national processing; providing that
75 fees for fingerprint processing and retention be borne
76 by the applicant; providing for retention of the
77 fingerprints; requiring the department to notify the
78 Department of Law Enforcement of certain individuals
79 who are no longer registered as secondary metals
80 recyclers; requiring the department to screen results
81 of background checks;

940080

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Commerce and Tourism (Hays) recommended the following:

1 **Senate Amendment**

2

3 Delete lines 539 - 544

4 and insert:

5 wire from a utility, including copper or aluminum bus bars,

6 connectors, grounding plates, or grounding wire.

126492

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Commerce and Tourism (Hays) recommended the following:

1 **Senate Amendment (with title amendment)**

2

3 Between lines 604 and 605

4 insert:

5 Section 14. For the 2014-2015 fiscal year, there is appropriated

6 to the Department of Agriculture and Consumer Services, the sums

7 of $259,721 in recurring and $185,664 in nonrecurring funds from

8 the General Inspection Trust Fund, and 4 full-time equivalent

9 positions with associated salary rate of $138,181, are

10 authorized for the purpose of implementing this act.

126492

11
12 ================= T I T L E A M E N D M E N T ================
13 And the title is amended as follows:
14 Delete line 58
15 and insert:
16 an appropriation; providing an effective date.

By Senator Brandes

22-00297A-14 20141182__

1 A bill to be entitled
2 An act relating to secondary metals recyclers;
3 providing for a type two transfer of the regulation of
4 secondary metals recyclers from the Department of
5 Revenue to the Department of Agriculture and Consumer
6 Services; amending s. 213.05, F.S.; repealing
7 provision that requires that the Department of Revenue
8 regulate the registration of secondary metals
9 recyclers; amending s. 213.053, F.S.; authorizing the
10 Department of Revenue to share specified information
11 with the Department of Agriculture and Consumer
12 Services; conforming provisions to changes made by the
13 act; amending s. 319.30, F.S.; redefining the term
14 “certificate of registration number”; amending s.
15 538.18, F.S.; redefining terms; amending s. 538.19,
16 F.S.; requiring the Department of Agriculture and
17 Consumer Services, rather than the Department of Law
18 Enforcement, to approve the form of certain records
19 maintained by secondary metals recyclers; amending s.
20 538.20, F.S.; authorizing investigators of the
21 Department of Agriculture and Consumer Services to
22 inspect regulated metals property and records of
23 secondary metals recyclers; amending s. 538.21, F.S.;
24 clarifying a provision of law; amending s. 538.23,
25 F.S.; providing criminal penalties for specified
26 prohibited acts and practices; amending s. 538.25,
27 F.S.; revising required application information for a
28 secondary metals recycler registration; requiring that
29 a secondary metals recycler maintain certain insurance

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

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30 coverage throughout the registration period;
31 increasing registration and renewal fees; requiring
32 that fees be deposited into the General Inspection
33 Trust Fund, rather than the Operating Trust Fund;
34 requiring a secondary metals recycler to allow
35 personnel of the Department of Agriculture and
36 Consumer Services to inspect a registration at the
37 listed place of business; providing remedies to the
38 Department of Agriculture and Consumer Services if a
39 secondary metals recycler fails to allow such
40 inspection; repealing certain civil fines; revising
41 criteria to deny or revoke a registration as a
42 secondary metals recycler; providing for immediate
43 suspension of an application for registration or a
44 registration if the applicant or registrant, or an
45 owner, officer, director, or trustee of an applicant
46 or registrant is convicted of certain felonies;
47 conforming provisions to changes made by the act;
48 amending s. 538.26, F.S.; prohibiting a secondary
49 metals recycler from purchasing or allowing any person
50 to purchase certain metals on a Sunday; revising the
51 list of regulated metals subject to certain purchase
52 restrictions; creating s. 538.27, F.S.; providing
53 administrative penalties; specifying administrative
54 procedures; providing for the collection of
55 administrative fines; creating s. 538.29, F.S.;
56 authorizing the Department of Agriculture and Consumer
57 Services to adopt certain rules and forms; providing
58 an effective date.

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

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

Section 1. All powers; duties; functions; records; personnel; property; pending issues and existing contracts; administrative authority; administrative rules; and unexpended balances of appropriations, allocations, and other funds for the regulation of secondary metal recyclers are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Department of Revenue to the Department of Agriculture and Consumer Services.

Section 2. Section 213.05, Florida Statutes, is amended to read:

213.05 Department of Revenue; control and administration of revenue laws.—The Department of Revenue shall have only those responsibilities for ad valorem taxation specified to the department in chapter 192, taxation, general provisions; chapter 193, assessments; chapter 194, administrative and judicial review of property taxes; chapter 195, property assessment administration and finance; chapter 196, exemption; chapter 197, tax collections, sales, and liens; chapter 199, intangible personal property taxes; and chapter 200, determination of millage. The Department of Revenue shall have the responsibility of regulating, controlling, and administering all revenue laws and performing all duties as provided in s. 125.0104, the Local Option Tourist Development Act; s. 125.0108, tourist impact tax; chapter 198, estate taxes; chapter 201, excise tax on documents; chapter 202, communications services tax; chapter 203, gross receipts taxes; chapter 206, motor and other fuel taxes; chapter

211, tax on production of oil and gas and severance of solid minerals; chapter 212, tax on sales, use, and other transactions; chapter 220, income tax code; ss. 336.021 and 336.025, taxes on motor fuel and special fuel; s. 376.11, pollutant spill prevention and control; s. 403.718, waste tire fees; s. 403.7185, lead-acid battery fees; s. 538.09, registration of secondhand dealers; ~~s. 538.25, registration of secondary metals recyclers;~~ s. 624.4621, group self-insurer's fund premium tax; s. 624.5091, retaliatory tax; s. 624.475, commercial self-insurance fund premium tax; ss. 624.509-624.511, insurance code: administration and general provisions; s. 624.515, State Fire Marshal regulatory assessment; s. 627.357, medical malpractice self-insurance premium tax; s. 629.5011, reciprocal insurers premium tax; and s. 681.117, motor vehicle warranty enforcement.

Section 3. Subsection (1), paragraph (p) of subsection (8), and subsection (11) of section 213.053, Florida Statutes, are amended to read:

213.053 Confidentiality and information sharing.—

(1) This section applies to:

(a) Section 125.0104, county government;

(b) Section 125.0108, tourist impact tax;

(c) Chapter 175, municipal firefighters' pension trust funds;

(d) Chapter 185, municipal police officers' retirement trust funds;

(e) Chapter 198, estate taxes;

(f) Chapter 199, intangible personal property taxes;

(g) Chapter 201, excise tax on documents;

(h) Chapter 202, the Communications Services Tax Simplification Law;

(i) Chapter 203, gross receipts taxes;

(j) Chapter 211, tax on severance and production of minerals;

(k) Chapter 212, tax on sales, use, and other transactions;

(l) Chapter 220, income tax code;

(m) Section 252.372, emergency management, preparedness, and assistance surcharge;

(n) Section 379.362(3), Apalachicola Bay oyster surcharge;

(o) Chapter 376, pollutant spill prevention and control;

(p) Section 403.718, waste tire fees;

(q) Section 403.7185, lead-acid battery fees;

(r) Section 538.09, registration of secondhand dealers;

~~(s) Section 538.25, registration of secondary metals recyclers;~~

(s) ~~(t)~~ Sections 624.501 and 624.509-624.515, insurance code;

(t) ~~(u)~~ Section 681.117, motor vehicle warranty enforcement; and

(u) ~~(v)~~ Section 896.102, reports of financial transactions in trade or business.

(8) Notwithstanding any other provision of this section, the department may provide:

(p) Names, addresses, ~~and~~ sales tax registration information, and information relative to chapter 212 for purposes of enforcing s.538.235(3), to the Division of Consumer Services of the Department of Agriculture and Consumer Services in the conduct of its official duties.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

(11) Notwithstanding any other provision of this section, with respect to a request for verification of a certificate of registration issued pursuant to s. 212.18 to a specified dealer or taxpayer or with respect to a request by a law enforcement officer for verification of a certificate of registration issued pursuant to s. 538.09 to a specified secondhand dealer ~~or pursuant to s. 538.25 to a specified secondary metals recycler~~, the department may disclose whether the specified person holds a valid certificate or whether a specified certificate number is valid or whether a specified certificate number has been canceled or is inactive or invalid and the name of the holder of the certificate. This subsection does ~~shall~~ not ~~be construed to~~ create a duty to request verification of any certificate of registration.

Section 4. Paragraph (b) of subsection (1) of section 319.30, Florida Statutes, is amended to read:

319.30 Definitions; dismantling, destruction, change of identity of motor vehicle or mobile home; salvage.—

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

(b) “Certificate of registration number” means the certificate of registration number issued by the Department of

175 Agriculture and Consumer Services ~~Revenue of the State of~~
176 ~~Florida~~ pursuant to s. 538.25.
177 Section 5. Subsections (2) and (7) of section 538.18,
178 Florida Statutes, are amended to read:
179 538.18 Definitions.—As used in this part, the term:
180 (2) “Department” means the Department of Agriculture and
181 Consumer Services ~~Revenue~~.
182 (7) “Personal identification card” means one of the
183 following forms of identification, which must be valid and
184 contain the individual’s photograph and current address:
185 (a) A ~~valid~~ Florida driver license.
186 (b) ~~,~~ A Florida identification card issued by the
187 Department of Highway Safety and Motor Vehicles.
188 (c) A~~, an equivalent~~ form of identification equivalent to
189 paragraph (a) or paragraph (b) issued by another state.
190 (d) ~~,~~ A passport.
191 (e) ~~, or~~ An employment authorization issued by the United
192 States Bureau of Citizenship and Immigration Services ~~that~~
193 ~~contains an individual’s photograph and current address~~.
194 Section 6. Subsections (1) through (3) of section 538.19,
195 Florida Statutes, are amended to read:
196 538.19 Records required; limitation of liability.—
197 (1) A secondary metals recycler shall maintain a legible
198 paper record of all purchase transactions to which such
199 secondary metals recycler is a party. A secondary metals
200 recycler shall also maintain a legible electronic record, in the
201 English language, of all such purchase transactions. The
202 appropriate law enforcement official may provide data
203 specifications regarding the electronic record format, but such

204 format must be approved by the department ~~of Law Enforcement~~. An
205 electronic record of a purchase transaction shall be
206 electronically transmitted to the appropriate law enforcement
207 official no later than 10 a.m. of the business day following the
208 date of the purchase transaction. The record transmitted to the
209 appropriate law enforcement official must not contain the price
210 paid for the items. A secondary metals recycler who transmits
211 such records electronically is not required to also deliver the
212 original or paper copies of the transaction forms to the
213 appropriate law enforcement official. However, such official
214 may, for purposes of a criminal investigation, request the
215 secondary metals recycler to make available the original
216 transaction form that was electronically transmitted. This
217 original transaction form must include the price paid for the
218 items. The secondary metals recycler shall make the form
219 available to the appropriate law enforcement official within 24
220 hours after receipt of the request.
221 (2) The following information must be maintained on the
222 form approved by the department ~~of Law Enforcement~~ for each
223 purchase transaction:
224 (a) The name and address of the secondary metals recycler.
225 (b) The name, initials, or other identification of the
226 individual entering the information on the ticket.
227 (c) The date and time of the transaction.
228 (d) The weight, quantity, or volume, and a description of
229 the type of regulated metals property purchased in a purchase
230 transaction.
231 (e) The amount of consideration given in a purchase
232 transaction for the regulated metals property.

233 (f) A signed statement from the person delivering the
234 regulated metals property stating that she or he is the rightful
235 owner of, or is entitled to sell, the regulated metals property
236 being sold. If the purchase involves a stainless steel beer keg,
237 the seller must provide written documentation from the
238 manufacturer that the seller is the owner of the stainless steel
239 beer keg or is an employee or agent of the manufacturer.
240 (g) The distinctive number from the personal identification
241 card of the person delivering the regulated metals property to
242 the secondary metals recycler.
243 (h) A description of the person from whom the regulated
244 metals property was acquired, including:
245 1. Full name, current residential address, workplace, and
246 home and work phone numbers.
247 2. Height, weight, date of birth, race, gender, hair color,
248 eye color, and any other identifying marks.
249 3. The right thumbprint, free of smudges and smears.
250 4. Vehicle description to include the make, model, and tag
251 number of the vehicle and trailer of the person selling the
252 regulated metals property.
253 5. Any other information required by the form approved by
254 the department ~~of Law Enforcement~~.
255 (i) A photograph, videotape, or digital image of the
256 regulated metals being sold.
257 (j) A photograph, videotape, or similar likeness of the
258 person receiving consideration in which such person’s facial
259 features are clearly visible.
260 (3) A secondary metals recycler complies with the
261 requirements of this section if it maintains an electronic

262 database containing the information required by subsection (2)
263 as long as the electronic information required by subsection
264 (2), along with an electronic oath of ownership with an
265 electronic signature of the seller of the secondary metals being
266 purchased by the secondary metals recyclers and an electronic
267 image of the seller’s right thumbprint that has no smudges and
268 smears, can be downloaded onto a paper form in the image of the
269 form approved by the department ~~of Law Enforcement~~ as provided
270 in subsection (2).
271 Section 7. Section 538.20, Florida Statutes, is amended to
272 read:
273 538.20 Inspection of regulated metals property and
274 records.—During the usual and customary business hours of a
275 secondary metals recycler, a law enforcement officer or a
276 nonsworn, trained regulatory investigator of the department
277 shall, after properly identifying herself or himself ~~as a law~~
278 ~~enforcement officer~~, have the right to inspect:
279 (1) Any and all purchased regulated metals property in the
280 possession of the secondary metals recycler, and
281 (2) Any and all records required to be maintained under s.
282 538.19.
283 Section 8. Subsection (3) of section 538.21, Florida
284 Statutes, is amended to read:
285 538.21 Hold notice.—
286 (3) A secondary metals recycler may not dispose of property
287 at any location until a holding period has expired. At the
288 expiration of the hold period or, if extended in accordance with
289 this section, at the expiration of the extended hold period, the
290 hold is automatically released and the secondary metals recycler

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may dispose of the regulated metals property unless other disposition has been ordered by a court of competent jurisdiction.

Section 9. Subsections (1) and (3) of section 538.23, Florida Statutes, are amended to read:

538.23 Violations and penalties.—

(1)(a) Except as provided in paragraph (b), a secondary metals recycler who knowingly and intentionally:

1. Violates s. 538.20, ~~or~~ s. 538.21, s. 538.235, or s. 538.26; or

2. Engages in a pattern of failing to keep records required under ~~by~~ s. 538.19~~;~~

~~3. Violates s. 538.26(2); or~~

~~4. Violates s. 538.235~~,

commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A secondary metals recycler who commits a third or subsequent violation of paragraph (a) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A ~~Any~~ person who knowingly provides false information, gives false verification of ownership, or who gives a false or altered identification and who receives money or other consideration from a secondary metals recycler in return for regulated metals property commits:

(a) A felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the value of the money or other consideration received is less than $300.

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(b) A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the value of the money or other consideration received is $300 or more or is for restricted regulated metals.

Section 10. Section 538.25, Florida Statutes, is amended to read:

538.25 Registration.—

(1) A person may not engage in business as a secondary metals recycler at any location without registering with the department. To register as a secondary metals recycler, an application must be submitted to the department on a department prescribed form. One application is required for each secondary metals recycler. An applicant must be a natural person who is at least 18 years of age or a corporation that is organized or qualified to do business in this state. If the applicant is a partnership, each partner must separately apply for registration.

(a) The application must include all the following information:

1. The full name and address of the applicant. If the applicant is not a natural person, the applicant shall provide the full name and address of each direct and beneficial owner of at least 10 percent equity interest in the applicant. If the applicant is a corporation, the applicant must also state the full name and address of each officer and director. The department shall accept applications only from a fixed business address. The department may not accept an application that provides an address of a hotel room or motel room, a vehicle, or a post office box.

349 2. The address of each location where the applicant will
350 engage in business as a secondary metals recycler. The
351 department shall issue a duplicate registration for each
352 location. For purposes of subsections (3) and (4) and s. 538.27,
353 duplicate registrations are individual registrations.
354 3. If the applicant is a natural person, a complete set of
355 his or her fingerprints, certified by an authorized law
356 enforcement officer, and a copy of a valid fullface photographic
357 identification card.
358 4. If the applicant is a corporation, the name and address
359 of the corporation's registered agent for service of process in
360 the state; and a certified copy of a statement from the
361 Secretary of State declaring that the corporation is duly
362 organized in this state or, if the corporation is organized in
363 another state, declaring that the corporation is duly qualified
364 to do business in this state.
365 5. Evidence of general liability insurance and workers'
366 compensation insurance coverage. Each secondary metals recycler
367 must maintain general liability insurance and workers'
368 compensation insurance throughout the registration period.
369 Failure to maintain general liability insurance and workers'
370 compensation insurance during the registration period
371 constitutes an immediate threat to the public health, safety,
372 and welfare, and the department may suspend or deny the
373 registration of a secondary metals recycler without such
374 insurance coverage.
375 6. Any additional information requested by the department.
376 (b) ~~(a)~~ An applicant shall remit a registration fee of $350
377 for each of the applicant's business locations with each

378 application for registration and, if applicable, a fee equal to
379 the federal and state costs for processing required fingerprints
380 ~~must be submitted to the department with each application for~~
381 ~~registration~~. ~~One application is required for each secondary~~
382 ~~metals recycler. If a secondary metals recycler is the owner of~~
383 ~~more than one secondary metals recycling location, the~~
384 ~~application must list each location, and the department shall~~
385 ~~issue a duplicate registration for each location. For purposes~~
386 ~~of subsections (3), (4), and (5), these duplicate registrations~~
387 ~~shall be deemed individual registrations.~~ A secondary metals
388 recycler shall pay ~~a fee of $6 per location at the time of~~
389 ~~registration and~~ an annual renewal fee of $350 ~~$6~~ per location
390 on October 1 of each year. All fees collected, less costs of
391 administration, shall be transferred into the General Inspection
392 ~~Operating~~ Trust Fund.
393 (c) ~~(b)~~ Where applicable, the department shall forward the
394 full set of fingerprints to the Department of Law Enforcement
395 for state and federal processing, provided the federal service
396 is available, to be processed for any criminal justice
397 information as defined in s. 943.045. The cost of processing
398 such fingerprints shall be payable to the Department of Law
399 Enforcement by the department. The department may issue a
400 temporary registration to each location pending completion of
401 the background check by state and federal law enforcement
402 agencies but shall revoke such temporary registration if the
403 completed background check reveals a prohibited criminal
404 background. The Department of Law Enforcement shall report its
405 findings to the department ~~of Revenue~~ within 30 days after the
406 date the fingerprints are submitted for criminal justice

information.

~~(c) An applicant for a secondary metals recycler registration must be a natural person who has reached the age of 18 years or a corporation organized or qualified to do business in the state.~~

~~1. If the applicant is a natural person, the registration must include a complete set of her or his fingerprints, certified by an authorized law enforcement officer, and a recent fullface photographic identification card of herself or himself.~~

~~2. If the applicant is a partnership, all the partners must make application for registration.~~

~~3. If the applicant is a corporation, the registration must include the name and address of such corporation's registered agent for service of process in the state and a certified copy of statement from the Secretary of State that the corporation is duly organized in the state or, if the corporation is organized in a state other than Florida, a certified copy of the statement that the corporation is duly qualified to do business in this state.~~

(2) A secondary metals recycler's registration shall be conspicuously displayed at the place of business set forth on the registration. A secondary metals recycler must allow department personnel to enter the place of business to ascertain whether a registration is current. If department personnel are refused entry or access for such purpose, the department may seek an inspection warrant pursuant to ss. 933.20-933.30 to obtain compliance with this subsection ~~A secondary metals recycler shall not dispose of property at any location until any holding period has expired~~.

~~(3) The Department of Revenue may impose a civil fine of up to $10,000 for each knowing and intentional violation of this section, which fine shall be transferred into the General Revenue Fund. If the fine is not paid within 60 days, the department may bring a civil action under s. 120.69 to recover the fine.~~

(3)~~(4)~~ In addition to the penalties ~~fine~~ provided in s. 538.27 ~~subsection (3)~~, registration under this section may be denied or any registration granted may be revoked, restricted, or suspended by the department if, after October 2, 1989, and within a 10-year ~~24-month~~ period immediately preceding such denial, revocation, restriction, or suspension:

(a) The applicant or registrant, or an owner, officer, director, or trustee of a registrant or applicant has been convicted of knowingly and intentionally:

1. Violating s. 538.20, ~~or~~ s. 538.21, or s. 538.26;

2. Engaging in a pattern of failing to keep records as required by s. 538.19;

3. Making a material false statement in the application for registration; or

4. Engaging in a fraudulent act in connection with any purchase or sale of regulated metals property;

(b) The applicant or registrant, or an owner, officer, director, or trustee of a registrant or applicant has been convicted of, or entered a plea of guilty or nolo contendere to, a felony committed by the secondary metals recycler against the laws of the state or of the United States involving theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses,

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465 possession of altered property, or any felony drug offense or of
466 knowingly and intentionally violating the laws of the state
467 relating to registration as a secondary metals recycler; or
468 (c) The applicant or registrant has, after receipt of
469 written notice from the Department of Revenue of failure to pay
470 sales tax, failed or refused to pay, within 30 days after the
471 secondary metals recycler's receipt of such written notice, any
472 sales tax owed to the Department of Revenue.
473 (4) ~~(5)~~ A denial of an application, or a revocation,
474 restriction, or suspension of a registration, by the department
475 shall be probationary for a period of 12 months in the event
476 that the secondary metals recycler subject to such action has
477 not had any other application for registration denied, or any
478 registration revoked, restricted, or suspended, by the
479 department within the previous 24-month period.
480 (a) If, during the 12-month probationary period, the
481 department does not again deny an application or revoke,
482 restrict, or suspend the registration of the secondary metals
483 recycler, the action of the department shall be dismissed and
484 the record of the applicant or secondary metals recycler cleared
485 thereof.
486 (b) If, during the 12-month probationary period, the
487 department, for reasons other than those existing before ~~prior~~
488 ~~to~~ the original denial or revocation, restriction, or
489 suspension, again denies an application or revokes, restricts,
490 or suspends the registration of the secondary metals recycler,
491 the probationary nature of such original action shall terminate,
492 and both the original action of the department and the action of
493 the department causing the termination of the probationary

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

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494 nature thereof shall immediately be reinstated against the
495 applicant or secondary metals recycler.
496 (c) The department shall immediately suspend a registration
497 or the processing of an application for registration upon
498 notification and subsequent written verification by a law
499 enforcement agency, a court, a state attorney, or the Department
500 of Law Enforcement that the registrant or applicant, or an
501 owner, officer, director, or trustee of a registrant or
502 applicant, is convicted of a felony enumerated in chapter 812 or
503 chapter 817.
504 (5) ~~(6)~~ Upon the request of a law enforcement official, the
505 department ~~of Revenue~~ shall release to the official the name and
506 address of any secondary metals recycler registered to do
507 business within the official's jurisdiction.
508 Section 11. Subsections (1) and (5) of section 538.26,
509 Florida Statutes, are amended to read:
510 538.26 Certain acts and practices prohibited.—It is
511 unlawful for a secondary metals recycler to do or allow any of
512 the following acts:
513 (1) Purchase regulated metals property, restricted
514 regulated metals property, or ferrous metals before 7 a.m. or
515 after 7 p.m., or any time on Sunday.
516 (5)(a) Purchase any restricted regulated metals property
517 listed in paragraph (b) unless the secondary metals recycler
518 obtains reasonable proof that the seller:
519 1. Owns such property. Reasonable proof of ownership may
520 include, but is not limited to, a receipt or bill of sale; or
521 2. Is an employee, agent, or contractor of the property's
522 owner who is authorized to sell the property on behalf of the

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523 owner. Reasonable proof of authorization to sell the property
524 includes, but is not limited to, a signed letter on the owner’s
525 letterhead, dated no later than 90 days before the sale,
526 authorizing the seller to sell the property.
527 (b) The purchase of any of the following regulated metals
528 property is subject to the restrictions provided in paragraph
529 (a):
530 1. A manhole cover.
531 2. A metal ~~An~~ electric light pole ~~or other utility~~
532 ~~structure~~ and its fixtures.
533 3. ~~, wires, and~~ Hardware that is ~~are~~ readily identifiable
534 as connected to a metal electric light ~~the utility~~ structure.
535 4.~~3.~~ A guard rail.
536 5.~~4.~~ A street sign, traffic sign, or traffic signal and its
537 fixtures and hardware.
538 6.~~5.~~ Communication, transmission, distribution, and service
539 wire ~~from a utility~~, including jelly wire, heavy gauge copper,
540 and aluminum wire measuring 1 inch or more in diameter with
541 insulation or measuring three-quarters of an inch without
542 insulation, and copper or aluminum bus bars, connectors,
543 grounding plates, waveguide, and underground cable ~~or grounding~~
544 ~~wire~~.
545 7.~~6.~~ A funeral marker or funeral vase.
546 8.~~7.~~ A historical marker.
547 9.~~8.~~ Railroad equipment, including, but not limited to, a
548 tie plate, signal house, control box, switch plate, E clip, or
549 rail tie junction.
550 10.~~9.~~ Any metal item that is observably marked upon
551 reasonable inspection with any form of the name, initials, or

552 logo of a governmental entity, utility company, cemetery, or
553 railroad.
554 11.~~10.~~ A copper, aluminum, or aluminum-copper condensing or
555 evaporator coil, including its tubing or rods, from an air-
556 conditioning or heating unit, excluding coils from window air-
557 conditioning or heating units and motor vehicle air-conditioning
558 or heating units.
559 12.~~11.~~ An aluminum or stainless steel container or bottle
560 designed to hold propane for fueling forklifts.
561 13.~~12.~~ A stainless steel beer keg.
562 14.~~13.~~ A catalytic converter or any nonferrous part of a
563 catalytic converter unless purchased as part of a motor vehicle.
564 15.~~14.~~ Metallic wire that has been burned in whole or in
565 part to remove insulation.
566 16.~~15.~~ A brass or bronze commercial valve or fitting,
567 referred to as a “fire department connection and control valve”
568 or an “FDC valve,” that is commonly used on structures for
569 access to water for the purpose of extinguishing fires.
570 17.~~16.~~ A brass or bronze commercial potable water backflow
571 preventer valve that is commonly used to prevent backflow of
572 potable water from commercial structures into municipal domestic
573 water service systems.
574 18.~~17.~~ A shopping cart.
575 19.~~18.~~ A brass water meter.
576 20.~~19.~~ A storm grate.
577 21.~~20.~~ A brass sprinkler head used in commercial
578 agriculture.
579 22.~~21.~~ Three or more ~~than two~~ lead-acid batteries, or any
580 part or component thereof, in a single purchase or from the same

581 individual in a single day.
582 Section 12. Section 538.27, Florida Statutes, is created to
583 read:
584 538.27 Administrative penalties.—
585 (1) Upon a determination that a violation of s. 538.19, s.
586 538.235, s. 538.25, or s. 538.26 has occurred, the department
587 may do one or more of the following:
588 (a) Issue a notice of noncompliance pursuant to s. 120.695.
589 (b) Impose an administrative fine not to exceed $200 per
590 violation and not to exceed $5,000 per inspection.
591 (c) Direct that the secondary metals recycler cease and
592 desist specified activities.
593 (2) Administrative proceedings that could result in the
594 entry of an order imposing any penalty specified in this section
595 must be conducted in accordance with chapter 120.
596 (3) Fines collected under this section shall be deposited
597 into the General Inspection Trust Fund. The department may bring
598 a civil action under s. 120.69 to recover any fine imposed under
599 this section which is not paid within 60 days after imposition.
600 Section 13. Section 538.29, Florida Statutes, is created to
601 read:
602 538.29 Rulemaking authority.—The department may adopt rules
603 and forms to administer the provisions of this part. The rules
604 must include tiered penalties for violations of this part.
605 Section 14. This act shall take effect July 1, 2014.

The Florida Senate

Committee Agenda Request

RECEIVED
MAR 03 2014
COMMERCE

To: Senator Nancy Detert, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: March 3, 2014

I respectfully request that **Senate Bill #1182**, relating to Secondary Metals Recyclers, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

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 Commerce and Tourism

BILL: SB 1438

INTRODUCER: Senator Bean

SUBJECT: Qualified Television Loan Fund

DATE: March 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Askey	Hrdlicka	CM	**Pre-meeting**
2.			ATD	
3.			AP	

I. Summary:

SB 1438 creates the Qualified Television (QTV) Fund, a $20 million evergreen fund that is privately managed under state oversight to administer short-term loans for production of qualified television content. The purpose of the QTV Fund is to incentivize the use of the state as a location for television content production and to develop and sustain the workforce and infrastructure for television content production.

A competitively selected fund administrator will administer the QTV Fund and partner with a qualified lending partner to make loans to qualified television producers to fund production costs of qualified television content in Florida. The fund administrator may raise private investment capital for concurrent lending through the QTV Fund; state funds and private investment capital are subordinate debt to the qualified lending partner's investment. All state funds must be segregated from any private investment capital. The bill requires the fund administrator to submit annual reports to the Department of Economic Opportunity (DEO) and requires the Auditor General to conduct an operational audit of the QTV Fund and the fund administrator.

The program expires December 31, 2024, and all remaining funds in the QTV Fund will revert to the General Revenue Fund.

II. Present Situation:

There are no loan programs in current Florida law that pertain to the film and entertainment industry or television content production. Current law does provide for an incentive program that pertains to the film and entertainment industry. The DEO Office of Film and Entertainment's 5-

year statewide strategic plan includes as a specific strategy to "expand opportunities for access to private capital for film, TV and digital media."[1]

Entertainment Industry Financial Incentive Program[2]

In 2003, the Legislature created the Entertainment Industry Financial Incentive Program (incentive program).[3] The incentive program's dual purposes are to:
- Promote Florida as a site for filming, creating, or producing movies, television series, commercials, digital media and other types of entertainment productions; and
- Sustain and develop the state's entertainment workforce, studios, and other related infrastructure.

The incentive program is administered by the Office of Film and Entertainment (OFE), subject to the policies and oversight of the DEO. Currently the incentive program is a 6-year program, which began July 1, 2010, and sunsets June 30, 2016. The incentive program provides tax credits for qualified expenditures related to filming and production activities in Florida. These tax credits may be applied against the corporate income tax or sales and use taxes. Additionally these tax credits may be transferred or sold one time.[4]

Priority for tax credit certifications is made on a first-come, first-served basis within the appropriate "queue."[5] There are three queues of eligible productions: general production, commercial and music video, and independent and emerging media production. The funding is apportioned to the queues as follows:
- 94 percent to the general production queue;
- 3 percent to the commercial and music video queue; and
- 3 percent to the independent and emerging media production queue.

Further, under the general production queue, no more than 45 percent of the tax credits can be awarded to high-impact television series. First priority in the general production queue for tax credits not yet certified is given to high-impact television series and high-impact digital media projects, in alternating order, depending on the type of the first application received.[6]

The OFE is directed to submit an annual report each November 1 to the Governor, the President of the Senate, and the Speaker of the House of Representatives, about the incentive program.[7, 8]

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[1] DEO, Office of Film and Entertainment, "Five-Year Strategic Plan for Economic Development 2013-2018," available at: http://filminflorida.com/about/OFE_Plan_V11.pdf (last visited March 21, 2014).
[2] Information about the incentive program is also available on OFE's website, available at: http://filminflorida.com/ifi/incentives.asp (last visited March 20, 2014).
[3] Section 288.1254, F.S. See ch. 2003-81, L.O.F. In 2010, the incentive program was changed from a cash reimbursement type program to the current form. See ch. 2010-147, L.O.F.
[4] Also, tax credits may be relinquished to the Department of Revenue (DOR) for 90 percent of the amount of the relinquished tax credit, dependent upon legislative appropriation.
[5] Section 288.1254(4), F.S.
[6] This rotating schedule was created in 2012. Ch. 2012-32, L.O.F.
[7] OFE, Fiscal Year 2013-2013 Annual Report (November 1, 2013), available at: http://www.filminflorida.com/ifi/PDFs/annualReports/Office%20of%20Film%20and%20Entertainment%20Annual%20Report%20FY2012-2013_Final%20Combined%20Draft.pdf (last visited 2/25/2014).
[8] Sections 288.1254(10), 288.1253, and 288.1258(5), F.S.

The OFE's annual report for Fiscal Year 2012-13, reviewed the incentive program for the first 3 years of the 6-year program. As of November 1, 2013, there were 297 certified productions, 128 of which were television production (e.g. television series, television pilots, telenovelas, award shows). Outcomes for the television productions include the following estimates:

- Almost $1 billion in qualified expenditures in Florida;
- 147,481 positions with over $549 million in wages paid;[9] and
- 148,038 lodging/room nights.

Projected outcomes are based on information supplied with the applications. These outcomes are subject to change as some projects may withdraw or additional projects become certified.

III. Effect of Proposed Changes:

Qualified Television Loan Fund

Section 1 creates s. 288.127, F.S., to create the Qualified Television Loan (QTV) Fund, a $20 million evergreen fund that is privately managed under state oversight to administer short-term loans for production of qualified television content. The purpose of the QTV Fund is to incentivize the use of the state as a location for television content production and to develop and sustain the workforce and infrastructure for television content production.

State funds in the QTV Fund may be used only to enter into loan agreements and to pay any administrative costs or other authorized fees under the QTV Fund program. The principal and interest of the QTV Fund must be invested and reinvested in accordance with the Florida Uniform Prudent Management of Institutional Funds Act[10] so as not to subject the funds to state and federal taxes and must be consistent with the investment policy statement adopted by the fund administrator. The QTV Fund funds shall be disbursed by the fund administrator through a lending vehicle to make short-term loans for the production of qualified television content.

Fund Administrator

The DEO is required to competitively contract with a private-sector fund administrator by July 1, 2014. The fund administrator must show, at least:

- A demonstrated track record of managing private sector equity or debt funds in the entertainment and media industries; and
- The ability to demonstrate through a partnership agreement that a qualified lending partner[11] is in place, with the capability of leveraging a minimum of 2.5 times the capital amount of

[9] Positions are individual positions, not FTEs. Positions may be permanent or temporary. Production cast, crew, extras, and stand-ins, etc., may work for multiple productions and fill multiple positions. The OFE was directed in the 2011 Regular Session to report positions as estimates of FTEs, but according to the annual report the OFE is still developing methodology to report the data. See ch. 2011-76, L.O.F.

[10] Section 617.2104, F.S.

[11] The bill defines a "qualified lending partner" as a financial institution defined in s. 655.005, F.S., that is selected by a fund administrator with a demonstrated capability in providing financing to television production and specialized expertise in intellectual property, tax credit programs, customary broadcast license agreements, advertising inventories, and ancillary revenue sources, with a combined portfolio in film, television, and entertainment media of at least $500 million.

the QTV Fund, for financing the production cost of qualified television content in the form of senior debt.

Preference will be given to private entities whose headquarters are in Florida and further consideration will be given to entities that have experience managing economic development-or job creation-related funds. The fund administrator must maintain a registered office in Florida throughout the duration of the contract.

The fund administrator must maintain books and records relating to state funds according to generally accepted accounting principles in accordance with the requirements of the Florida Single Audit Act[12] and make those books and records available to the DEO for inspection upon reasonable notice. The books and records must be maintained with detailed records of the use of proceeds from loans to fund qualified television content.

The fund administrator must provide a conflict-of-interest statement from its governing board certifying that no member, director, employee, agent, or other person connected to or affiliated with the fund administrator is receiving or will receive any type of compensation or remuneration from a production company that has received or will receive funds from the QTV Fund or from a qualified lending partner. The DEO may waive this requirement for good cause shown.

The fund administrator may be removed for cause defined under contract between the DEO and the fund administrator, including the engagement in fraud or criminal acts by board members, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance.

Management Fee and Profit Distribution

For administering the QTV Fund, the fund administrator shall be paid an annual management fee paid in advance from state funds in equal quarterly installments, based on the amount of loans under management. For the first 5 years, the annual management fee will equal 5 percent of the loans under management, and then 3 percent of the loans under management for the remainder of the contract. After the first year of the QTV Fund, the annual management fee cannot exceed the investment proceeds earned from its completed investments. Any additional private investment capital[13] is responsible for its own management fees. Additionally, the fund administrator may receive an annual income or profit distribution equal to 20 percent of the net income of the QTV Fund. This distribution may not be made from any principal funds from the original appropriation.

Reporting Requirements

By February 28 each year the fund administrator must submit to the DEO an annual financial report that consists of audited financial statements for the preceding tax year that are audited by an independent certified public accountant. The audit must also provide a basis to verify the

[12] Section 215.87(7), F.S.
[13] The bill defines "private investment capital" as capital from private, nongovernmental funding sources that will be co-invested with the QTV Fund in segregated accounts.

segregation of state funds from those of any private investment capital. An additional program report must be submitted by the same date that includes information on the loans made in the preceding calendar year and including:

- The name of the qualified television content;
- The names of the counties in which the production occurred;
- The number of jobs created and retained as a result of the production;
- The loan amounts, including the amount of private investment capital and funds provided by a qualified lending partner;
- The loan repayment status for each loan;
- The number and amounts of any loans with payments past due;
- The number and amounts of any loans in default;
- A description of the assets securing the loans; and
- Any other information and documentation required by the DEO.

Additionally, the fund administrator must also submit an annual plan of accountability of economic development. The report must provide details of the job creation resulting from the QTV Fund loans made during the current year and cumulatively since the beginning of the program, and any additional information requested by the DEO pertaining to economic development and job creation in Florida.

Loan Administration

The QTV Fund may be used to make loans to production companies to fund production costs for qualified television content or to "provide improvement of the credit profile of a structured financial transaction for qualified television content" (see below *Qualified Television Content Criteria*). To make a loan, the fund administrator shall consider:

- The types of eligible collateral;
- The credit worthiness of the project;
- The producer's track record;
- The possibility that the project will encourage, enhance, or create economic benefits; and
- The extent to which assistance would foster innovative public-private partnerships and attract private debt or equity investments.

The QTV Fund loan package must be secured by contractual and predictable sources of repayment such as domestic and international broadcaster license agreements, tax credits, and other ancillary revenues that are derived from media content rights. The loans must be made on the basis of a second lien or primary security rights on the media assets aforementioned. Unsecured loans may not be made.

The fund administrator is authorized to enter into agreements with qualified lending partners for concurrent lending through the QTV Fund. The fund administrator may raise private investment capital for mezzanine and other equity or to make concurrent loans. Loans from private investment capital may not be made at more favorable terms and conditions than the terms and conditions of the state funds in the QTV Fund. The state appropriation must be maintained in a separate account from any private investment capital, made in segregated loans, and administered in a separate legal investment entity. Funds may not be comingled.

Loans may only be provided in conjunction with senior loans provided by a qualified lending partner. Loans from the QTV Fund, whether from state funds or private investment capital, may be subordinate to senior debt from the qualified lending partner and may not exceed 30 percent of the total production funding cost of any one project.

Repayment of any loan must be in accordance with the broadcast license agreement and the delivery of qualified television content to the major broadcaster. Repayment must be within 60 days after delivery of the content to the major broadcaster.[14] Loan terms may not exceed 36 months in duration. However, under extenuating circumstances, the fund administrator may grant an extension after providing the DEO written findings specifying conditions requiring the extension.

Excepting the funds appropriated to the QTV Fund program, the credit of the state may not be pledged. The state is not liable or obligated in any way for claims on the loan program or against the fund administrator or the DEO.

Qualified Television Content Criteria

The bill defines "qualified television content" as a series, miniseries, or made-for-TV content produced by a qualified production company that has in place a distribution contract with a major broadcaster, under a customary broadcast license agreement. The term excludes productions that contain obscene content, as defined in s. 847.001, F.S.

The bill requires the fund administrator to consider at a minimum, certain criteria for evaluating the qualifying television content for a loan. The criteria include:

- The content is intended for broadcast by a major broadcaster on a major network, cable, or streaming channel;
- The content is produced in this state, or a minimum of 80 percent of the production budget must be spent in this state. This requirement may be amended by the fund administrator upon written notice to the DEO, which has 10 business days to object to the change;
- For television series, there is a programming order for at least 13 episodes. This requirement may be amended by the fund administrator upon written notice to the DEO, which has 10 business days to object to the change;
- The producer must have a contract in place with a major broadcaster to acquire content programming under a customary broadcast license agreement and the contract must cover 60 percent of the budget;
- The producer must retain a foreign sales agent and be able to provide the administrator with the agent's official foreign and ancillary sales estimate; and
- The project must be bonded and secured by an industry approved completion guarantor if the production cost per episode exceeds $1 million. This requirement may be waived if the loan applicant provides the fund administrator with evidence of adequate structure to protect state's funds.

[14] The bill defines "major broadcaster" as a broadcasting organization including, but no limited to, television broadcasting networks, cable television, direct broadcast satellite, telecommunication companies, and internet streaming or other digital media platforms.

Audits

The bill requires the Auditor General to conduct an operational audit[15] of the QTV Fund and fund administrator. The scope of review must include, but is not limited to internal control evaluations, internal audit functions, reporting and performance requirements for the use of funds, and compliance with state and federal law.

The fund administrator must provide to the Auditor General any detail or supplemental data required.

Rulemaking

The bill authorizes the DEO to adopt rules to administer the bill and authorizes the DEO to adopt emergency rules to implement this bill. The emergency rules adopted remain in effect for 6 months after adoption and may be renewed. The subsection authorizing the DEO to adopt emergency rules expires October 1, 2015.

Expiration

The QTV Fund expires on December 31, 2024. All remaining funds in the QTV Fund revert to the General Revenue Fund.

Section 2 provides that the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[15] See s. 11.45(1)(g), F.S.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill provides for a new loan program designed to be an evergreen fund with an initial appropriation of $20 million from the Economic Development Trust Fund.

VI. Technical Deficiencies:

As noted by the DEO, the Economic Development Trust Fund does not generate any material revenue that could be used to fund the loan program.[16] The bill does not identify a revenue source.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 288.127 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.

[16] Department of Economic Opportunity, *Legislative Bill Analysis: SB 1438* (March 16, 2014).

749572

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Bean) recommended the following:

1 **Senate Amendment**
2
3 Delete line 60
4 and insert:
5 the funds appropriated for this program to the fund

208840

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Bean) recommended the following:

1 **Senate Amendment**

2

3 Delete line 81

4 and insert:

5 by September 1, 2014, and award the contract in accordance with

6 the

397900

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Bean) recommended the following:

1 **Senate Amendment**

2

3 Delete lines 225 - 226

4 and insert:

5 domestic and international broadcaster license agreements and

6 other ancillary revenues that are derived from

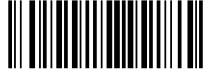
908470

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Bean) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Between lines 310 and 311
4 insert:
5 Section 2. The sum of $20,000,000 is appropriated to the
6 Department of Economic Opportunity from nonrecurring funds from
7 the General Revenue Fund for the 2014-2015 fiscal year. These
8 funds shall be used for the Qualified Television Loan Fund in s.
9 288.127, Florida Statutes, as created by this act.
10


908470

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 line 15
14 and insert:
15 providing emergency rulemaking authority; providing an
16 appropriation; providing an

By Senator Bean

4-00803A-14 20141438__

1 A bill to be entitled
2 An act relating to the Qualified Television Loan Fund;
3 creating s. 288.127, F.S.; defining terms; providing a
4 purpose; creating the Qualified Television Loan Fund;
5 requiring the Department of Economic Opportunity to
6 contract with a fund administrator; providing fund
7 administrator qualifications; providing for the fund
8 administrator's compensation and removal; specifying
9 the fund administrator powers and duties; providing
10 the structure of the loans; providing qualified
11 television content criteria; requiring the Auditor
12 General to conduct an operational audit of the fund
13 and the fund administrator; authorizing the department
14 to adopt rules; providing for expiration of the act;
15 providing emergency rulemaking authority; providing an
16 effective date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Section 288.127, Florida Statutes, is created to
21 read:
22 288.127 Qualified Television Loan Fund (QTV Fund).—
23 (1) DEFINITIONS.—As used in this section, the term:
24 (a) "Fund administrator" means a private sector
25 organization under contract with the department to manage and
26 administer the QTV Fund.
27 (b) "Major broadcaster" means broadcasting organizations
28 that include, but are not limited to, television broadcasting
29 networks, cable television, direct broadcast satellite,

4-00803A-14 20141438__

30 telecommunications companies, and internet streaming or other
31 digital media platforms.
32 (c) "Private investment capital" means capital from
33 private, nongovernmental funding sources that will be coinvested
34 with the QTV Fund in segregated accounts.
35 (d) "Qualified lending partner" means a financial
36 institution, as defined in s. 655.005, selected by a fund
37 administrator with demonstrated capability in providing
38 financing to television production and specialized expertise in
39 intellectual property, tax credit programs, customary broadcast
40 license agreements, advertising inventories, and ancillary
41 revenue sources, with a combined portfolio in film, television,
42 and entertainment media of at least $500 million.
43 (e) "Qualified television content" means series, mini-
44 series, or made-for-TV content produced by a qualified
45 production company that has in place a distribution contract
46 with a major broadcaster, under a customary broadcast license
47 agreement. The term does not include a production that contains
48 content that is obscene, as defined in s. 847.001.
49 (2) PURPOSE.—The purpose of the QTV Fund is to create a
50 public-private partnership in the form of an evergreen fund to
51 administer a loan program for television production. The QTV
52 Fund shall be privately managed under state oversight to
53 incentivize the use of this state as a site for producing
54 qualified television content and to develop and sustain the
55 workforce and infrastructure for television content production.
56 (3) CREATION.—The Qualified Television Loan Fund is created
57 within the department. The QTV Fund shall be a public fund that
58 is privately managed by the fund administrator under contract

59 entered into with the department. The department shall disburse
60 $20 million from the Economic Development Trust Fund to the fund
61 administrator to invest in the QTV Fund during the existence of
62 the program pursuant to this section and the contract entered
63 into between the fund administrator and the department. State
64 funds in the QTV Fund may be used only to enter into loan
65 agreements and to pay any administrative costs or other
66 authorized fees under this section.
67 (a) The QTV Fund shall be an evergreen fund that shall
68 invest and reinvest the principal and interest of the fund in
69 accordance with s. 617.2104, in such a manner as to not subject
70 the funds to state or federal taxes and to be consistent with
71 the investment policy statement adopted by the fund
72 administrator. As the production companies repay the principal
73 and interest for the QTV Fund, the state funds shall be
74 returned, less any QTV Fund expenses, to the account to be lent
75 to subsequent borrowers.
76 (b) Funds from the QTV Fund shall be disbursed by the fund
77 administrator through a lending vehicle to make short-term loans
78 pursuant to this section.
79 (4) FUND ADMINISTRATOR.—
80 (a) The department shall contract with a fund administrator
81 by July 1, 2014, and award the contract in accordance with the
82 competitive bidding requirements in s. 287.057.
83 (b) The department shall select as fund administrator a
84 private sector entity that demonstrates the ability to implement
85 the program under this section and that meets the requirements
86 set forth in this section. Preference shall be given to
87 applicants that are headquartered in this state. Additional

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

88 consideration may be given to applicants with experience in the
89 management of economic development or job creation-related
90 funds. The qualifications for the fund administrator must
91 include, but are not limited to, the following:
92 1. A demonstrated track record of managing private sector
93 equity or debt funds in the entertainment and media industries.
94 2. The ability to demonstrate through a partnership
95 agreement that a qualified lending partner is in place, with the
96 capability of providing leverage of a minimum of 2.5 times the
97 capital amount of the QTV Fund, for financing the production
98 cost of qualified television content in the form of senior debt.
99 (c) For overseeing and administering the QTV Fund, the fund
100 administrator shall be paid an annual management fee equal to 5
101 percent of the loans under management during the first 5 years
102 and 3 percent of the loans under management after the fifth year
103 and for the remaining duration of the contract. However, after
104 the first year of the QTV Fund, the annual management fee may
105 not exceed the investment proceeds earned from its completed
106 investments. The annual management fee shall be paid from state
107 funds in the QTV Fund and shall be paid in advance, in equal
108 quarterly installments. Any additional private investment
109 capital in the segregated accounts is responsible for its own
110 management fees. In addition, the fund administrator may receive
111 income or profit distribution equal to 20 percent of the net
112 income of the QTV Fund on an annual basis. Such distribution may
113 not be made from any principal funds from the original
114 appropriation.
115 (d) The fund administrator shall provide services defined
116 under this section for the duration of the QTV Fund term unless

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117 removed for cause. Cause shall be further defined under the
118 contract with the fund administrator and must include, but is
119 not limited to, the engagement in fraud or other criminal acts
120 by board members, incapacity, unfitness, neglect of duty,
121 official incompetence and irresponsibility, misfeasance,
122 malfeasance, nonfeasance, or lack of performance.
123 (5) FUND ADMINISTRATOR POWERS AND DUTIES.—
124 (a) *Authority to contract.*—The fund administrator may enter
125 into agreements with qualified lending partners for concurrent
126 lending through the QTV Fund. A loan made by the qualified
127 lending partner must be accounted for separately from the state
128 funds or any other private investment capital. Such loan shall
129 be made as senior debt. The fund administrator may raise private
130 investment capital for mezzanine equity and other equity or
131 raise junior capital for concurrent lending through the QTV
132 Fund. However, loans from private investment capital may not be
133 made at more favorable terms and conditions than the terms and
134 conditions of the state funds in the QTV Fund. The state
135 appropriation must be maintained in a separate account from any
136 private investment capital and administered in a separate legal
137 investment entity or entities. Private investment capital and
138 loans shall be segregated from each other, and funds may not be
139 commingled.
140 (b) *General duties.*—The fund administrator:
141 1. Shall prudently manage the funds in the QTV Fund as an
142 evergreen fund.
143 2. Shall contract with one or more qualified lending
144 partners.
145 3. Shall provide improvement of the credit profile of a

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146 structured financial transaction for qualified production
147 companies that produce qualified television content meeting the
148 criteria in subsection (7).
149 4. May raise additional private investment capital to be
150 held in separate accounts, in addition to the leverage provided
151 by the qualified lending partner.
152 5. Shall administer the QTV Fund in accordance with this
153 part.
154 6. Shall agree to maintain the recipient’s books and
155 records relating to funds received from the department according
156 to generally accepted accounting principles and in accordance
157 with the requirements of s. 215.97(7) and to make those books
158 and records available to the department for inspection upon
159 reasonable notice. The books and records must be maintained with
160 detailed records showing the use of proceeds from loans to fund
161 qualified television content.
162 7. Shall maintain its registered office in this state
163 throughout the duration of the contract.
164 (c) *Financial reporting.*—The fund administrator shall
165 submit to the department by February 28 each year audited
166 financial statements for the preceding tax year which are
167 audited by an independent certified public accountant after the
168 end of each year in which the fund administrator is under
169 contract with the department. In addition to providing an
170 independent opinion on the annual financial statements, such
171 audit provides a basis to verify the segregation of state funds
172 from those of any private investment capital.
173 (d) *Program reporting.*—The fund administrator shall submit
174 an annual report to the department by February 28 after the end

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175 of each year in which the fund administrator is under contract
176 with the department. The report must include information on the
177 loans made in the preceding calendar year and must include, but
178 need not be limited to, the following:
179 1. The name of the qualified television content.
180 2. The names of the counties in which the production
181 occurred.
182 3. The number of jobs created and retained as a result of
183 the production.
184 4. The loan amounts, including the amount of private
185 investment capital and funds provided by a qualified lending
186 partner.
187 5. The loan repayment status for each loan.
188 6. The number, and amounts, of any loans with payments past
189 due.
190 7. The number, and amounts, of any loans in default.
191 8. A description of the assets securing the loans.
192 9. Other information and documentation required by the
193 department.
194 (e) *Plan of accountability.*—The fund administrator shall
195 submit an annual plan of accountability of economic development,
196 including a report detailing the job creation resulting from the
197 QTV Fund loans made during the current year and cumulatively
198 since the inception of the program. The fund administrator shall
199 also provide any additional information requested by the
200 department pertaining to economic development and job creation
201 in the state.
202 (f) *Conflict-of-interest statement.*—The fund administrator
203 shall provide a conflict-of-interest statement from its

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204 governing board certifying that no board member, director,
205 employee, agent, or other person connected to or affiliated with
206 the fund administrator is receiving or will receive any type of
207 compensation or remuneration from a production company that has
208 received or will receive funds from the loan program or from a
209 qualified lending partner. The department may waive this
210 requirement for good cause shown.
211 (6) LOAN STRUCTURE.—
212 (a) The QTV Fund may make loans to production companies to
213 fund production costs or provide improvement of the credit
214 profile of a structured financial transaction for qualified
215 television content that meets the criteria requirements of
216 subsection (7). To make a loan, the fund administrator shall
217 take into consideration the types of eligible collateral, the
218 credit worthiness of the project, the producer’s track record,
219 the possibility that the project will encourage, enhance, or
220 create economic benefits, and the extent to which assistance
221 would foster innovative public-private partnerships and attract
222 private debt or equity investment.
223 (b) The QTV Fund loan package shall be secured by
224 contractual and predictable sources of repayment such as
225 domestic and international broadcaster license agreements, tax
226 credits, and other ancillary revenues that are derived from
227 media content rights. Unsecured loans may not be made.
228 (c) The loans shall be made on the basis of a second lien
229 or primary security rights on the media assets listed in
230 paragraph (b).
231 (d) The QTV Fund shall provide funding only in conjunction
232 with senior loans provided by a qualified lending partner. Loans

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233 from the QTV Fund may be subordinated to senior debt from the
234 qualified lending partner and may not exceed 30 percent of the
235 total production funding cost of any particular project.
236 (e) The production company's repayment of any loan shall be
237 in accordance with the broadcast license agreement and the
238 delivery of qualified television content to the major
239 broadcaster and shall be within 60 days after such delivery.
240 (f) Loans made by the QTV Fund may not exceed 36 months in
241 duration, except for extenuating circumstances for which the
242 fund administrator may grant an extension upon making written
243 findings to the department specifying the conditions requiring
244 the extension.
245 (g) With the exception of funds appropriated to the loan
246 program by the Legislature, the credit of the state may not be
247 pledged. The state is not liable or obligated in any way for
248 claims on the loan program or against the lender or the
249 department.
250 (7) QUALIFIED TELEVISION CONTENT CRITERIA.—The fund
251 administrator must consider at a minimum the following criteria
252 for evaluating the qualifying television content:
253 (a) The content is intended for broadcast by a major
254 broadcaster on a major network, cable, or streaming channel.
255 (b) The content is produced in this state, or a minimum of
256 80 percent of the production budget must be spent in this state.
257 This requirement may be amended by the fund administrator upon
258 notice to the department. Such notice must include a specific
259 justification for the change and must be transmitted to the
260 department in writing. The department has 10 business days to
261 object to the change. If the department does not object to the

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262 change within 10 business days, the change is deemed acceptable
263 by the department, and the fund administrator may grant the
264 amendment to the requirement in this paragraph.
265 (c) If the content is a series, there is a programming
266 order for at least 13 episodes. This requirement may be amended
267 by the fund administrator upon notice to the department. Such
268 notice must include a specific justification for the change and
269 must be transmitted to the department in writing. The department
270 has 10 business days to object to the change. If the department
271 does not object to the change within 10 business days, the
272 change is deemed acceptable by the department, and the fund
273 administrator may grant the amendment to the requirement in this
274 paragraph.
275 (d) The producer must have a contract in place with a major
276 broadcaster to acquire content programming under a customary
277 broadcast license agreement and the contract must cover 60
278 percent of the budget.
279 (e) The producer must retain a foreign sales agent and must
280 be able to provide the fund administrator with the foreign sales
281 agent's official estimates of foreign and ancillary sales.
282 (f) The project must be bonded and secured by an industry-
283 approved completion guarantor if the production cost per episode
284 exceeds $1 million. This requirement may be waived if the loan
285 applicant provides the fund administrator with evidence of
286 adequate structure to protect the state's funds.
287 (8) AUDITOR GENERAL REPORT.—The Auditor General shall
288 conduct an operational audit, as defined in s. 11.45, of the QTV
289 Fund and fund administrator. The scope of review must include,
290 but is not limited to, internal controls evaluations, internal

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291 audit functions, reporting and performance requirements for the
292 use of the funds, and compliance with state and federal law. The
293 fund administrator shall provide to the Auditor General any
294 detail or supplemental data required.
295 (9) RULEMAKING AUTHORITY.—The department may adopt rules to
296 administer this section.
297 (10) EXPIRATION.—This section expires December 31, 2024, at
298 which point all funds remaining in the QTV Fund shall revert to
299 the General Revenue Fund.
300 (11) EMERGENCY RULES.—
301 (a) The executive director of the department is authorized,
302 and all conditions are deemed met, to adopt emergency rules
303 pursuant to ss. 120.536(1) and 120.54(4) for the purpose of
304 implementing this act.
305 (b) Notwithstanding any other law, the emergency rules
306 adopted pursuant to paragraph (a) remain in effect for 6 months
307 after adoption and may be renewed during the pendency of
308 procedures to adopt permanent rules addressing the subject of
309 the emergency rules.
310 (c) This subsection expires October 1, 2015.
311 Section 2. This act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 898

INTRODUCER: Communications, Energy, and Public Utilities Committee and Senators Abruzzo and Soto

SUBJECT: Communications Services Tax

DATE: March 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	**Fav/CS**
2.	Hrdlicka	Hrdlicka	CM	**Pre-meeting**
3.			AFT	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 898 excludes from the definition of "sales price" for the communications services tax the sale of communications services between a franchisor and its franchisee. The exclusion does not apply to the sale of communications services to a franchisor for its own use.

The bill states that it is a clarification of existing law, and a tax may not be assessed or collected with respect to any charge or portion thereof on the sale of communications services between a franchisor and its franchisee for periods before or after the effective date of the bill.

II. Present Situation:

Chapter 202, F.S., imposes a communications services tax on "retail sales of communications services which originate and terminate in Florida, or originate or terminate in Florida and are billed to a Florida address."[1] Communication services include telecommunications, cable, direct-to-home satellite, and related services.[2] Generally, the communication services tax includes a state tax rate of 6.65 percent and a gross receipts tax rate of 2.52 percent for a

[1] Florida Revenue Estimating Conference, 2014 Florida Tax Handbook, 55.
[2] Chapter 202, F.S.

combined rate of 9.17 percent.[3] In addition, local governments impose a local tax rate of up to 7.12 percent.[4]

The communications services tax is applied to the retail "sales price" of each taxable communications service for the purpose of remitting the tax due.[5] The term "sales price" is defined to mean the total amount charged in money or other consideration by a dealer for the sale of the right or privilege of using communications services in this state, including any property or other service which is part of the sale and for which the charge is not separately itemized on a customer's bill.[6] The following are express exclusions from the definition of "sales price":

- An excise tax, sales tax, or similar tax levied by the United States or any state or local government on the purchase, sale, use, or consumption of any communications service, including communications services tax that is permitted or required to be added to the sales price of such service if the tax is stated separately;
- A fee or assessment levied by the United States or any state or local government, including regulatory fees and emergency telephone surcharges that must be added to the price of the service if the fee or assessment is separately stated;
- Communications services paid for by inserting coins into coin-operated communications devices available to the public;
- The sale or recharge of a prepaid calling arrangement;
- The provision of air-to-ground communications services, defined as a radio service provided to a purchaser while on board an aircraft;
- A dealer's internal use of communications services in connection with its business of providing communications services;
- Charges for property or other services that are not part of the sale of communications services, if such charges are stated separately from the charges for communications services; and
- Charges for goods or services, including Internet access services, that are not subject to the communications services tax and are not separately itemized on a customer's bill but can be reasonably identified from the selling dealer's books and records kept in the regular course of business.

The state taxes collected are deposited into the general revenue fund and a portion is distributed to local governments.[7] Gross receipts tax collections are deposited into the Public Education Capital Outlay and Debt Service Trust Fund and are used for the capital funding of public schools, community colleges, and universities. The Department of Revenue provides tax collection services for local governments, and local communication services taxes are distributed to local governments.

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[3] See ss. 202.12(1)(a) and 203.01(1)(b), F.S. The gross receipts tax is 2.37 percent, plus an additional 0.15 percent for certain services. Local, long distance, and toll telephone services sold to a residential household are exempt from the 6.65 percent state tax and 0.15 percent gross receipts tax.
[4] Section 202.19, F.S.
[5] Section 202.12, F.S.
[6] Section 202.11(13), F.S.
[7] Section 202.18, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 202.11(13)(b), F.S., to add the sale of communications services between a franchisor and its franchisee to the list of express exclusions from the definition of "sales price."

The term "franchisor" is not defined. The term "franchisee" is defined to mean any entity, including a related company, using the franchisor's service mark, whether by license, management agreement, or by a subsidiary or affiliate of the franchisor.[8, 9]

The exclusion does not apply to the sale of communications services to a franchisor for its own use.

Section 2 states that the bill is a clarification of existing law, and a tax may not be assessed or collected with respect to any charge or portion thereof on the sale of communications services between a franchisor and its franchisee for periods before or after the effective date of the bill.

Section 3 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The Revenue Estimating Conference has not yet determined the impact of this bill.

Generally, the exception to the prohibitions under art. VII, s. 18 of the Florida Constitution, is if the Legislature passes such a law by two-thirds of the membership of each chamber. Additionally, laws determined to have an "insignificant fiscal impact," which means an amount not greater than the average statewide population for the applicable fiscal year times $0.10, are exempt. As of April 1, 2013, the statewide population estimate was about 19.3 million.[10]

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[8] The term "related company" means any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used. Section 495.011(10), F.S.

[9] The term "service mark" means any word, name, symbol, or device, or any combination thereof, used by a person to identify and distinguish the services of such person from the services of others and to indicate the source of the services, even if that source is unknown. Titles, character names, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that the person or the programs may advertise the goods of the sponsor. Section 495.011(11), F.S.

[10] Office of Economic and Demographic Research, Florida Population Estimates for Counties and Municipalities, April 1, 2013, available at http://edr.state.fl.us/Content/population-demographics/data/2013_Pop_Estimates.pdf (last visited 3/16/2014).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet determined the impact of this bill.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The Department of Revenue stated that the bill would have an insignificant operational impact.[11]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 202.11 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 Communications, Energy, and Public Utilities on March 4, 2014:
The committee substitute completely rewrites the proposed exemption from the term "sales tax" for purposes of the Communications Services Tax. It exempts the sale of communications services between a franchisor and its franchisee, defining the term "franchisee" to mean any entity, including a related company, using the franchisor's service mark, whether by license, management agreement, or by a subsidiary or affiliate of the franchisor.

The bill also states that it is a clarification of existing law, and a tax may not be assessed or collected with respect to any charge or portion thereof described in s. 202.11(13)(b), F.S., as amended by this act, for periods before or after the effective date of this act.

B. Amendments:

None.

[11] Department of Revenue, 2014 Legislative Bill Analysis: CS/SB 898 (3/14/2014).

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

411094

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Commerce and Tourism (Abruzzo) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 11 - 72
4 and insert:
5 Section 1. Subsection (5) of section 202.11, Florida
6 Statutes, is amended to read:
7 202.11 Definitions.—As used in this chapter, the term:
8 (5) “Information service” means the offering of a
9 capability for generating, acquiring, storing, transforming,
10 processing, retrieving, using, or making available information

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11 via communications services, including, but not limited to,
12 electronic publishing, web-hosting service, and end-user 900
13 number service. The term includes data processing and other
14 services that allow data to be generated, acquired, stored,
15 processed, or retrieved and delivered by an electronic
16 transmission to a purchaser where such purchaser's primary
17 purpose for the underlying transaction is the processed data or
18 information. The term does not include video service.
19 Section 2. This act is a clarification of existing law, and
20 no tax may be assessed or collected with respect to any charge
21 or portion thereof described in s. 202.11(5), Florida Statutes,
22 as amended by this act, for periods before or after the
23 effective date of this act.
24
25 ================= T I T L E A M E N D M E N T ================
26 And the title is amended as follows:
27 Delete lines 4 - 6
28 and insert:
29 the term "information services" to include certain
30 data processing and other services;

By the Committee on Communications, Energy, and Public Utilities; and Senator Abruzzo

579-02095-14 2014898c1

A bill to be entitled

An act relating to the communications services tax; amending s. 202.11, F.S.; revising the definition of the term “sales price” to exclude charges for the sale of communications services between a franchisor and its franchisee; defining the term “franchisee”’ providing applicability; providing an effective date.

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

Section 1. Paragraph (b) of subsection (13) of section 202.11, Florida Statutes, is amended to read:

202.11 Definitions.—As used in this chapter, the term:

(13) “Sales price” means the total amount charged in money or other consideration by a dealer for the sale of the right or privilege of using communications services in this state, including any property or other service, not described in paragraph (a), which is part of the sale and for which the charge is not separately itemized on a customer’s bill or separately allocated under subparagraph (b)8. The sales price of communications services may not be reduced by any separately identified components of the charge which constitute expenses of the dealer, including, but not limited to, sales taxes on goods or services purchased by the dealer, property taxes, taxes measured by net income, and universal-service fund fees.

(b) The sales price of communications services does not include charges for any of the following:

1. An excise tax, sales tax, or similar tax levied by the United States or any state or local government on the purchase,

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579-02095-14 2014898c1

sale, use, or consumption of any communications service, including, but not limited to, a tax imposed under this chapter or chapter 203 which is permitted or required to be added to the sales price of such service, if the tax is stated separately.

2. A fee or assessment levied by the United States or any state or local government, including, but not limited to, regulatory fees and emergency telephone surcharges, which must be added to the price of the service if the fee or assessment is separately stated.

3. Communications services paid for by inserting coins into coin-operated communications devices available to the public.

4. The sale or recharge of a prepaid calling arrangement.

5. The provision of air-to-ground communications services, defined as a radio service provided to a purchaser while on board an aircraft.

6. A dealer’s internal use of communications services in connection with its business of providing communications services.

7. Charges for property or other services that are not part of the sale of communications services, if such charges are stated separately from the charges for communications services.

8. Charges for goods or services that are not subject to tax under this chapter, including Internet access services but excluding any item described in paragraph (a), which ~~that~~ are not separately itemized on a customer’s bill, but which ~~that~~ can be reasonably identified from the selling dealer’s books and records kept in the regular course of business. The dealer may support the allocation of charges with books and records kept in the regular course of business covering the dealer’s entire

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59 service area, including territories outside this state.
60 9. The sale of communications services between a franchisor
61 and its franchisee. This exclusion does not apply to the sale of
62 communications services to a franchisor for its own use. As used
63 in this subparagraph, the term "franchisee" means any entity,
64 including a related company as defined in s. 495.011, using the
65 franchisor's service mark as defined in s. 495.011, whether by
66 license, management agreement, or by a subsidiary or affiliate
67 of the franchisor.
68 Section 2. This act is a clarification of existing law, and
69 no tax may be assessed or collected with respect to any charge
70 or portion thereof described in s. 202.11(13)(b), Florida
71 Statutes, as amended by this act, for periods before or after
72 the effective date of this act.
73 Section 3. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JOSEPH ABRUZZO
25th District

COMMITTEES:
Commerce and Tourism, *Vice Chair*
Environmental Preservation and
Conservation, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on Finance and Tax
Communications, Energy, and Public Utilities
Military Affairs, Space, and Domestic Security

JOINT COMMITTEE:
Joint Legislative Auditing Committee, *Chair*

March 13th, 2014

The Honorable Nancy C. Detert
The Florida Senate
416 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Madam Chair Detert:

I respectfully request that Senate Bill 898, related to Communications Services Tax, be placed on the Commerce and Tourism committee agenda. This legislation will revise and clarify the purpose of the Communications Services Tax.

Thank you for your consideration. Please let me know if I can provide any further information.

Sincerely,

Joseph Abruzzo

cc: Jennifer Hrdlicka, Staff Director

REPLY TO:
❐ 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774
❐ 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore